



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

February 11, 1975

Opinion No. 75- 49

Mr. John Ball, Director
Kansas Real Estate Commission
Room 1212, 535 Kansas Avenue
Topeka, Kansas 66603

Dear Mr. Ball:

Section 1(a) of ch. 348, L. 1974, now appearing as K.S.A. 1974 Supp. 75-3223 states in pertinent part thus:

"Whenever it is provided by law that a member of a board is to receive compensation as provided in this section, such member shall be paid per diem compensation of thirty-five dollars (\$35) for each day of actual attendance at any meeting of such board or any subcommittee meeting authorized by such board."

K.S.A. 1974 Supp. 74-4202(c) provides thus:

"Members of the Kansas real estate commission attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in section 1 of [ch. 348, L. 1974, supra]."

You advise that the Real Estate Commission generally holds a meeting once each month in Topeka or some other location within

Mr. John Ball, Director
Page Two
February 11, 1975

the state. The commissioners have been paid per diem compensation for the day actually in attendance at the meeting, and in addition, have also received per diem compensation for the day preceding the meeting, if the commission member travelled to the place of the commission meeting on the day preceding the meeting. Similarly, if a commission member remained in the City of Topeka, for example, overnight following the day of the meeting, the member might receive per diem compensation for that following day. You pose the following question thus:

"If Commission members travel to the city in which the commission meeting is being held the day prior to the Commission meeting, or if they return to their home the day following the Commission meeting, may they be paid per diem for those extra days, or are they limited to receiving per diem only for the day in which they are actually in attendance?"

K.S.A. 1974 Supp. 75-3223, quoted above, expressly authorizes payment of per diem compensation only for "each day of actual attendance at any meeting" of a board or subcommittee thereof. Per diem compensation may not be paid for a day spent travelling to or from a meeting, and not spent in actual attendance at a meeting of the board or subcommittee thereof.

You also inquire concerning per diem compensation to members of the Commission when acting as subcommittees. You advise that when a member knows in advance that he will have a specific item of work to do on behalf of the Commission, he is appointed as a subcommittee of one and is authorized by the Commission to do the work and receive compensation. However, members of the Commission are frequently contacted at their home or office by people in the real estate business or by members of the public. In such instances, the commission member may be called upon at that time to do certain work relating to the business of the Commission. However, the member has no opportunity to be appointed, first, as a subcommittee of one to do the work. As examples of this work, you cite counseling with a member of the public as to the procedure in filing a complaint against a real estate broker or salesman, counseling with someone in the real estate business concerning the

Mr. John Ball, Director
Page Three
February 11, 1975

Kansas real estate brokers' license law and commission rules and regulations, or appearing before a real estate board to give a talk or program concerning the license law, rules and regulations and policies of the commission. Therefore, you inquire whether commission members may be paid per diem compensation for work done on behalf of the commission, if that work is other than attending a meeting of the commission or subcommittee thereof. The answer is no. Under K.S.A. 1974 Supp. 75-3223, payment is authorized only for attendance at meetings of the commission and subcommittees thereof. A member of the commission may not receive per diem compensation for work other than attendance at commission meetings or subcommittee meetings.

The statute 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 subcommittees meetings which are authorized by the full Commission.

You ask, for example, whether the Commission may lawfully create five permanent subcommittees, each composed of one member of the Commission, and authorize each subcommittee of one to do work on behalf of the Commission as it may arise and receive per diem compensation for such work. As indicated above, the statute prescribing allowable per diem compensation makes this compensation payable only for actual attendance at meetings of the full agency and subcommittees thereof. It does not contemplate, and does not authorize, payment to individual members for work done relating to the commission, other than that performed in the course of a meeting of the full Commission, or at a meeting of a subcommittee clearly authorized thereby.

The proposal to create five permanent subcommittees is, in our view, a transparent attempt to circumvent the restrictive compensation provisions. An interview between a commission member in his office or at his home, and a member of the public or of the real estate profession who consulted the commission member for advice or counseling, would not constitute a meeting for which per diem compensation is authorized to be paid.

You also advise that members of the Real Estate Commission may from time to time attend regional and national conventions of the National Association of Real Estate License Law Officials. You

Mr. John Ball, Director
Page Four
February 11, 1975

ask whether, assuming that members of the Commission attending such conventions are first authorized to do so by the Commission, commission members may be paid per diem compensation for attendance at such conventions, and if so, whether they may also be paid per diem compensation for days or portions thereof spent travelling to and from the convention site. Once again, K.S.A. 1974 Supp. 75-3223 authorizes per diem compensation for members only while in actual attendance, in this instance, upon meetings of the Commission and subcommittees thereof. It does not authorize payment of per diem compensation to members of the Commission while attending meetings of other organizations, or, in this case, conventions. There is, of course, no authority for the Commission to hold meetings of its own beyond the territorial borders of the state.

Lastly, you point out that the cited statute above authorizes compensation for "each day of actual attendance at any meeting of such board or any subcommittee meeting authorized by such board." [Emphasis supplied.] You ask whether, a member who attends a commission for less than a full day is entitled to compensation for a full day of attendance. 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, 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.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. James R. Cobler, Director
Division of Accounts and Reports
Department of Administration
2nd Floor - State Capitol
Topeka, Kansas

Mr. W. F. Wachs, Chief
Accounting Control and
Service Section
Department of Administration
2nd Floor - State Capitol
Topeka, Kansas