



STATE OF KANSAS

*Office of the Attorney General*

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

CURT T. SCHNEIDER  
Attorney General

September 3, 1975

ATTORNEY GENERAL OPINION NO. 75-349

Mr. Anthony D. Lopez  
Executive Director  
Commission on Civil Rights  
535 Kansas Avenue, 5th Floor  
Topeka, Kansas 66603

Re: Witnesses--Fees

Synopsis: Persons subpoenaed by the Kansas Commission on Civil Rights are entitled to witness fees and mileage prescribed by K.S.A. 28-125 for witnesses in proceedings in district courts.

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Dear Mr. Lopez:

You inquire concerning the payment of witness fees, mileage and subsistence to witnesses appearing at hearings held by or under the authority of the Kansas Commission on Civil Rights. The question is prompted, we understand, by the chief auditor of the administrative audit section of the Division of Accounts and Reports, concerning a voucher submitted for mileage, totalling \$147.94, per diem allowance of \$87.50, and witness fees of \$5.00, payable to one Duane McCrary, of Madison, Wisconsin, in the matter of *McCrary v. Smalley*.

The power of the Commission to issue subpoenas for the attendance of persons is, of course, entirely statutory, as is the authority of the Commission to pay fees and any other allowances to persons so subpoenaed. K.S.A. 1974 Supp. 44-1005 provides in pertinent part thus:

"The complainant or respondent may apply to the commission for the issuance of a subpoena for the attendance of any

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person or the production or examination of any books, records or documents pertinent to the proceeding at the hearing. Upon such application the commission shall issue the subpoena."

When, of course, the Commission is itself the complainant, it may issue subpoenas for persons whose attendance it requires. K.S.A. 44-1020(b) states thus:

"Witnesses summoned by subpoena of the commission shall be entitled to the same witness and mileage fees as are allowed witnesses in proceedings in district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by said respondent."

Witness fees and mileage allowances for witnesses in proceedings in district courts are fixed by K.S.A. 28-125:

"Witnesses shall receive the following fees: For attending before any court or grand jury, per day, five dollars (\$5) . . . ; for each mile necessarily and actually traveled in going to and returning from the place of attendance, mileage at the rate prescribed by law . . . . No witness shall receive per diem or mileage in more than one case covering the same period of time or the same travel . . . ."

Thus, only mileage and a per diem payment of five dollars is authorized by law to be paid witnesses. There appears to be no authority whatever for payment of any sum for subsistence, as claimed on the voucher in question.

You do not indicate whether the witness in question was subpoenaed to appear. It appears that he was the complainant. We find no authority in the Kansas Act Against Discrimination, K.S.A. 44-1001 *et seq.*, for payment of mileage and witness fees to persons other than witnesses who are "summoned by subpoena of

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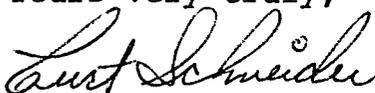
the commission," for it is only these witnesses who are entitled to witness and mileage fees as are allowed witnesses in proceedings in district courts.

As you point out, the complainant is required to appear at a hearing on the complaint. K.S.A. 1974 Supp. 44-1005 directs thus:

"The complainant shall appear at such hearing in person, with or without counsel, and submit testimony. Any individual or individuals filing a complaint must appear in person at such hearing."

The purpose of a subpoena, of course, is to compel the attendance of persons as witnesses. Under the Act, subpoenas shall issue at the request of the complainant or respondent, or at the instance of the Commission itself when it is the complainant. Only persons who attend pursuant to a subpoena are entitled to payment of witness fees and mileage, and such persons are entitled to no other payments therefor, such as subsistence. A complainant may not, of course, require the Commission to issue a subpoena to him- or herself to attend a hearing upon said person's complaint, for the sole purpose of such a subpoena would be to entitle the complainant to payment of witness fees and mileage to which he or she would not otherwise be entitled. On the basis of the foregoing, we find no authority for the payment of the amounts claimed in this instance, if the witness did not attend pursuant to a subpoena issued at the request of a party to the proceeding, in this instance, the respondent.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj