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HEALTH DISTRICT ADVISORY COUNCIL MEETING—CHAIRMAN, BOARD OF TOWNSHIP TRUSTEES WHO ATTENDS MEETING AS DELEGATE, NOT ON BUSINESS FOR TOWNSHIP—SECTION 3294 G. C.—ENTITLED TO RECEIVE ONLY COMPENSATION FOR SERVICES RENDERED.

SYLLABUS:

A chairman of a board of township trustees who attends a health district advisory council meeting as a delegate is not on business for the township, as provided for in Section 3294, General Code, and is entitled to receive only that compensation for which services are rendered.

Columbus, Ohio, July 20, 1949

Hon. Webb D. Tomb, Prosecuting Attorney
Seneca County, Tiffin, Ohio

Dear Sir:

I am in receipt of your request for my opinion, which reads:

“Under Section 1261-18 of the General Code a township trustee who serves as a delegate to a health district advisory council is entitled to ‘\$5.00 per diem and necessary expenses by the --- township he represents, this to be in addition to his regular compensation.’

“Under Section 3294 of the General Code a township trustee is allowed a per diem of \$3.50 for each day of service in the business of the township, with a limit being set depending upon the size of the township budget.

“There are several opinions of the Attorney General to the effect that the latter section limits the total compensation which trustees may receive, including compensation for special services.

“The specific question upon which I would like your opinion is this: May a trustee who attends a health district advisory council meeting as a delegate, and who performs no other service for the township on the day of such attendance, properly receive both the per diem authorized by Section 1261-18 and that authorized by Section 3294, assuming that the maximum compensation specified in the latter section is not exceeded?”

Section 1261-18 of the General Code, as stated in your communication, provides that the mayor of each municipality not constituting a city health district and the chairman of the trustees of each township in a general health district shall constitute a board, known as the district advisory council, to select and appoint a district board of health. Members of said council are designated as delegates. It is further provided that said council shall meet on the first Monday in March at the county seat and organize by electing a chairman and secretary. Without undertaking to set forth the section in full, it is believed to be sufficient to state that after providing a number of things in addition to those already mentioned, it provides:

“On certification of the chairman and secretary each delegate to an annual or special meeting shall be paid \$5.00 per diem and necessary expenses by the village or township he represents, this to be in addition to his regular compensation.” (121 O. L. 16.)

The duty imposed upon the chairman of the board of trustees under this section relates to health matters and such duty devolves upon him by virtue of his being a chairman of the board of trustees.

Regular compensation for township trustees is provided for in Section 3294 of the General Code, which reads:

“Each trustee shall be entitled to one dollar and fifty cents for each day of service in the discharge of his duties in relation to partition fences, to be paid in equal proportions by the parties, and three dollars and fifty cents for each day of service in the business of the township, to be paid from the township treasury. Provided, however, that in townships having a budget of less than ten thousand dollars, the trustees shall be entitled to compensation for not more than one hundred days at said rate of three dollars and fifty cents per day; in townships having a

budget of from ten thousand to twenty thousand dollars, the trustees shall be entitled to compensation for not more than one hundred and twenty-five days at said rate of three dollars and fifty cents per day; and in townships having a budget of twenty thousand dollars or over the trustees shall be entitled to compensation for not more than one hundred and fifty days at said rate of three dollars and fifty cents per day. Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the clerk of the township, and by him preserved for inspection by any persons interested.” (118 O. L. 575.)

In Sutherland Statutory Construction, Vol. 2, at page 327, it is said:

“legislative language will be interpreted on the assumption that the legislature was aware of existing statutes.”

The problem now is, what did the legislature mean when it said “this to be in addition to his regular compensation,” as stated in Section 1261-18? It is apparent that the legislature intended that those who perform duties as delegates on the advisory council should be compensated for those duties.

Strictly speaking, each delegate is engaged on the business of the health district and not on the business of individual subdivisions, even though the matter of public health is one of vital importance to each subdivision.

The compensation provided for in Section 3294 means that compensation to which each trustee is entitled by virtue of his election to the board of trustees; it should be noted that since the compensation provided for is limited to a certain number of days, the board is not such an office that requires the attention of its members full time.

The compensation provided for in Section 1261-18, *supra*, can only mean pay for the number of days to which the chairman of the board of trustees is entitled for services rendered as a member of the advisory council and not as a trustee for the township.

At this time I wish to call your attention to Amended Senate Bill No. 88, effective July 28, 1949, entitled “An Act to Amend Section 3294 of the General Code relative to compensation of trustees.” Section 3294, as amended, reads:

“Each trustee shall be entitled to five dollars for each day of service in the discharge of his duties in relation to partition fences,

to be paid in equal proportions by the parties, and three dollars and fifty cents for each day of service in the business of the township, to be paid from the township treasury. Provided, however, that in townships having a budget of less than ten thousand dollars, the trustees shall be entitled to compensation for not more than one hundred days at said rate of three dollars and fifty cents per day; in townships having a budget of from ten thousand to twenty thousand dollars, the trustees shall be entitled to compensation for not more than one hundred and twenty-five days at said rate of three dollars and fifty cents per day; in townships having a budget of from twenty thousand to thirty thousand dollars, the trustees shall be entitled to compensation for not more than one hundred and fifty days at said rate of three dollars and fifty cents per day; and in townships having a budget of thirty thousand dollars or over, the trustees shall be entitled to compensation for not more than one hundred and seventy-five days at said rate of three dollars and fifty cents per day. Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the clerk of the township, and by him preserved for inspection by any persons interested."

In view of the foregoing, it is therefore my opinion that a chairman of a board of township trustees who attends a health district advisory council meeting as a delegate is not on business for the township, as provided for in Section 3294 of the General Code, and is entitled to receive only that compensation for which services are rendered.

Respectfully,

HERBERT S. DUFFY,
Attorney General.