



STATE OF KANSAS

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September 10, 1980

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ATTORNEY GENERAL OPINION NO. 80- 191

H. D. Lippincott
Administrative Officer
State Board of Barber Examiners
109 West 9th Street, Room 518
Topeka, Kansas 66612

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

Synopsis: Members of the Board of Barber Examiners, 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 conducting examinations of applicants for licensure by the Board. Cited herein: K.S.A. 1979 Supp. 65-1815, K.S.A. 1979 Supp. 74-1806, K.S.A. 75-3223.

* * *

Dear Mr. Lippincott:

You inquire as to the propriety of the Board of Barber Examiners providing a per diem compensation to board members when administering examinations to applicants for licenses issued by the Board. 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.

In your request for an opinion, you state:

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"[I]t is our Board's policy to have board meetings on Sunday before the examinations and on the day of conducting the examination the Board gives the exams, grades the exams and takes care of any unfinished business that might not have been discussed or cleared up from the day before."

Also, you advise that there are instances when the Board has public hearings on proposed rules and regulations on the day of examinations.

K.S.A. 1979 Supp. 74-1806 mandates that the Board of Barber Examiners shall meet as required by law, at times designated by the board and on the call of the administrative officer. When the members of the Board of Barber Examiners are attending meetings of the Board or attending a subcommittee meeting thereof authorized by the Board, they shall be paid compensation, subsistence allowances, mileage, and other expenses as provided in K.S.A. 75-3223. This latter statute establishes the amount of per diem compensation that is payable for each day of attendance at any such meeting. It also precludes the payment of such compensation to board members who are salaried state officers or employees.

In an opinion issued this date to the Executive Director of the Board of Cosmetology, we discussed the history and purpose of K.S.A. 75-3223. Also included therein is a discussion of prior opinions of this office that have considered the application and interpretation of K.S.A. 75-3223. While such discussions are pertinent to the consideration of your inquiry, rather than unduly burden our response to your request, we are enclosing a copy of this opinion for your review.

Please note that we concluded in the enclosed opinion that, pursuant to K.S.A. 75-3223, per diem compensation may be paid to members of state boards only for each day of actual attendance at meetings of such boards or at duly authorized meetings of subcommittees thereof, but that such per diem is not payable for time spent in the performance of a board member's official duties, where such duties are not performed at a duly constituted board or subcommittee meeting. Such conclusion is equally applicable here, but we do not believe it necessarily precludes members of the Board of Barber Examiners from receiving per diem compensation for the time spent conducting examinations of applicants for licensure by the Board.

K.S.A. 1979 Supp. 65-1815 requires the Board of Barber Examiners to conduct examinations and provides in pertinent part:

"The board shall conduct examinations for applicants for certificates of registration to practice as registered apprentices or registered barbers, at such times and places as it shall determine: Provided, however,

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That examinations shall be given not less than twice
in each year."

The sole question you pose is whether the conduct of an examination by Board members is a "meeting" within the meaning of K.S.A. 1979 Supp. 74-1806 and K.S.A. 75-3223. There can be no question that if a meeting is called by the Board or its administrative officer to transact other business of the Board that such constitutes a meeting within the above cited statutes. Likewise, the fact that such meeting coincides with the conduct of the barber examinations, does not alter its character as a duly authorized meeting of the Board. In addition, we must conclude that a gathering of Board members, which requires the attendance and participation of such members for the purpose of giving and grading barber examinations is a "meeting" within the intent of K.S.A. 1979 Supp. 74-1806 and K.S.A. 75-3223. Few functions of the Board are more clearly a part of its regulatory duties, and the performance of those duties is a matter of discretion within the authority of the Board, so long as statutory mandates are honored.

One note of caution is in order. Where the Board schedules its meetings on dates coinciding with the dates of examinations administered by the Board, or on dates immediately preceding or following such examination dates, Board members are entitled to per diem only for attendance at the meetings, and not for conducting examinations that are not administered at a duly constituted meeting of the Board or subcommittee thereof. Where the dates of meetings and examinations coincide, the foregoing statement may appear to be a difference without distinction. However, as previously noted, Board members are not entitled to compensation for time spent in the performance of official duties, unless such duties are performed at duly constituted meetings. Equally as important, though, is the requirement of K.S.A. 75-3223 that per diem be paid only for "each day of actual attendance" at any such meeting.

With respect to this statutory provision, Attorney General Opinion No. 75-49 considered the question of whether a board member who attends a meeting for less than a full day is entitled to compensation. Attorney General Schneider responded, as follows:

"Generally speaking, compensation has been regarded as allowable for a day of attendance at a meeting although the meeting may not last the entire day. If, of course,

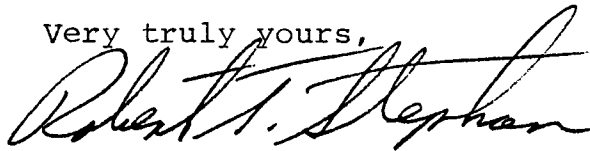
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a meeting were called for no purpose other than to entitle members to per diem compensation and not for the substantial purpose of transacting the business of the Commission, proper auditing and post-auditing might produce facts justifying recovery of any compensation paid for such meetings."

We concur with the foregoing caveat. It is inappropriate for a board to meet for the sole purpose of entitling some or all of the board's members to receive compensation for the performance of official duties that are not performed at the meeting.

In conclusion, therefore, it is our opinion that members of the Board of Barber Examiners, 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 conducting examinations of applicants for licensure by the Board.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:phf
Enclosure