



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

November 28, 1977

ATTORNEY GENERAL OPINION NO. 77- 371

Harlan R. Burns, D.D.S.  
Secretary-Treasurer  
Kansas Board of Dental Examiners  
4301 Huntoon  
Topeka, Kansas 66604

Re: State Boards, Commissions and Authorities--Kansas Dental Board--Compensation and Expenses

Synopsis: (1) The secretary-treasurer of the Kansas Dental Board is a "salaried state officer" within the meaning of said term as employed in K.S.A. 1976 Supp. 75-3223.

(2) Board members are entitled to per diem compensation as provided in K.S.A. 1976 Supp. 74-1405; *i.e.*, for each day of actual attendance at meetings of the Board, or subcommittee meetings of the Board, conducting examinations for dental or dental hygienists licenses or conducting inspections of dental laboratories.

(3) It is of no significance insofar as per diem compensation is concerned that a meeting of the Board or its subcommittee is in-state or out-of-state.

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Dear Dr. Burns:

I have your letter wherein you request my opinion relative to several questions concerning payment of per diem compensation to members of the Kansas Dental Board which may or may not be permitted under K.S.A. 1976 Supp. 74-1405 and K.S.A. 1976 Supp. 75-3223.

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Initially you inquire whether the Board's secretary-treasurer is a "salaried state officer or employee." K.S.A. 1976 Supp. 74-1405 provides in pertinent part thus:

"The board may appoint a secretary-treasurer who shall be in the unclassified service of the Kansas Civil Service Act. The secretary-treasurer shall receive an annual salary fixed by the board and approved by the state finance council."

I understand you enjoy the appointment of secretary-treasurer by exercise of the above noted authority vested in the Board. Without undue elaboration, suffice it to say because you receive an annual salary from the state for the performance of duties at the request of and in the furtherance of a state board's statutory obligations you are a salaried state employee. In this regard you also ask for the procedure by which per diem monies erroneously paid to you as secretary-treasurer may be returned to the state. You need only forward to this office a check or draft made payable to the Treasurer of the State of Kansas in the amount determined by the post auditor as due and owing, and I will direct it to the appropriate state officers.

You also ask several questions regarding per diem compensation for Board members relative to particular activities. Initially certain provisions of K.S.A. 1976 Supp. 74-1405 should be noted:

"The board shall hold two regular meetings each year at times to be fixed by the board, and special meetings at such other times as may be necessary. Members of the Kansas dental board attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, or conducting examinations for dental or dental hygienists licenses or conducting inspections of dental laboratories required by K.S.A. 65-1438 and amendments thereto shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 1976 Supp. 75-3223 and amendments thereto . . . . The board in its discretion may affiliate as an active member with the national association

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of dental examiners and any organization of one or more state boards for the purpose of conducting a standard examination of candidates for licensure as dentists or dental hygienists and pay regular dues to such association or organization, and may send members of the board to the meetings of said national association and the meetings of any organization of state boards of dental examiners organized for the purpose of conducting a standard examination of candidates for licensure as dentists and dental hygienists." [Emphasis added.]

You advise that pursuant to the above provisions the Board has in fact affiliated with the American Association of Dental Examiners and the Central Regional Dental Testing Service (CRDTS), the latter being an organization comprised of several state dental boards which administers standard examinations for dental and dental hygienists licensure applicants.

First, you ask if Board members may claim the allowable per diem compensation for administering the "national board examinations" of the American Dental Association when such members receive \$75 per day reimbursement for meals and lodging. K.S.A. 1976 Supp. 74-1405, as above quoted, permits per diem compensation to be paid Board members for "conducting examinations for dental or dental hygienists." Whether a Board member by administering the national board examination is fulfilling the Board's duty to conduct examinations "to ascertain the qualification and fitness of [Kansas] applicants for licenses as dentists, or certificates as specialists in dentistry" [K.S.A. 74-1406] or whether a member participates in such activity as an exercise of the Board's prerogative under K.S.A. 1976 Supp. 74-1405, makes no difference. So long as that member is conducting authorized examinations for dental or dental hygienists licenses he or she is entitled to claim \$35 per diem compensation for each day in actual attendance thereof. This conclusion applies equally to the member who also acts as a dental examiner for CRDTS, assuming of course that such activity entails conducting examinations for dental or dental hygienists licenses. And, it is immaterial whether the location for these examinations are within or without the state insofar as per diem compensation is concerned.

Second, you ask whether Board members are entitled to \$35 per diem compensation for authorized attendance at meetings of the

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American Association of Dental Examiners. While K.S.A. 1976 Supp. 74-1405 authorizes the Board to "send members of the Board to the meetings of . . . [a] national association" of dental examiners, it does not, however, authorize compensation for attendance at such meetings either expressly, impliedly or otherwise.

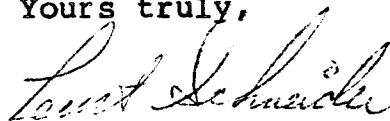
Third, you ask if Board members are authorized per diem compensation for attending CRDTS board of directors meetings and/or CRDTS examination review committee meetings. Again, the pivotal factor is whether these meetings fall within the specifically identified activities for which such compensation may be allowed under K.S.A. 1976 Supp. 74-1405. Neither of these meetings appear to qualify.

Fourth, you ask whether per diem compensation is allowed for attendance at Board meetings held in border cities. The location of any meeting is of no significance, irrespective of gubernatorial authorization for the out-of-state location or the lack thereof.

Fifth, you ask if Board members are authorized per diem compensation for court appearances which may be required as part of his or her official duties as a Board member. We note such duty does not fall within the specific list of activities permitting such compensation and is thereof not compensable. K.S.A. 1976 Supp. 74-1405.

Last, you inquire whether Board members attending subcommittee meetings are entitled to per diem compensation. K.S.A. 1976 Supp. 74-1405 expressly permits such payments and while recording minutes for such meetings are not absolutely essential they may be an otherwise prudent means of establishing the legitimacy of a claim for compensation.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

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