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COSMETOLOGY, STATE BOARD OF—MEMBERS—MILEAGE AND NECESSARY EXPENSES ALLOWED—MAY BE GRANTED ONLY FOR ATTENDANCE AT BOARD MEETINGS—MAY NOT BE GRANTED TO INDIVIDUAL BOARD MEMBERS ON INSPECTION TOUR OR FOR CONFERENCE WITH OFFICIALS OF VARIOUS COSMETOLOGY SCHOOLS.

## SYLLABUS:

Mileage and necessary expenses allowed to the members of the State Board of Cosmetology may only be granted for attendance at board meetings, and may not be granted to individual board members engaged in an inspection tour or conference with officials of various cosmetology schools.

Columbus, Ohio, June 1, 1948

Hon. Joseph T. Ferguson, Auditor of State  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“A question has arisen as to the legal interpretation of the provisions of General Code Section 1082-3, pertaining to the allowance of expenses and mileage to members of the State Board of Cosmetology.

“Is the allowance of necessary expenses and mileage limited to items incurred in connection with, or while attending a meeting of the Board; or, may an individual member of the Board, engaged individually or singly, in an inspection tour, or conferences with officials of various Cosmetology schools at various points in the state, claim reimbursement for necessary expenses and mileage?”

The members of the Board of Cosmetology are statutory officers, and because of this limitation they have only those powers that are expressly delegated to them by statute, or powers which are implied from those so delegated. 32 O. Jur. 933. This rule is particularly applicable with relation to financial transactions. It has been adjudicated in numerous cases that authority to act in financial transactions must be clearly and distinctly granted; and if such authority is of doubtful import, the doubt is resolved

in favor of the public and against the grant of power. *State, ex rel. Locher v. Menning*, 95 O. S. 97; *Jones, Auditor v. Commissioners*, 57 O. S. 189; and *State, ex rel. The A. Bentley and Sons Company v. Pierce, Auditor*, 96 O. S. 44. In the last case cited, Judge Wanamaker stated:

“In construing such grant of power, particularly administrative power through and by a legislative body, the rules are well settled that the intention of the grant of power, as well as the extent of the grant, must be clear; that in case of doubt that doubt is to be resolved not in favor of the grant but against it. It is one of the reserved powers that the legislative body no doubt had, but failed to delegate to the administrative board or body in question.”

It has been specifically held that traveling expenses of public officers and employes can not be paid from public funds except in cases where the incurring and payment of such expenses are authorized by statute. *Richardson v. State*, 66 O. S. 108; *Higgins v. Commissioners*, 62 O. S. 621.

However, if certain duties have to be performed by traveling, but statutory provisions have not provided therefor, or provisions for traveling expenses are allowed by statute in one instance but no mention is made of such expenses in the instances in question, it is presumed that the General Assembly intended such performance of duties to be included within the consideration of the general emoluments of the office.

In *Clark v. Board of County Commissioners*, 58 O. S. 107, it is stated:

“It is well settled that a public officer is not entitled to receive pay for services out of the public treasury, unless there is some statute authorizing the same. Services performed for the public, where no provision is made by statute for payment, are regarded as a gratuity, or as being compensated by the fees, privileges and emoluments accruing to such officer in the matters pertaining to his office. *Jones v. Commissioners*, 57 Ohio St., 189. To warrant payment out of the public treasury, it must appear that such payment is authorized by statute. Section 5, Article 10 of the Constitution. *Diebolt v. Trustees*, 7 Ohio St., 237; *Anderson v. Commissioners*, 25 Ohio State., 13; *Strawn v. Commissioners*, 47 Ohio St., 404.”

Courts have always held that public funds must be disbursed strictly according to statutory authority. 32 O. Jur. 955 states:

“Public officials should consider themselves rather as trustees than philanthropists, in the appropriation and disbursement of

public funds. Public funds may be disbursed only by clear authority of law. Mere good faith in making an improper payment of public funds is not generally recognized as an excuse. \* \* \*

See also State v. Maharry, 97 O. S. 272.

A similar question was considered by my predecessor in Opinion No. 85, Opinions of the Attorney General for 1919, at page 143. In this opinion it is stated:

“An examination of the Ohio cases will disclose that in every case where the claim of a public officer to extra compensation, or for expenses incurred in the discharge of his official duties, was allowed, the decision was based upon the ground that the payment was authorized by statute, and that in every case where the claim was denied the decision was reached because there was no statute authorizing its allowance.”

Numerous cases are cited to substantiate the above conclusion. Thereafter, the above opinion states that the General Assembly in numerous statutes provided for the payment of traveling and other expenses of various other public officials. Therefore, this would seem to deny the right to recover traveling expenses in cases where no provision is made for the payment of the same. Numerous statutes are again cited as examples. See Opinion No. 4696, Opinions of the Attorney General for 1935, at page 1248.

Section 1082-3, General Code, does not expressly grant traveling expenditures for the inspection of cosmetology schools. The paragraph of the above section pertinent to the present inquiry reads as follows:

“\* \* \* The members of the board shall receive seven dollars and fifty cents (\$7.50) per diem for every meeting of the board which they attend, together with their necessary expenses, and mileage at the rate of five cents per mile for each mile necessarily traveled. All such compensation, necessary expenses and mileage, shall be paid upon warrant of the state auditor and charged against the board of cosmetology's rotary funds, as herein provided, and no part thereof shall be paid out of other state funds.  
\* \* \*”

I call your attention to the fact that the grant of traveling expenses is restricted for travel to board meetings only. It is significant that such expenses are limited to this specific purpose of travel and silent as to other purposes of travel which may be required. Consequently, board members

who personally desire to inspect such schools may not grant travel expenses to themselves. The only other section which would indirectly allow travel expenses is Section 1082-4, General Code, which permits the board to “\*\*\* hold other meetings \*\*\* for the transaction of necessary business as, in its judgment, may be required, at such times and places as it may determine.”

Comparable statutes, which concern other administrative boards, do not grant travel expenses with the limitation of attendance at board meetings; but allow generally for “necessary expenses incurred.” This difference may be illustrated by the remunerative sections of the General Code pertaining to the following administrative boards:

Section 1081-4, General Code.

“Each member of the board (state board of barber examiners) shall receive eight dollars for each day actually employed in the discharge of his official duties and his necessary expenses incurred therein. \* \* \*”

(Parenthetical matter added.)

Section 1084-6, General Code.

“\* \* \* Each member of the state bridge commission shall receive a salary at the rate of \$2,000.00 per annum, and the necessary expenses incurred in the discharge of the duties of his office. \* \* \*”

Section 1264, General Code.

“Each member of the state medical board shall receive ten dollars for each day employed in the discharge of his official duties and his necessary expenses so incurred.”

Section 1295-26, General Code.

“Each member of the state board of optometry shall receive ten dollars for each day actually employed in the discharge of his official duties, and his necessary expenses incurred. \* \* \*”

Section 6064-5, General Code.

“\* \* \* Each member of the board of liquor control shall receive an annual salary of four thousand five hundred dollars, together with his actual and necessary traveling expenses incurred in the performance of his official duties. \* \* \*”

Courts have always zealously guarded the expenditure of public funds. Even if there would be doubt as to the interpretation of the above sections which grant this administrative board the right to expend money, such doubt must be resolved in favor of the public and against the grant of power.

I am therefore of the opinion that mileage and necessary expenses allowed to the members of the State Board of Cosmetology may only be granted for attendance at board meetings, and may not be granted to individual board members engaged in an inspection tour or conference with officials of various cosmetology schools.

Respectfully,

HUGH S. JENKINS,  
Attorney General.