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MEMBERS AND THE SECRETARY OF THE STATE RACING COMMISSION ARE ENTITLED TO REIMBURSEMENT FOR TRAVELING EXPENSES OUT OF STATE WITHOUT APPROVAL OF THE EMERGENCY BOARD; BUT ALL OTHER EMPLOYEES MUST GET APPROVAL OF THE EMERGENCY BOARD—§§127.05, 141.15, 3769.02, R.C., OPINION 2538, 1961.

SYLLABUS:

Members and the secretary of the state racing commission are, pursuant to Section 3769.02, Revised Code, entitled to reimbursement for actual and necessary traveling expenses incurred on travel outside the state, without the approval of the emergency board; but all other employees of the commission must, pursuant to Section 127.05, Revised Code, obtain the approval of the emergency board to travel outside the state at state expense.

Columbus, Ohio, April 26, 1962

Ohio State Racing Commission, Wyandotte Building
21 West Broad Street, Columbus 15, Ohio

Gentlemen :

Your request for my opinion reads as follows :

"It is the desire of this Commission to obtain a written opinion from your office regarding the following question :

"Is it necessary for the Racing Commission to obtain authorization from the Emergency Board for out-of-state travel on the part of its members, staff and employees in order for the expenditures incurred in such travel to be properly paid from state funds, or are these members, staff and employees authorized by law to incur these out-of-state expenses when on business of the Commission?"

Pertaining to out-of-state travel, Section 127.05, Revised Code, reads as follows :

"No executive, legislative, or judicial officer, board, commission, or employee of the state shall, at state expense, attend any association, conference, convention, or perform official duties outside the state unless authorized by law or by the emergency board. Before such allowance may be made, the head of the department shall make application in writing to the emergency board showing necessity for such attendance and the probable cost to the state. If a majority of the members of the emergency board approve the application, such expense shall be paid from any moneys appropriated to said department, board, bureau, or commission for traveling expenses."

Also to be considered, is Section 141.15, Revised Code, which reads in part :

"Any elected or appointed state officer or state employee of any department, office, or institution of this state, whose compensation is paid, in whole or in part, from state funds, may be reimbursed for his actual and necessary traveling and other expenses incurred while traveling within this state on official business authorized by law or required in the performance of duties imposed by law.

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In my Opinion No. 2538, issued on September 26, 1961, I construed the effect of the above-noted provisions of law. The first three paragraphs of the syllabus of that opinion read as follows:

"1. Pursuant to Section 127.05, Revised Code, no state officer or employee may perform official duties outside the state, at state expense, unless authorized by law or by the emergency board.

"2. Where a state officer or employee is authorized by a specific statute other than Section 141.15, Revised Code, to be reimbursed for his necessary expenses incurred in the performance of his official duties, he is 'authorized by law' within the purview of Section 127.05, Revised Code, to travel on official duties outside the state at state expense, and does not need the approval of the emergency board to so travel at state expense, however, where there is no such specific statute authorizing the officer or employee to be reimbursed for his necessary expenses, he must obtain the approval of the emergency board to travel on official business outside the state, at state expense.

"3. Whether the official duties of a state officer or employee require that he travel outside the state depends on the statute pertaining to said duties and the particular facts involved."

Thus, the question is whether any specific statute allows the reimbursement of members, staff, and employees of the racing commission for expenses incurred in performing official duties.

Here pertinent is Section 3769.02, Revised Code, which reads in part:

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"The commission shall appoint a secretary who shall serve during its pleasure. He shall keep a complete record of its proceedings, and preserve, at its general office, all books, maps, documents, and papers entrusted to its care, and perform such other duties as the commission prescribes. The secretary shall be paid a salary of not to exceed two thousand five hundred dollars per annum. The chairman of the commission shall receive a salary of not to exceed three thousand six hundred dollars per annum, and the salary of the associate commissioners shall not exceed two thousand five hundred dollars per annum. *When on commission business the commissioners and the secretary shall be allowed actual and necessary traveling expenses.* Said salaries and expenses shall be paid in semimonthly installments by the treasurer of state, out of the state racing commission fund

on vouchers authorized by the commission and approved by the auditor of state.

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(Emphasis added)

It will be noted that under the above provision the commissioners and the secretary “shall be allowed actual and necessary traveling expenses.” Thus, said commissioners and secretary are authorized by a specific statute other than Section 141.15, Revised Code, to be reimbursed for their necessary expenses, and are, therefore, “authorized by law” within the purview of Section 127.05, Revised Code, to travel outside the state, at state expense, without approval of the emergency board. (See Opinion No. 2538, *supra*.)

As to employees of the commission, I have been unable to find any specific section of law authorizing their reimbursement for expense, and must conclude that such reimbursement can be made only under Section 141.15, *supra*, for travel within the state, and with the approval of the emergency board under Section 127.05, *supra*, for travel outside the state.

In conclusion, it is my opinion and you are advised that members and the secretary of the state racing commission are, pursuant to Section 3769.02, Revised Code, entitled to reimbursement for actual and necessary traveling expenses incurred on travel outside the state, without the approval of the emergency board; but all other employees of the commission must, pursuant to Section 127.05, Revised Code, obtain the approval of the emergency board to travel outside the state at state expense.

Respectfully,

MARK McELROY

Attorney General