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1. HEADQUARTERS—MUST BE ESTABLISHED FOR EVERY STATE EMPLOYEE—WHILE ON DUTY AT HEADQUARTERS, EMPLOYEE NOT ENTITLED TO BE REIMBURSED FOR LIVING EXPENSES—SECTION 4, REGULATIONS GOVERNING TRAVELING EXPENSES, DEPARTMENT OF FINANCE—APPROVED AND FOLLOWED.
2. DEPARTMENT OF LIQUOR CONTROL—DIVISION CHIEF—REGULAR POST OF DUTY CENTRAL OFFICE OF DEPARTMENT—WHERE PERSON MAINTAINS LEGAL OR PERMANENT RESIDENCE OUTSIDE COLUMBUS—NOT ENTITLED TO REIMBURSEMENT FOR LIVING EXPENSES IN PERFORMANCE OF OFFICIAL DUTIES AT CENTRAL OFFICE.

## SYLLABUS:

1. A "headquarters" must be established for every state employe and while on duty at his headquarters an employe is not entitled to be reimbursed for his living expenses. (Section 4 of the Regulations Governing Traveling Expenses, issued by the Department of Finance, approved and followed.)

2. A division chief in the Department of Liquor Control whose regular post of duty is the central office of the department and who maintains his legal or permanent residence outside of Columbus is not entitled to reimbursement for living expenses incurred while in the performance of his official duties at the central office.

Columbus, Ohio, February 27, 1950

Hon. Oscar L. Fleckner, Director of the Department of Liquor Control  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your opinion is respectfully requested as to whether the officers of this Department whose offices were created by Sections 154-3, 154-5, 154-6 of the Ohio General Code may be lawfully reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided by Section 154-16 of the Ohio General Code, such reimbursement to include maintenance expenses incurred in Columbus, Ohio, by officers whose legal residences are located outside of Columbus, Ohio.

"I have been presented with a written claim by the Chief of one of the Divisions of this Department for lodging (hotel accommodations) and meals in Columbus, Ohio. I questioned my authority to approve such expenses for reimbursement and, therefore withheld approval.

"Please be reminded that in accordance with the provisions of Section 154-8 and with the approval of Governor Frank J. Lausche, the Department was reorganized into the following nine Divisions: Enforcement Division, Permit Division, Beer & Wine Division, Division of Store Management, Division of Lquor Purchases, Division of Supply Purchases, Personnel Division, Accounting Division and Chemical Analysis Division.

"You will take notice also that this Department maintains a central office in the City of Columbus at 33 North Third Street in accordance with the provisions of Section 154-17 of the Ohio General Code.

"It is my understanding that it has been the practice to withhold approval of such expenses for reimbursement, and I have no personal interest in the question since even if it is lawful, I would waive any claim that I may personally have for reimbursement for maintenance expenses while in Columbus since I accepted the appointment as Director with full knowledge of the accepted practice that I was not to be reimbursed for such expenses. I recognize, however, that I am without authority to render a legal opinion and that the claimant is entitled to an answer founded upon an opinion rendered by authorized counsel."

I believe it appropriate to refer, at the outset, to the general rule that public funds can be disbursed only by clear authority of law, and in case of doubt as to the right to expend public moneys such doubt must be resolved in favor of the public and against the grant of power. See 32 O. Jur., Public Funds, Section 11.

As noted in your letter, the central office of the Department of Liquor Control is located in the city of Columbus in accordance with the provisions of Section 154-17, General Code. Said section reads as follows:

"Each department shall maintain a central office in the city of Columbus. The director of each department may, in his discretion and with the approval of the governor, establish and maintain, at places other than the seat of government, branch offices for the conduct of any one or more functions of his department."

I believe it is clear from the facts stated in your letter that headquarters for the chiefs of the divisions of the Department of Liquor Control is

the central office of the Department. Under Section 154-16, General Code, a division chief in your Department is entitled in addition to his salary "to his actual and necessary expenses incurred in the performance of his official duties." The section referred to reads in full as follows:

"Each officer whose office is created by Sections 154-3, 154-5 and 154-6 of the General 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 provided by law, each such officer and each member of the boards and commissions in the departments created by this chapter shall be entitled to his actual and necessary expenses incurred in the performance of his official duties."

The suggestion that the authorization to receive "actual and necessary expenses" would entitle a public employe hired on a full-time salary basis to living expenses while at his regular post of duty is repugnant to me. The effect of Section 154-17, supra, is to require that every employee of the State be assigned to a particular office or post of duty. Presumably, assignments are made on the basis of duties to be performed and where the interests of the State indicate that the post of duty should be located. The Regulations Governing Traveling Expense, issued by the Department of Finance, clearly state that a "headquarters" *must* be established for every State employee and that while on duty at his headquarters the employee is not entitled to his living expenses. I refer to Section 4 of said Regulations, which reads as follows:

"4. Headquarters—A headquarters must be established for every State employe at which expenses will not be allowed. Where actual headquarters are different from department headquarters, a statement to that effect shall be made in duplicate and filed with the Director of Finance before any claim for expense can be allowed. Any officer or employe living in one community and having the official office for all or a major portion of his work in another community shall not present a claim for expenses resulting from the fact that he lives in another community from that in which he works. Whenever an employe lives in a suburb of a city in which he is required to work, he shall not be allowed expenses while engaged in work in the city, nor shall he be allowed expenses for transportation to and from his place of residence."

I am of the opinion that the above regulation is backed by law, and sound well-established administrative practice. I believe the sentiment of the Supreme Court of Ohio in such matters is indicated by the decision

in State, ex rel. Leis v. Ferguson, Auditor, 149 O. S. 555, 557, where the court observed as follows in denying expenses to members of the Board of Liquor Control while on duty in Columbus:

“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.”

In the statement of the above case attention is called to the fact that the respondent conceded that members of the Board of Liquor Control were entitled to reimbursement for expenses incurred while enroute to and on return from a meeting or session of the Board in Columbus. I am sure that the Auditor would not make such a concession with respect to employees of your department, and I would be compelled to agree with him. The law presumes that one who accepts a position with the state which has a fixed place where his duties are to be performed will take up his residence at such place. An employee who chooses not to change his residence to coincide with the place where his duties are to be ordinarily performed may not thereby claim reimbursement for expenses incurred traveling from his home to his post of duty or for his personal living expenses while residing away from his home. The view I am stating here is very well expressed in, *In re Annual Statement of Receipts, etc.*, 118 Pa. Super. Ct. 47, 180 A. 148, 151, as follows:

“\* \* \* The law contemplates that one who accepts public office whether it be a state or county office, which has one fixed place where his duties are to be performed, be it capital or county seat, shall take up his residence where his office requires his regular presence, and, if for his own convenience, the officer prefers to live elsewhere, his expenses going to, and returning from, his official place of business, and his expenses while there, are no part of the expenses necessarily incurred in the discharge of his official duties, or in the performance of any service, office, or duty imposed upon him, but are incurred for his own convenience and personal advantage. \* \* \*”

See also *Hedrick v. Reeves*, State Auditor, 46 S. D. 218, 191 N. W. 761, where it was held that a state game warden's expenses for board and lodging incurred while attending to the duties of his office at the Capitol were not embraced within the clause “actual and necessary traveling ex-

penses", even though the statute specifically allowed traveling expenses when absent from home.

In view of the preceding, I am of the opinion that a division chief in the Department of Liquor Control whose regular post of duty is the central office of the department and who maintains his legal or permanent residence outside of Columbus is not entitled to reimbursement for living expenses incurred while in the performance of his official duties at the central office.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.