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BOARD OF LIQUOR CONTROL—TRAVELING EXPENSES—TRAVEL ON OFFICIAL BUSINESS EXCEPT TO CENTRAL OFFICE—BOARD MEMBERS ARE FULL TIME OFFICE HOLDERS—NO AUTHORITY FOR TRAVEL EXPENSE BETWEEN HOMES AND CENTRAL OFFICE—LECTURING IS NOT PART OF OFFICIAL BUSINESS OF A MEMBER OF THE BOARD AND TRAVEL EXPENSES CONNECTED THEREWITH ARE NOT TO BE PAID FROM PUBLIC FUNDS.

SYLLABUS:

1. Members of the Ohio Board of Liquor Control may properly be reimbursed for traveling expense incurred while on a journey on official business to points other than the central office of the department in Columbus.
2. Members of the Ohio Board of Liquor Control are required by the statute to devote their entire time to the duties of the office which they hold, and are regularly and customarily engaged in the performance of those duties at the central office of the department in Columbus; and they cannot properly be paid an allowance to cover the expense of travel between such central office and the place where they reside.
3. The making of lectures by an individual member of the Ohio Board of Liquor Control is not a part of the statutory duties of such officer, and traveling expense incurred in a journey to deliver such lecture may not be paid from public funds.

Columbus, Ohio, October 16, 1957

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

Dear Sir :

Your request for my opinion reads as follows :

“The 102nd General Assembly passed Senate Bill #1, which increased the salaries of members of the Board of Liquor Control to \$12,000 per annum. This was emergency legislation and went into effect January 15, 1957. Thereafter, Senate Bill #438 was passed which reduced the salaries paid to members of the Board of Liquor Control as provided by Section 4301.07, Revised Code, to \$6,000. The existing section, prior to passage of Senate Bill #1 provided that the Chairman of the Board of Liquor Control was to receive a salary of \$6,500 per annum. The Chairman of the board is appointed by the Governor, pursuant to Section 4301.06, Revised Code.

“The present Chairman of the board was appointed as a member of the Board of Liquor Control by former Governor Lausche and his term runs until 1959. Under the provisions of the law, as existed at the time of his appointment, members of the Board of Liquor Control, received an annual salary of \$6,000, except the Chairman, who received an annual salary of \$6,500. Vouchers are being presented to the State Auditor's office by the present Chairman of the board for payment on the \$6,500 annual salary basis.

“A formal opinion is respectfully requested as to whether or not :—

“(a) The present Chairman, who holds over, is entitled to a salary of \$6,500 per annum as Chairman, or whether by the provisions of Senate Bill #438, his salary should be set at \$6,000 per annum.

“(b) Whether such Chairman serves at the pleasure of the Governor or not, inasmuch as he was appointed by the preceding Governor as member of the board, and being continued in office as the Chairman of the board by the present Governor.

“Whenever a new Chairman is appointed, are we correct in assuming that the new Chairman, under the existing law, will be entitled to only \$6,000 annual salary?

“There is no provision in Section 4301.07, Revised Code, for the paying of actual and necessary traveling expense incurred in

the performance of official duties by members of the Board of Liquor Control, such as was found in Section 6064-5 of the General Code of Ohio before amendments which were made in the 100th, 101st and 102nd General Assemblies. Expense vouchers are being submitted by members of the Board of Liquor Control for necessary travel expense including travel from the homes of the members to Columbus and return to their homes.

“In the case of *State, ex rel. Leis, v. State Auditor*, reported in 149 O. S. 555, the Court held that there was no authority to pay for subsistence—lodging, local transportation, telephone calls etc., made by a member of the Board of Liquor Control while in attendance upon his duties at the office of the Board, in Columbus. The then State Auditor, answering the petition in mandamus on an agreed stipulation of facts, did not question the right of members to traveling expense from their homes to Columbus and return to such homes. The headquarters of the Board of Liquor Control are established in Columbus, Ohio. On occasion the board members find it necessary to conduct hearings etc., away from the headquarters.

“So that we may honor such expense accounts as are rendered by the members of the Board of Liquor Control, will you please render a formal opinion as to whether or not :—

“(a) Members of the Board of Liquor Control are entitled to traveling expense to and from Columbus when in attendance upon meetings of the board.

“(b) Are such members entitled to traveling expense when they are on official business away from the headquarters.

“Assuming that you will hold that such members are so entitled to such traveling expense for hearings, investigations etc., away from the headquarters shall such traveling expense be computed from the headquarters to the place of hearing. And stating a hypothetical case, assuming that such a hearing were conducted in Cleveland, Ohio and a member of the board was a resident of the City of Cleveland, would such Cleveland resident be entitled to mileage expense from Columbus to Cleveland and return to Columbus.

“Or, would the fact of residence in Cleveland preclude any charge for traveling expense, since no expense was involved by that particular member.

“(c) Assuming that you hold that members of the Board of Liquor Control would be allowed traveling expense incurred in the performance of their official duties, would the making of a lecture or speech to a religious group be considered in the nature of ‘official duties.’”

Your reference to Senate Bill No. 438, 102nd General Assembly, as reducing the salary of the chairman of the board of liquor control to \$6,000 annually appears to have been made under an erroneous impression. An examination of the enrolled bill as signed, approved, and filed in the office of the Secretary of State, discloses that the chairman's salary was fixed therein at \$6,500.

It is understood that the member here in question at no time claimed, or was paid, a salary at the rate formerly provided by Senate Bill No. 1, 102nd General Assembly, and there is thus no question here involved as to the power of the General Assembly, under Section 20, Article II, Ohio Constitution, to *reduce* such member's salary during his existing term. This being so, and because your query whether the chairman serves at the pleasure of the Governor is evidently propounded upon the supposition that the ruling in Opinion No. 176, Opinions of the Attorney General for 1957, p. 22, dated March 4, 1957, would permit such decrease during term, it becomes at once apparent that such query is presently purely academic and need not be here resolved.

The syllabus in the Leis case to which you refer is as follows :

"1. The members of the Board of Liquor Control of Ohio are public officers and entitled only to the compensation and allowances provided by law.

"2. Statutes relating to compensation and allowances of public officers are to be strictly construed, and such officers are entitled to no more than that clearly given thereby.

"3. As 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.

"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 purposes."

The rules thus stated in the first and second paragraphs of the syllabus, are clearly very broad in scope, and if deemed applicable to *ordinary* traveling expenses, are such as to cast doubt on the legality of a very widespread practice among the several state departments and agencies of paying

such expenses in the absence of express statutory provision therefor. To be perfectly candid, and to bring the matter completely "home," so to speak, there is no express statutory authority to pay the traveling expense of employees in my own department, although it is now, and has long been, the practice to pay such expenses where travel on official duty is undertaken.

In any treatment of the Leis case, consideration must be given to the Supreme Court's often repeated injunction that the syllabus of a decision cannot be construed as any broader than the facts of the case warrant. See 14 Ohio Jurisprudence 2d, 683, Section 248. In *Williamson Heater Co. v. Radich*, 128 Ohio St., 124, the syllabus reads in part:

"The syllabus of a decision of the Supreme Court of Ohio states the law of Ohio, but such pronouncement must be interpreted with reference to the facts upon which it is predicated and the questions presented to and considered by the court * * *."

With this rule in mind we may note what facts were actually involved in the Leis case, and which were actually considered by the court. These facts appear from the statement of the case which is as follows:

"In this action commenced in this court, Simon L. Leis, relator, who resides in the city of Cincinnati and is a member of the Board of Liquor Control of the state of Ohio receiving an annual salary fixed by the General Assembly and from state funds provided for the purpose, asks a writ of mandamus against Joseph T. Ferguson, respondent, auditor of the state of Ohio, requiring the latter to issue a warrant in the amount of \$25.21 for necessary expenses incurred by relator in the discharge of his official duties as a member of the board. Such expenses, listed in a voucher duly presented to the respondent, are for railroad fare between Cincinnati and Columbus and *for costs of lodging, meals and long distance telephone calls and streetcar and taxicab fares paid by relator while attending to official business in Columbus.*

'The cause is submitted upon the petition, answer, reply and a stipulation of facts. It is agreed that funds are on hand and available to pay such expenses, if proper.

"Respondent in his brief and upon oral argument concedes that 'relator is legally entitled to reimbursement for his expenses incurred while enroute to, and on return from, a meeting or session of the Board of Liquor Control in Columbus' and states that he has issued or will issue a warrant or warrants for the same. The item respecting railroad fare will, therefore, be eliminated from further consideration." (Emphasis added.)

Here it will be seen that the court's decision actually involved "costs of lodging, meals and long distance telephone calls and streetcar and taxicab fares," all incurred "while attending to official business in Columbus."

Judge Zimmerman commented on these items as follows, page 557:

"* * *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 * * *."

Judge Zimmerman then went on to note the provision in Section 6064-5, General Code, for payment to board members of "actual and necessary traveling expenses," and to consider whether this justified payment of the items noted above. On this point he said, 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 fulltime basis at the principal establishment maintained for such purpose."

(Emphasis added.)

The reference here to one "receiving an annual salary for his services" indicates that the court viewed the payments there claimed as an additional "compensation" rather than a reimbursement for expenses of travel on official business. This idea is suggested again in the following passage in the opinion, page 558:

"The proposition is generally recognized that 'the right of an officer to compensation for expenses incurred by him in the performance of an official duty must be found in a provision of the constitution or a statute conferring it either directly or by necessary implication, and the officer cannot recover compensation additional to the compensation fixed by statute for such expenses.' 46 Corpus Juris, 1018, Section 246; 32 Ohio Jurisprudence, 1013, Section 153; 43 American Jurisprudence, 134, Section 341."

In Opinion No. 2187, Opinions of the Attorney General for 1950, page 571, the syllabus reads:

"County coroners who use their own automobiles in discharging the duties of their office are not entitled to mileage for

such use either by statute or by implication. Their compensation is limited to that provided for them in Section 2855-3 of the General Code.”

This opinion was overruled in Opinion No. 1869, Opinions of the Attorney General for 1952, the writer therein commenting on the earlier ruling as follows :

“It appears to me that the use of the word ‘compensation’ in the above syllabus is not accurate. It implies that an allowance for reimbursement of expenses of traveling is a part of the compensation of an officer. I submit that an officer could not live long on that kind of ‘compensation.’ * * *”

In my opinion, the Leis case must be regarded merely as holding that a statutory authorization to pay traveling expenses does not provide authority to pay the expenses of subsistence, lodging, and the like, incurred by a state officer while performing his duties at the “central office” of the agency on which he serves, but rather that the term “traveling expense” includes only such necessary expenses as are incurred “on a journey” on official business.

Another point to be considered in the case at hand is that the General Assembly, in the biennial appropriation acts, regularly makes specific appropriations to the several state departments and agencies of funds for “traveling expenses.” Thus, in House Bill No. 929, 101st General Assembly, there was included, page 154, an item for the department of liquor control of \$424,000.00 for “traveling expenses” for each year of the biennium just recently ended. The *appropriation act* gives no hint as to what officers or employees in the department are to be reimbursed from this fund, but it is quite certain that the General Assembly intended that this fund should be drawn upon to reimburse some of them.

If some of such officers and employees are to be reimbursed it is clearly impossible to deny reimbursement to others. Hence I conclude that such an appropriation is indicative of a legislative intent that any and all officers and employees of a department who actually and necessarily incur “traveling expenses” in the performance of official duty are to be reimbursed from the funds thus appropriated.

In applying this rule to the members of the board of liquor control I am not unmindful of the fact that existing Section 4301.07, Revised Code, does not contain any provision as to “actual and necessary traveling ex-

penses” such as was formerly found in Section 6064-5, General Code, and which was under consideration in the Leis case. However, it is to be borne in mind that this provision was initially deleted in the codification of 1953, and that there is a presumption against the intent to effect substantive changes by that process. *State, v. Williams*, 104 Ohio St., 232. Moreover, in Section 1.24, Revised Code, there is an express legislative disclaimer to effect substantive changes in the 1953 codification.

These circumstances, considered in light of a blanket appropriation to the department for “traveling expenses,” as noted above, lead me to conclude that this deletion may not so operate as to prevent payment of the claims of members of the board for reimbursement for such expenses.

Moreover, in the Leis case, Judge Zimmerman’s quotation from *Corpus Juris* referring to statutory authorization of expense payments “by necessary implication” suggests that the court might well have found such implication in a legislative appropriation item even in the absence of then existing Section 6064-5, General Code, had it been necessary to reach such a question.

With these considerations in mind we may proceed to examine the specific queries you propound.

In referring to “traveling expenses to and from Columbus when in attendance upon meetings of the board”, I assume you have in mind weekend journeys between the member’s home and the board’s “central office” in Columbus.

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 Sections 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.

This 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 to your second question, for the reasons above indicated, we must conclude that members of the board are entitled to traveling expense while on journeys away from the department's central office in Columbus on official business.

As to the case of a member who resides in Cleveland actually remaining there for a week of hearings conducted by the board in that city, it is obvious, as you suggest, that "no expense was involved." Accordingly,

none could be claimed by way of reimbursement. Certainly no mileage claims could be made, for no journey was made.

As to whether or not a member shall be reimbursed for travel expenses incurred by reason of a journey to a point not within that geographical area designated as the board's principal place of business, the prime purpose of such journey being to deliver a lecture to a religious society, it should be noted that the board of liquor control is invested with broad investigatory, administrative and *quasi*-judicial powers.

Section 4301.03, Revised Code, empowers the board to adopt reasonable rules covering a multitude of phases of the area of its jurisdiction. Section 4301.04, Revised Code, is the basis of the board's investigatory and *quasi*-judicial authority. Such section includes among other things, a provision permitting the board to submit to the governor proposed changes in the law if it so desires. Section 4301.04 (G), Revised Code.

Inasmuch as the board, as an integral part of the department, shares the responsibility of implementing the provisions and intent of the liquor control act, it might be argued that the giving of such lectures is justified as incidental to, and in furtherance of, the powers granted the board in the statutes referred to above. However this may be, it is to be remembered that board members, as *individuals*, have no functions or duties under the law. Rather, such members have duties *as members*, and those duties relate to acts by the board as a whole, excepting, of course, those cases in which a member conducts a hearing as a referee of the board. This being the case, it is clear that individual members could not, as individual lecturers, be considered in the discharge of official business, no matter how worthy the cause they seek to advance.

Accordingly and in specific answer to your inquiry, it is my opinion that :

1. Members of the Ohio Board of Liquor Control may properly be reimbursed for traveling expense incurred while on a journey on official business to points other than the central office of the department in Columbus.

2. Members of the Ohio Board of Liquor Control are required by the statute to devote their entire time to the duties of the office which they hold, and are regularly and customarily engaged in the performance of those duties at the central office of the department in Columbus; and they

cannot properly be paid an allowance to cover the expense of travel between such central office and the place where they reside.

3. The making of lectures by an individual member of the Ohio Board of Liquor Control is not a part of the statutory duties of such officer, and traveling expense incurred in a journey to deliver such lecture may not be paid from public funds.

Respectfully,
WILLIAM SANBE
Attorney General