



STATE OF KANSAS

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September 10, 1980

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ATTORNEY GENERAL OPINION NO. 80- 190

Mr. Henri Fournier
Executive Director
Kansas State Board of Cosmetology
630 Kansas Avenue
Topeka, Kansas 66603

Re: State Boards, Commissions and Authorities--Board
of Cosmetology--Authority to Pay Per Diem Compensation
When Conducting Examinations

Synopsis: Members of the Board of Cosmetology, who are not salaried state officers or employees, are entitled to receive per diem compensation, in the amount allowed by K.S.A. 75-3223, for each day's attendance at meetings held for the purpose of administering examinations to applicants for licensure by the Board or for the grading of examination papers. Cited herein: K.S.A. 1979 Supp. 74-2701, 74-2702, K.S.A. 74-2703 and 75-3223.

* * *

Dear Mr. Fournier:

You request the opinion of this office whether the Board of Cosmetology may provide per diem compensation to the Board's members when administering examinations to applications for licenses. It is our understanding that the Division of Legislative Post Audit, in a draft report of a recently completed audit, indicates that it is inappropriate to pay per diem to the members under these circumstances.

The statute governing generally the payment of per diem compensation, subsistence allowances, mileage and other expenses of members of state boards is K.S.A. 75-3223. Subsection (a) thereof provides for the payment of per diem compensation to such members "for each day

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of actual attendance at any meeting of such board or any subcommittee meeting authorized by such board" (emphasis added), except it precludes the payment of such per diem to board members who are salaried state officers or employees. These provisions are applicable to all members of state boards for which statutory provisions authorize the payment of per diem compensation.

K.S.A. 75-3223 was enacted as a result of recommendations made by the 1973 Special Committee on Ways and Means. In this Committee's report to the 1974 Legislature (Report on Kansas Legislative Interim Studies to the 1974 Legislature, Proposal No. 113), it was noted that there did not exist at that time a "system of payments of per diem compensation and expenses" and that a "hodge-podge" of statutory provisions in this regard had "developed over a period of many years." Id. at 113-3. The Committee noted that not only the amounts of compensation then allowed to various boards varied greatly, but also the purposes for which such compensation was paid reflected a "wide variation." Id. at 113-4. Thus, it was the Committee's conclusion that "a uniform rule, i.e., payment for actual attendance at a meeting, would be desirable for both policy and administrative reasons." Id.

To this end, the Committee recommended the enactment of pre-filed House Bill No. 1624, section 1 of which was the "'master statute,' providing for uniformity of per diem and expenses, to which the individual board and commission statutes would cross-refer." Id. Said bill was enacted (L. 1974, ch. 348), taking effect on July 1, 1974, and section 1 thereof was subsequently codified as K.S.A. 75-3223.

Subsequent to this statute's enactment, this office has had occasion to render several opinions regarding its application and interpretation. In Attorney General Opinion No. 75-49, issued by Attorney General Curt Schneider to the director of the Kansas Real Estate Commission, it was concluded:

"The statute [75-3223] regarding compensation is express in its term. Certainly service on many of the various state boards, commissions, and similar bodies may entail work by individual members in addition to attendance at the meetings. However, the state has chosen to compensate members only for actual attendance at meetings and sub-committees [sic] meetings which are authorized by the full Commission."

This conclusion was specifically reaffirmed in Attorney General Opinion No. 75-279, and this same reasoning was applied in Attorney

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General Opinion No. 77-371. In our opinion, this conclusion reflects a correct interpretation of 75-3223: pursuant to this statute, per diem compensation may be paid to members of state boards only for actual attendance at meetings of such boards or at subcommittee meetings duly authorized by such boards.

While it is our understanding that Legislative Post Audit has relied upon the prior opinions of this office noted above in conducting its audit of the Board of Cosmetology, it also is our impression that Post Audit has applied the conclusions reached in these opinions so as to find it a violation of K.S.A. 75-3223 to pay per diem compensation to members of the Board for the days spent administering and grading examinations given to applicants for licenses issued by the Board. If that is a correct impression, we must disagree with Post Audit's determination.

Pursuant to K.S.A. 1979 Supp. 74-2701 et seq., certain powers and duties are vested in the Board of Cosmetology. K.S.A. 1979 Supp. 74-2702(a) requires that the Board of Cosmetology shall meet as required by law, at times designated by the Board and also shall meet on the call of the chairman. The statute further states that members of the Board attending meetings of the Board, or attending a subcommittee meeting thereof authorized by the Board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided by K.S.A. 75-3223. In addition, K.S.A. 74-2703 states:

"It shall be the duty of such board to meet at least twice each year, and at such times and places as it may deem advisable and shall at such times hold examinations of such applicants as shall have applied for registration."
(Emphasis added.)

From the foregoing, it is apparent that, since the Board of Cosmetology is required by law "to meet" to administer examinations to applicants, its members who are not salaried state officers or employees are entitled to per diem compensation pursuant to K.S.A. 75-2332(a). With respect to the grading of test papers (assuming arguendo that to "hold examinations" does not include the grading of examinations) we also believe that Board members are entitled to such compensation, if such examinations are graded at a duly constituted meeting of the Board or subcommittee thereof.

In reaching this latter conclusion, we are not unmindful of the fact that, prior to its amendment by the passage of 1974 House Bill No. 1624, K.S.A. [now 1979 Supp.] 74-2702 provided that a Board member was

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entitled to specified compensation "per day for each day that he is actually engaged in official duties in establishing policies, holding hearings and other specific statutory duties." By the 1974 amendment to this statute, however, this language was deleted and replaced by the provision authorizing compensation in accordance with K.S.A. 75-3223. Arguably, therefore, it could be reasoned that this change evinces a legislative intent that Board members are no longer entitled to receive compensation for the performance of official duties. However, without further qualification, we cannot accept such reasoning as producing the best statement of legislative intent.

In our judgment, the essential purpose of the legislation recommended by the 1973 Special Committee on Ways and Means and passed by the 1974 Legislature was to make uniform, to the greatest extent possible, the amount and basis for payment of per diem compensation to members of state boards and commissions. The basis so established is that such payments are restricted to days board members are in actual attendance at meetings, including duly authorized meetings of subcommittees. But, we find nothing to indicate that the special committee or the legislature intended to preclude payment of compensation to members attending meetings called and held for the purpose of carrying out a board's lawful functions or duties, such as the grading of examination papers in furtherance of a statutory duty to provide for the examination and licensure of cosmetologists.

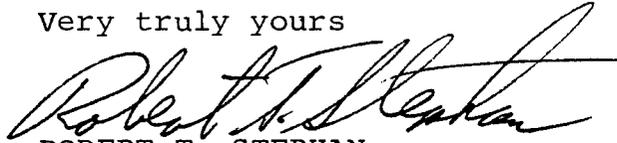
To the contrary, we note that, in discussing the desired results of its proposed legislation, the 1973 Sepcial Committee on Ways and Means stated: "Specific permission for payment of per diem for attending subcommittee meetings is intended to provide needed flexibility in those cases where less than the full membership of a board is authorized to transact certain business or perform official duties." (Emphasis added.) Such statement is certainly consonant with our conclusion that, where official duties of a board or subcommittee thereof are susceptible of performance at a meeting thereof, board members are entitled to receive per diem compensation for each day's attendance at a meeting held in whole or in part for the purpose of performing such duties.

Therefore, it is our opinion that members of the Board of Cosmetology, who are not salaried state officers or employees, are entitled to receive per diem compensation, in the amount allowed by K.S.A. 75-3223, for each day's attendance at meetings held in whole or in part for

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the purpose of administering examinations to applicants for licensure
by the Board or for the grading of examination papers.

Very truly yours



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Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:phf