



STATE OF KANSAS

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September 14, 1978

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ATTORNEY GENERAL OPINION NO. 78- 294

Ms. Pamela McClelland Cooper
Staff Assistant
Equal Employment Opportunity Office
503 Kansas Avenue
Topeka, Kansas 66603

Re: State Employees--Travel Subsistence--Payment

Synopsis: When a state employee travels out of town overnight on official business, and is provided lodging without cost in the home of a friend or relative, K.S.A. 75-3207 authorizes, but does not require, the agency head to authorize payment of a reduced subsistence allowance for that travel.

* * *

Dear Ms. Cooper:

You advise that your office has received a confidential complaint concerning the payment of per diem allowances to the employees of a certain agency. Specifically, it is alleged that one employee did not receive the full per diem allowance allowed by law while travelling out of town overnight on official business. You state that the agency administrator has advised the employee that the full allowance would not be allowed because the employee stayed in the home of a relative rather than in commercial lodging. In addition, it is your understanding that employees in this particular agency are not reimbursed for mileage purposes unless the person or persons called upon by the employee sign letters acknowledging that the call was in fact made.

K.S.A. 75-3207 and -3207a provide for the payment of subsistence allowances for travel on official business. K.S.A. 75-3207 provides in pertinent part thus:

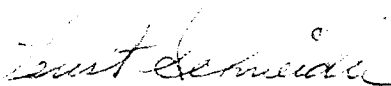
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"Reduced allowances under this section or K.S.A. 75-3207a for subsistence may be made where considered appropriate by the head of any state agency by reason of the nature of travel, type of business being conducted and frequency of travel. Notice of any such reduced allowances shall be given to the director of accounts and reports."

This section vests in the agency head substantial discretion to authorize payment of reduced subsistence allowances when the agency head deems it "appropriate" due to the nature and frequency of travel and the type of business being conducted. Subsistence allowances are authorized to defray the necessary and actual travelling expenses incurred by the employee. Payment of subsistence allowances are not based on a dollar-for-dollar reimbursement of an employee's travel costs. Subsistence allowances are paid on the basis of amounts authorized by the Secretary of Administration, within the limits set by the legislature, which are judged reasonably adequate to defray the ordinary and necessary travel costs incurred by employees generally. K.S.A. 75-3207 permits the agency head to reduce the subsistence allowance paid in a particular instance when the authorized amount exceeds the reasonable and necessary expenses. The cost of lodging is a substantial component of any employee's travel expense. When, in a given case, the agency head finds that the employee will not or did not incur that expense, because of free lodging furnished by a friend or relative, the agency head enjoys discretion to reduce the subsistence allowance paid in a particular instance for that reason.

There is no statute prescribing a particular method of verifying mileage claims. Agency heads are free to adopt such policies as they deem reasonably necessary and appropriate to verify an employee's travel and mileage claim. The requirement of a written acknowledgment such as you describe may be somewhat onerous, but the policy is not prohibited by law.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. W. Keith Weltmer
Mr. James Cobler