

December 21, 1993

OPINION NO. 93-066

The Honorable J.B. Collier, Jr.  
Lawrence County Prosecuting Attorney  
Lawrence County Court House  
Ironton, Ohio 45638

Dear Prosecutor Collier:

You have requested an opinion concerning the language of R.C. 339.03 that permits trustees of a county hospital to recover their reasonable expenses incurred in the performance of their duties. The relevant provision states:

*The trustees shall serve without compensation, but shall be allowed their necessary and reasonable expenses incurred in the performance of their duties, including the cost of their participation in such continuing education programs or developmental programs as the trustees consider necessary.*

R.C. 339.03 (emphasis added). Your letter notes that the statute clearly permits reimbursement of costs of participating in continuing education programs or developmental programs. You are interested in a determination of other sorts of expenses that might be included within this provision. It is assumed that in each case the actual expenses incurred will be itemized and proper documentation will be provided.<sup>1</sup>

#### **Authority of a Board of County Hospital Trustees**

A board of county hospital trustees is created pursuant to R.C. 339.02 and is given broad authority over the county hospital. *See, e.g.*, 1966 Op. Att'y Gen. No. 66-006; 1952 Op. Att'y Gen. No. 1126, p. 97. R.C. 339.06(A) grants the board "the entire management and control of the hospital" and authorizes the board to "establish such rules for its government and the admission of

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<sup>1</sup> This opinion addresses only reimbursement for expenses actually incurred and paid by a trustee and does not consider any sort of general expense allowance that is not based directly on out-of-pocket expenses.

persons as are expedient." 1952 Op. No. 1126 recognized "the principle that where powers are conferred upon a board to operate and manage an institution intended for the public welfare, a large amount of discretion must be vested in such trustees, and...the statute can not undertake to enumerate in detail every movement that they may make." 1952 Op. No. 1126 at 103. Thus, the general standard for recovery of expenses is that the board may incur "such expenses as are reasonably necessary for the proper conduct and efficient use of the hospital." 1925 Op. Att'y Gen. No. 2628, p. 463 at 464 (quoted in 1952 Op. No. 1126 at 103).

A board of county hospital trustees has authority to adopt rules (or bylaws) defining the types of expenses that will be reimbursed pursuant to R.C. 339.03, *see* R.C. 339.06(A); 1952 Op. No. 1126, as long as those rules comply with the statutory standard establishing reimbursable expenses as "necessary and reasonable expenses incurred in the performance of [the trustee's] duties." R.C. 339.03. That R.C. 339.03 uses the phrase "shall be allowed" indicates that a trustee is entitled to reimbursement for such expenses. R.C. 339.03; *see, e.g., Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (use of "shall" generally indicates that a provision is mandatory).

### **Allowance of Specific Expenses**

Whether a particular expense is incurred in the performance of an official's duties was discussed in 1975 Op. Att'y Gen. No. 75-008 in connection with reimbursement of expenses of members of a board of education. Op. No. 75-008 quoted Drury, *Ohio School Guide*, 3d Ed., Sec. 4.22, as follows:

The amount of expenses that may be incurred, as well as the nature of the items that may be reimbursed, rests in the sound discretion of each board, subject to the fundamental rule that public funds may not be expended to reimburse public officials or employees for expenses that are personal and private, and not official, or not actually incurred in the performance of their duties.

Op. No. 75-008 at 2-34. Op. No. 75-008 concluded that a board of education lacked authority to pay for meals of board members at meetings that are held in the home district of the board and do not involve travel away from headquarters, since the cost of such meals is a private expense that is not necessary to the conduct of the meetings. *Accord* 1982 Op. Att'y Gen. No. 82-006; 1970 Op. Att'y Gen. No. 70-061. The expenditure of public funds for meals, refreshments, or other amenities has, however, been permitted when the legislative authority determines that the expenditure is necessary to further a public purpose. *See, e.g.,* 1986 Op. Att'y Gen. No. 86-086; Op. No. 82-006.

Moreover, "necessary and reasonable expenses" have generally been construed to include travel and parking expenses, overnight lodging, and meals away from home on official business. In 1952 Op. No. 1126, one of my predecessors concluded that a board of county hospital trustees had authority to use hospital funds for necessary traveling expenses incurred in interviewing prospective employees, whether the traveling was done by the members of the board or their employees, or by persons invited by the board to come to interview. *See also* Op. No. 66-006. *See generally, e.g.,*

*State ex rel. Leis v. Ferguson*, 149 Ohio St. 555, 80 N.E.2d 118 (1948) (syllabus, paragraph 3) ("[a]s commonly understood and accepted, the expression traveling expenses comprehends transportation costs and other charges reasonably incident thereto incurred while on a journey, including lodging, food and kindred expenses"; the court adopted a more narrow interpretation in a mandamus action, including costs of transportation for business in another city, but excluding expenditures for subsistence, lodging, telephone calls and local transportation made by a member of the Board of Liquor Control after arriving at his destination, and noting that the official received a substantial annual salary); 1961 Op. Att'y Gen. No. 2538, p. 588; 1960 Op. Att'y Gen. No. 1926, p. 752 (discussing allowable traveling and other expenses); 1960 Op. Att'y Gen. No. 1124, p. 67. Reimbursement may also be granted for stationery, postage expenses, and telephone charges incurred in the discharge of official business. *See generally, e.g., In re Advisory Opinion to the House of Representatives*, 485 A.2d 550, 554 (R.I. 1984) ("[t]he purpose underlying an expense allowance or reimbursement is to replace funds expended...in performing...services").

Reimbursement for meals purchased by trustees on trips away from the district on hospital business would clearly be permitted. Whether reimbursement for a meal purchased in other circumstances would be permissible would depend upon the necessity of the meal and its relationship to hospital duties. *See, e.g., R.C. 3315.06* (expressly authorizing a county board of education to adopt a resolution to include among expenses of conducting a meeting within the county the cost of meals served at the meeting); Op. No. 86-086 (syllabus, paragraph 2) ("[t]he State Lottery Commission may expend public funds for the provision of meals for its employees and other persons at meetings of the Commission or at meetings related to the business of the Commission only where the Commission has determined that the provision of such meals is necessary to the performance of a function or duty expressly or impliedly conferred upon the Commission by statute and if its determination is not manifestly arbitrary or unreasonable").

Ultimately, the question whether any particular expense is a necessary and reasonable expense incurred in the performance of a trustee's duties is a question of fact, to be determined in the first instance by the board. *See generally* 1985 Op. Att'y Gen. No. 85-005. Any expense incurred by a trustee may be reimbursed under R.C. 339.03 if the board of county hospital trustees, in the reasonable exercise of its discretion, finds that the expense is a necessary and reasonable expense incurred in the performance of the trustee's duties.

## **Conclusion**

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Pursuant to R.C. 339.03, a member of a board of county hospital trustees must be allowed his necessary and reasonable expenses incurred in the performance of his duties. Such expenses include the cost of participation in such continuing education programs or developmental programs as the trustees consider necessary and also include any other expenses that the trustees, in the reasonable exercise of their discretion, find to be necessary and reasonable expenses incurred in the performance of a trustee's duties.

2. Expenses that are generally found acceptable for reimbursement include travel and parking expenses, overnight lodging, postage expenses, and telephone charges incurred in the discharge of official business. Meal expenses are reimbursable only when the payment for such meals is reasonably necessary to the performance of the trustee's statutory duties.

Respectfully,

LEE FISHER  
Attorney General

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SYLLABUS:

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2. Expenses that are generally found acceptable for reimbursement include travel and parking expenses, overnight lodging, postage expenses, and telephone charges incurred in the discharge of official business. Meal expenses are reimbursable only when the payment for such meals is reasonably necessary to the performance of the trustee's statutory duties.