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MEMBER—BOARD OF LIQUOR CONTROL—NOT ENTITLED TO EXPENSES INCURRED WHILE SERVING IN CITY OF COLUMBUS—REIMBURSEMENT IS AUTHORIZED TO MEMBER FOR ACTUAL EXPENSES INCURRED WHILE TRAVELING TO OR FROM BOARD HEARINGS. §§121.12, 4301.07, RC.

SYLLABUS:

1. Sections 121.12 and 4301.07, Revised Code, so far as they pertain to the payment of expenses of a member of the board of liquor control, are in *pari materia* and should be read together.

2. While pursuant to Section 121.12, Revised Code, a member of the board of liquor control would be entitled only to the same expenses as other state officers included in such section, under Section 4301.07, Revised Code, a member may properly be reimbursed for his actual and necessary travel expenses incurred in traveling to attend board hearings or on other board business to the city of Columbus from his place of residence, and for such expenses incurred in returning to said place of residence.

3. Neither Section 121.12, nor Section 4301.07, Revised Code, authorizes the reimbursement of a member of the board of liquor control for expenses incurred while serving in the city of Columbus.

Columbus, Ohio, January 27, 1960

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“In the examination of vouchers submitted to this office for approval, the State Board of Liquor Control, in connection with

travel expense of the board members, has submitted to us a copy of a letter dated November 25, 1959 from your office to the effect that a member of the Board of Liquor Control may properly be reimbursed for actual and necessary travel expenses incurred in traveling on official business between the place where he resides and other locations in the State, including expenses incurred in traveling to and from the city of Columbus.

"In view of the ruling of your predecessor, 1957 O.A.G. No. 1178 (page 589) that such allowances could not be paid and recognizing also the amendment made to Section 4301.07 of the Revised Code by the 103rd General Assembly, a formal opinion is respectfully requested:—

"1. Whether or not Opinion No. 1178 supra has been rescinded.

"2. Whether the members of the Board of Liquor Control may be allowed expenses while serving in the city of Columbus.

"Your attention is directed to the Formal Opinion rendered February 13, 1958 by your predecessor, Opinion No. 1708, in which he held that the members of the Board of Cosmetology may be reimbursed for reasonable luncheon expenses for a meeting of such board when such meeting spans a period of time prior to the usual luncheon period and concludes after the luncheon period."

Section 4301.07, Revised Code, referred to in your letter, reads as follows:

"Each member of the board of liquor control shall devote his entire time to the duties of his office and shall hold no other public position of trust or profit. No member of the board, nor the director of liquor control, nor any of the appointees or employees of the department of liquor control shall have any financial interest, directly or indirectly, in the manufacture, distribution, or sale of beer or intoxicating liquor.

"Each member of the board shall receive an annual salary of ten thousand dollars, except the chairman who shall receive an annual salary of eleven thousand dollars. *In addition thereto, each member shall receive the actual and necessary travel expenses in connection with board hearings and business.* The chairman shall be an attorney-at-law who has had five years of active law practice." (Emphasis added)

Under the above section, each member of the board of liquor control is allowed an annual salary *plus the actual and necessary travel expenses in connection with board hearings and business*, the provision for expenses

having been inserted in said section by House Bill No. 1107 of the 103rd General Assembly, effective October 23, 1959.

I also note that each member of the board of liquor control is entitled to his "actual and necessary expenses incurred in the performance of his official duties" under Section 121.12, Revised Code, which read as follows :

"Each officer whose office is created by sections 121.02, 121.04, and 121.05 of the Revised Code shall devote his entire time to the duties of his office, and shall hold no other office or position of profit. In addition to his salary, each such officer and *each member of the boards and commissions in the departments* shall be entitled to his actual and necessary expenses incurred in the performance of his official duties." (Emphasis added) (The board of liquor control is a part of the department of liquor control—Section 4301.02, Revised Code. The department of liquor control is one of the departments included in Section 121.02, Revised Code.)

In the past it has been accepted that members of the board of liquor control should be reimbursed for traveling expenses incurred while on a journey on official business to points other than the central office of the department in Columbus. In the case of *State, ex rel. Leis v. Ferguson*, 149 Ohio St., 555, it was held that members could not be reimbursed for expenses incurred in transacting business of the board in Columbus. Head-note 4 of this case reads :

"4. The term, 'traveling expenses,' contained in Section 6064-5, General Code, in relation to members of the Board of Liquor Control, does not embrace expenditures for subsistence, lodging, telephone calls and local transportation made by a member of such board after arriving at his destination for the transaction of the business in which he is regularly and customarily engaged at the 'central office' maintained for such purpose."

Thus, the court held that local expenses incurred by a member while transacting business of the board in Columbus were not compensable. The court, however, did not rule against the payment of expenses of a member incurred in traveling to and from Columbus on official business. The statute at that time was Section 6064-5, General Code (now Section 4301.07, Revised Code), and read in part :

"The Director of Liquor Control and each member of the Board of Liquor Control shall devote his entire time to the duties of his office and shall hold no other public position of trust or profit.* * *

“Each member of the Board of Liquor Control shall receive an annual salary * * *, *together with his actual and necessary traveling expenses incurred in the performance of his official duties.* (Emphasis added)

At page 557 of the *Leis case, supra*, it is stated :

“Here, we have a situation where relator receives a substantial annual salary for the performance of the duties of his office, the headquarters and principal place of business of the Board of Liquor Control is in the city of Columbus, and the relator incurred the expenses for which claim is made while in Columbus attending to the affairs for which he is compensated.”

And at page 558 :

“It can hardly be said with confidence that the phrase ‘traveling expenses,’ standing alone and unexplained, includes expenditures for subsistence, lodging, telephone calls, local transportation, etc., made by one, receiving an annual salary for his services, after arriving at his destination for the transaction of the business in which he is regularly engaged on a full-time basis at the principal establishment maintained for such purpose.”

In 1953, the provision of Section 6064-5, General Code, allowing traveling expenses, was deleted from the law. (See 125 Ohio Laws, 292.) Also in 1953, Section 6064-5, General Code, was renumbered as Section 4301.07, Revised Code.

In Opinion No. 1178, Opinions of the Attorney General for 1957, page 589, my predecessor held that members of the board of liquor control could not properly be paid an allowance to cover the expense of travel between the city of Columbus and the places where they resided. In reaching this conclusion my predecessor pointed out the statutory provision that members should devote their entire time to the duties of their office and that such members were regularly and customarily engaged in the performance of those duties at the central office of the department in Columbus.

At the time Opinion No. 1178, *supra*, was issued, Section 4301.07, *supra*, did not provide for travel expenses for members of the board. On the basis of the “travel expense” allowance to the department of liquor control as contained in the then existing appropriation act, however, my predecessor concluded that members of the board should be reimbursed for “traveling expenses” in the performance of their official duties. (Not in-

cluding travel expenses to Columbus, and return, from their places of residence). The authority for payment of expenses under Section 121.12, *supra*, noted earlier, was not referred to in said Opinion No. 1178 although such authority existed at that time.

Both the *Leis case, supra*, and Opinion No. 1178, *supra*, were based primarily on the provision of law stating that a member shall "devote his entire time to the duties of his office" and on the fact that the principal office of the board is in the city of Columbus. In this regard, it is stated in said Opinion No. 1178, at pages 596 and 597:

"In the *Leis case*, Judge Zimmerman noted that the statute required each department to maintain a central office in Columbus, and required each member to 'devote his entire time to the duties of his office.' See Sections 154-17 and 6064-6, General Code, now Section 121.15 and 4301.07, Revised Code. Moreover, in the fourth paragraph of the syllabus the court clearly limited its ruling to an officer whose journey was made 'for the transaction of business in which he is *regularly and customarily engaged at the central office* maintained for such purpose.'

"The words emphasized above, considered in relation to the reference already noted to a central office, and the devotion of a member's 'entire time to the duties of his office,' quite plainly suggest that a contrary view may well have been reached had the court been dealing with a part-time board member who was 'regularly and customarily' engaged in a private vocation at a place of residence other than Columbus and who only occasionally journeyed to Columbus for a temporary stay to transact official public business. In the case of such part-time officer it is clear that the journey is made from the residence to the central office for the purpose of transacting official business; but where the full-time officer, who is 'regularly and customarily' on duty at the departmental 'central office,' it is just as clear that the weekend journey to his place of residence is for personal rather than for official business reasons.

"The question was not decided in the *Leis case*, the State Auditor having conceded in his brief and on oral argument that the expense of such travel could properly be reimbursed. In my view that concession was improvidently made, but however that may be, the *Leis case* is no authority for a view contrary to that expressed above, and I thus answer your first query as to weekend travel to and from Columbus, in the negative.

"In passing we may note briefly the practical effect of the contrary view on this point. As already indicated, the appropriation for 'traveling expenses' to this department is a blanket one; and there is no reason in law which would justify limiting the use of those funds to the reimbursement of official traveling expenses

of any particular officer or employee, or group of officers and employees, of the department. Hence if it be concluded that the officers here in question, who choose to maintain a residence in a city other than Columbus, despite the circumstance that they are customarily and regularly on full time duty at the department's central office in Columbus, can be reimbursed for the expense of weekend travel to such residence in such other city, there is no reason in law that the same privilege should not be extended to every employee of the department similarly situated. I find it wholly impossible to suppose that such was the legislative intent in providing the funds for reimbursement for traveling expenses in the case of any department of the state."

As will be developed later, I do not believe it necessary to consider the reasoning of Opinion No. 1178, *supra*, in my treatment of the instant question. Some discussion of said reasoning, however, would appear appropriate in order to present the full background of the question.

Regarding the words "each member of the board of liquor control shall devote his entire time to the duties of his office," I had occasion to comment on similar language relating to members of the pardon and parole commission, as found in Section 2965.03, Revised Code, as then existing, reading "each member shall give his entire time to his official duties on the commission." In that opinion I stated that while Section 121.16, Revised Code, provides a forty hour work-week for all employees whose salary or wage is paid in whole or in part by the state, it does not appear that there is any similar provision for state *officers*. I then went on to say with respect to such a phrase as "each member shall devote his entire time" that, in the absence of any more definite language, it is my view that this provision must be interpreted in accord with the language used, and specifically that this provision requires service for such period as "normal or standard" which will, of course, vary as the duties of the office vary. Further, it was and is my opinion that for some officers full-time service is merely that which is necessary to discharge efficiently all of the duties of the office. Accordingly, I do not believe that a member of the board of liquor control has a full-time job in the sense that the director of liquor control or his employees have full-time jobs.

Regarding a member of the board being regularly and customarily engaged at the central office in the transaction of business, it must be noted that, in actuality, the work of a member does not require what is generally recognized as "full-time" employment. It is common knowledge that the board of liquor control does not meet five days a week regularly but serves

only that time which is found necessary to discharge its duties, usually about three days a week. Also, there is nothing in the law preventing a member of the board from engaging in a private vocation at a place of residence other than Columbus, and it is probable that some members do so engage.

Further, it is my understanding that although the department of liquor control is required to maintain a central office in Columbus (Section 121.15, Revised Code), hearings of the board may be held anywhere in the state in addition to being held in Columbus and members are sometimes required to appear in Columbus and in other areas for certain duties other than hearings.

While in view of the above, I might be constrained to disagree with some of the reasoning of Opinion No. 1178, *supra*, I do not deem it necessary to further consider this aspect since the law governing expenses of a member of the board was substantially changed after the issuance of said opinion, said change being the insertion of a specific provision regarding travel expenses.

As noted earlier, Section 4301.07, *supra*, provides that in addition to his annual salary a member shall receive the actual and necessary travel expenses in connection with board hearings and business, such provision having been effective since October 23, 1959. At the time this provision was enacted into law another provision of law, Section 121.12, Revised Code, gave members of the board of liquor control their actual and necessary expenses incurred in the performance of their official duties. This latter provision provides authority for payment of expenses of state officers, including those of the director of liquor control.

While both Section 121.12 and 4301.07, *supra*, deal with expenses of a member, I believe that these sections should be read together to ascertain the intent of the legislature in this regard. As stated in 37 Ohio Jurisprudence, Section 331, page 594:

“The general assembly, in enacting a statute, is assumed, or presumed, to have legislated with full knowledge and in the light of all statutory provisions concerning the subject-matter of the act; because the legislative mind, in the enactment of a statute, is directed to what has been enacted and exists as a part of the statutory law of the state on the same subject, or subjects related to it. It is therefore a fundamental rule of statutory construction that sections and acts in *pari materia* should be construed together as if they were a single statute.”

And, in the same volume, Section 332, page 599:

“Statutes or sections which expressly refer to each other or which relate to the same person or thing or to the same class of persons or things or to the same subject or object may be regarded as *in pari materia*.”

Under the provisions of Section 121.12, *supra*, it would appear that a member of the board of liquor control is entitled to the same expenses as the other state officers included in such section. This section would probably not, on its face, include payment of travel expenses incurred in traveling between the residence of the member and Columbus, nor payment of expenses incurred while serving in the city of Columbus.

The provisions of Section 4301.07, *supra*, however, appear to go further with regard to expenses than do those of Section 121.12, *supra*. Said Section 4301.07, refers to actual and necessary travel expenses “in connection with board hearings and business” and states that such expenses are to be paid *in addition* to the annual salary. Section 121.12, *supra*, provides for “actual and necessary expenses incurred in the performance of his official duties.” Former Section 6064-5, General Code, interpreted in the *Leis case*, *supra*, provided that a member should receive an annual salary “together with his actual and necessary traveling expenses incurred in the performance of his official duties.”

Further, it must be remembered that, at the time of the 1959 amendment, members were not being paid for expenses incurred in traveling to Columbus from their places of residence and return (Opinion No. 1178, *supra*). The intention of the legislature in making such amendment must have been to make some change in the law, as it is presumed that every amendment of a statute is made to effect some purpose (37 Ohio Jurisprudence, Section 438, page 768). I believe it reasonable to conclude, therefore, that in making such amendment the legislature intended that some new reimbursement for expenses of members be authorized. What such reimbursement should be depends on the interpretation of the words “travel expenses” as used in Section 4301.07, *supra*.

In Webster’s New Collegiate Dictionary, at page 905, the word “travel” is defined as follows:

“1. To journey to a distant place or to many places; make a journey including many places * * * a journey; trip; tour * * *.”

At page 291 of the same volume, the word "expense" is defined as follows:

"* * * that which is expended, outlay * * *."

Reading the two definitions together, "travel expenses" are expenditures made in going from one place to another.

I am aware that "travel expenses" might be given a broader meaning to comprehend transportation costs and other charges reasonably incident thereto while on a journey, including lodging, meals and kindred expenses incurred during the trip (*Leis case, supra*, pages 557 and 558). I believe, however, that the words "travel expenses" as used in Section 4301.07, *supra*, should be given the stricter interpretation and should be construed to relate to the expenditures incurred in going from one place to another. On this question, as noted earlier, it was stated in the *Leis case, supra*, on page 558:

"It can hardly be said with confidence that the phrase 'traveling expenses,' standing alone and unexplained, includes expenditures for subsistence, lodging, telephone calls, local transportation, etc., made by one, receiving an annual salary for his services, after arriving at his destination for the transaction of the business in which he is regularly engaged on a full-time basis at the principal establishment maintained for such purpose."

In summary, therefore, I find that a member of the board of liquor control, along with certain other state officers, is entitled to expenses under the general provision of Section 121.12, Revised Code; that specific provision has been made in Section 4301.07, Revised Code, for the payment of actual and necessary travel expenses in connection with board hearings and business; that such specific provision was inserted in Section 4301.07, Revised Code, by the 103rd General Assembly with the intention of making some change in the law; and that "travel expenses" as used in Section 4301.07, Revised Code, include expenses incurred by a member in traveling to Columbus from his place of residence and return.

In view of these conclusions and answering your first question, I do not believe that the before-mentioned Opinion No. 1178 should apply to the present members of the board of liquor control and am of the opinion that under Section 4301.07, Revised Code, a member of the board of liquor control may properly be reimbursed for his actual and necessary travel expenses incurred in traveling on official business between the place where

he resides and other locations in the state, including expenses incurred in traveling to and from the city of Columbus.

Coming to your second question, I have already stated that the words "travel expenses," as used in Section 4301.07, *supra*, refer to expenditures incurred in going from one place to another. Thus, I do not believe that this section would authorize the payment of expenses of a member incurred while serving in the city of Columbus. Also, Section 121.12, Revised Code, entitles members of the board of liquor control to the same expenses as the other state officers included in such sections, which allowance would not include expenses incurred while serving in the city of Columbus, the principal office of the department of liquor control.

Accordingly, I am of the opinion that members of the board of liquor control should not be reimbursed for expenses incurred while serving in the city of Columbus.

Answering your specific questions, therefore, I am of the opinion and you are advised:

1. Sections 121.12 and 4301.07, Revised Code, so far as they pertain to the payment of expenses of a member of the board of liquor control, are in *pari materia* and should be read together.

2. While pursuant to Section 121.12, Revised Code, a member of the board of liquor control would be entitled only to the same expenses as other state officers included in such section, under Section 4301.07, Revised Code, a member may properly be reimbursed for his actual and necessary travel expenses incurred in traveling to attend board hearings or on other board business to the city of Columbus from his place of residence, and for such expenses incurred in returning to said place of residence.

3. Neither Section 121.12, nor Section 4301.07, Revised Code, authorizes the reimbursement of a member of the board of liquor control for expenses incurred while serving in the city of Columbus.

Respectfully,

MARK MCELROY

Attorney General