

1708

EXPENSES—MEMBERS OF STATE BOARDS AND COMMISSIONS—LUNCHEON, TRAVEL, PARKING—LIMITS OF REASONABLENESS — COSMETOLOGY BOARD — 1178 OAG 1957 AND *STATE EX REL., LEIS v. FERGUSON, 149 Ohio St., 555, Distinguished.*

SYLLABUS:

1. Whether a member of the State Board of Cosmetology who resides in Columbus and attends a board meeting in Columbus may be reimbursed for his reasonable luncheon expense depends upon whether the luncheon expense is one necessary to enable the member to be present at the meeting; such necessity is a question of fact the determination of which is dependent upon the facts of each case.

2. If it be determined that the member's reasonable luncheon expense is necessary in order to enable the member to attend the meeting, reimbursement is authorized by Section 4713.02, Revised Code.

3. Parking expense incurred by a member of the State Board of Cosmetology who resides in Columbus and attends a board meeting in Columbus, is an expense necessary to enable the member to attend the meeting, and the member may be reimbursed therefor as authorized by Section 4713.02, Revised Code.

4. Section 4713.02, Revised Code, authorizes a member of the State Board of Cosmetology who resides in Columbus and attends a meeting in Columbus, to receive a mileage allowance for the number of miles necessarily traveled in order to enable the member to attend the meeting. Opinion No. 1178, Opinions of the Attorney General for 1957, p. 589 and *State ex rel. Leis v. Ferguson*, 149 Ohio St., 555, distinguished.

Columbus, Ohio, February 13, 1958

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

Dear Sir:

Your request for my opinion reads as follows:

"There has been presented to the State Auditor an expense voucher by a member of the State Board of Cosmetology who is a resident of the city of Columbus. The expense voucher covers mileage, automobile parking and noon day lunches in Columbus.

"Section 4713.02 establishes the office of the Board of Cosmetology in Columbus. It further provides that:

'all reasonable expense incurred by the board shall be paid upon the warrant of the Auditor of State and charged against the board's Rotary Fund, etc.'

"In view of your holding in Opinion No. 1178 dated October 16, 1957 that members of the Ohio Board of Liquor Control 'cannot properly be paid an allowance to cover the expense of travel between such central office and the place where they reside,' may this board member lawfully receive expense money for such mileage, parking, meal allowance, cab fare, etc.?"

"I might point out that there is a distinction between membership on the Board of Liquor Control and membership on the Board of Cosmetology in that they, Cosmetology Board members, are not full time employees on an annual salary but receive \$15.00 per diem for every meeting of the Board which they attend together with their necessary expenses and mileage for each mile necessarily traveled."

I note that the voucher which has been submitted does not include any claim for payment of cab fares, so I will not consider this item and

will deal with only those three items for which claim actually has been made.

At the outset, it may be noted that your request is premised on the conclusion that the interpretation of the portion of Section 4713.02, Revised Code, which you quote is dispositive of your question. With this conclusion I must disagree, and I quote portions of Sections 4713.02, Revised Code, in order to explain my position in this regard, and to provide a basis for the discussion which follows:

“There is hereby created the state board of cosmetology, to consist of three members, two of whom shall be graduate cosmetologists and one of whom shall be a regularly licensed physician.
* * *”

“The members of the board shall receive fifteen dollars per diem for every meeting of the board which they attend, together with their necessary expenses, and mileage for each mile necessarily traveled. All such compensation, necessary expenses, and mileage, shall be paid upon warrant of the auditor of state and charged against the board’s rotary funds and no part thereof shall be paid out of other state funds. (Emphasis added)

“The board shall * * * establish an office at Columbus. * * *

“The board may employ necessary inspectors and clerks. The compensation of such employees and all reasonable expense incurred by the board, shall be paid upon the warrant of the auditor of state and charged against the board’s rotary fund and no part thereof shall be paid out of other state funds.”

Also applicable is Section 4713.03, Revised Code, as follows:

“The state board of cosmetology shall hold a meeting for the examination of applicants for license and the transaction of such other business as shall pertain to its duties at least twice a year, one of which meetings shall be held in Cleveland, and one in Cincinnati, and the board may hold other meetings for the examination of applicants or for the transaction of necessary business as, in its judgment, may be required, at such times and places as it may determine.”

It thus may be seen that the emphasized portion of Section 4713.02, Revised Code, deals specifically with board members’ attendance at meetings, their compensation, necessary expenses and mileage. This portion will thus prevail over the portion of the statute which you quote, since this latter portion of the statute deals only generally with the question of expenses.

The question thus presented by your request is whether the emphasized portion of Section 4713.02, Revised Code, authorizes payment of the voucher items mentioned in your request.

Plainly, this portion of the statute entitles the board members to reimbursement of those expenses which necessarily must be incurred in order to enable them to be present at board meetings. With regard to the member's expense for noonday lunch, whether this is an expense necessary to enable the member to attend is a question of fact which must necessarily depend upon the circumstances in each case. If the meeting is held in Columbus between the hours of 9 a. m. and 10 a. m., obviously the noonday luncheon is not a necessary expense. If, however, the meeting extends from the morning until the afternoon hours, through the luncheon period, and the meeting is adjourned for lunch, the Columbus member's reasonable luncheon expense would be legitimate and could be allowed the member.

It is my understanding that meetings oftentimes are held in Columbus at noon in order that the physician member of the board might be able to attend. In these circumstances it seems perfectly reasonable to me that the Columbus member's luncheon either immediately before or immediately after the meeting may properly be considered an expense necessary to enable the member to attend the meeting. In this situation, reimbursement would be proper.

Turning to the second item, that of automobile parking, it is my judgment that inasmuch as Section 4713.02, Revised Code, authorizes the payment of automobile mileage, the use of the member's personal automobile in getting to and from the meeting is thus sanctioned. It hardly can be argued that it is not necessary for the member to park his car in the downtown Columbus area in order to attend the meeting, and it may thus be concluded that the second item is perfectly proper.

We come now to consider the third and final item, that of mileage from the member's home to downtown Columbus and the return trip. Again it may be observed that Section 4713.02, Revised Code, authorizes payment to the board member of mileage for attendance at board meetings only. Mileage for other purposes is thus not authorized. It is obvious that the member necessarily must travel the distance between his home and the place of meeting in order to be physically in attendance. The statute plainly grants mileage for each such mile thus necessarily traveled,

and makes no express exception in the case of a member who happens to reside in the city where the meeting is held.

It is only when the concept of "central office or" "headquarters" is injected that there arises any difficulty in applying the statute to the facts as you present them. It is my opinion that these terms have no application to the instant case which is clearly distinguishable from those situations where the above terms have been employed to defeat a claim for mileage or travel allowance.

As you point out, I recently held in Opinion No. 1178, Opinions of the Attorney General for 1957, p. 589, in the second paragraph of the syllabus, as follows:

"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."

In reaching the above conclusion, I had before me the following facts:

- (1) A member of the Board of Liquor Control by statute was a full time officer receiving a substantial annual salary;
- (2) The member resided in Cincinnati although the central office of the Department was in Columbus;
- (3) The member made weekend journeys to his place of residence, and
- (4) The pertinent statute provided that the member receive an annual salary, "together with his actual and necessary traveling expenses incurred in the performance of his official duties."

I thus concluded that the weekend journeys to Cincinnati were for personal rather than official business reasons, and were therefore not within the purview of "traveling expenses incurred in the performance of his official duties."

In the case under consideration, the board member neither is a full time officer nor does he receive a substantial annual salary. Further, no problem of weekend journeys to the member's home is here involved, and the statute here under consideration is materially different. It thus be-

comes apparent that this prior ruling is not factually comparable with the case here under consideration, but is easily distinguishable, and thus not applicable, for the above reasons.

I feel it is necessary to point out that a strict construction must be given Section 4713.02, Revised Code. This rule requiring such a construction was set forth by our Supreme Court and embodied in the second paragraph of the syllabus in the case of *State ex rel. Leis v. Ferguson*, 149 Ohio St., 555 (1948) as follows:

“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.”

As I view it, strict construction does not mean penurious illiberality of construction, and in this regard, of assistance is the following excerpt from 37 Ohio Jurisprudence, 719 *et seq.*:

“Strict construction of a statute is one which refuses to extend the law by implication, inference or construction, and confines its operation to cases which fall fairly within the letter of the statute, as well as within its spirit or reason, and recognizes nothing that is not expressed. The statute should not be made to extend beyond the manifest intention of the legislature as indicated by the clear, plain, obvious, or natural import of the language used. * * *”

“The rule of strict construction should not be carried beyond the reason for its existence. A statute which is subject to the rule of strict construction is nevertheless entitled to a *reasonable, sensible, and fair construction according to the sense in which the terms thereof were intended to be used. The rule does not require the courts to depart from the plain or usual meaning of the terms employed. Nor is the rule violated by allowing the words of the statute to have their full meaning, or even the more extended of two meanings, where such construction best harmonizes with the context and most fully promotes the policy and objective of the legislature. The construction, though strict, should not be unduly technical, arbitrary, severe, artificial, or narrow. Strict construction does not mean that the statute should be construed in a spirit of hostility, or so constructed as to render it practically inoperative and ineffectual, or as to defeat the obvious purpose and intention of the legislature. * * **” (Emphasis added)

It will be noted that the legislature chose not to enumerate with any degree of particularity those expenses for which board members might

be reimbursed, and prescribed no express limitations on the mileage allowance. It preferred to use broad terms, and, giving these words their natural, full meaning, I can only conclude that it was the intent of the legislature to authorize payment of all three voucher items mentioned in your request. To hold otherwise would be to adopt a strained, stinted construction of the statute under consideration.

If we assume for the moment that the board member who resides in Columbus were to make a trip to a board meeting held in Cleveland pursuant to Section 4713.03, Revised Code, it could hardly be argued that these voucher items are not necessary and proper ones. I can see no valid basis for making a distinction between lunch and parking expenses incurred in this latter case and such expenses incurred by the same board member in Columbus merely because the member happens to reside in Columbus.

If the board members were on a full time basis, receiving a substantial annual salary while working in Columbus, my opinion might be different because of *State ex rel. Leis v. Ferguson, supra*. As heretofore mentioned this is not the case here, and I find no public policy prohibiting payment of all three voucher items contained in your request.

Accordingly, it is my opinion, and you are advised that:

1. Whether a member of the State Board of Cosmetology who resides in Columbus and attends a board meeting in Columbus may be reimbursed for his reasonable luncheon expense depends upon whether the luncheon expense is one necessary to enable the member to be present at the meeting; such necessity is a question of fact the determination of which is dependent upon the facts of each case.

2. If it be determined that the member's reasonable luncheon expense is necessary in order to enable the member to attend the meeting, reimbursement is authorized by Section 4713.02, Revised Code.

3. Parking expense incurred by a member of the State Board of Cosmetology who resides in Columbus and attends a board meeting in Columbus, is an expense necessary to enable the member to attend the meeting, and the member may be reimbursed therefore as authorized by Section 4713.02, Revised Code.

4. Section 4713.02, Revised Code, authorizes a member of the State Board of Cosmetology who resides in Columbus and attends a meeting in

Columbus, to receive a mileage allowance for the number of miles necessarily traveled in order to enable the member to attend the meeting. Opinion No. 1178, Opinions of the Attorney General for 1957, p. 589, and *State ex rel. Leis v. Ferguson*, 149 Ohio St., 555, distinguished.

Respectfully,

WILLIAM SAXBE

Attorney General