

States money in his fiscal transactions must bear the loss of any depreciation in such foreign money accepted.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

2195.

COUNTY BOARD OF REVISION—WHEN ENTITLED TO REIMBURSEMENT FOR EXPENSES INCURRED IN MAKING ACTUAL VIEW OF REAL ESTATE.

*The members of the county board of revision are entitled to be reimbursed for expenses incurred by them in making an actual view of real estate, where they are dissatisfied with the character of the evidence which has been produced before them on complaints as to valuations.*

COLUMBUS, OHIO, June 25, 1921.

HON. CHARLES R. SARGENT, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Some time ago you informed this department that you had advised the members of the board of revision of Ashtabula county that that board, or its members, would be entitled to car fare or automobile hire in making an actual view of real estate which the board might deem it expedient to make in connection with the hearing of complaints as to real estate valuations; such expenses being, in your opinion, "contingent expenses" within the meaning of section 5585 of the General Code. You also state that the tax commission has recently promulgated a rule to the contrary. In your letter you stated that you were not requesting a formal ruling, unless this office should desire to render one or had already rendered such an opinion which had not been called to your attention.

No such opinion has been rendered by this department. Upon careful consideration it is believed best to give an opinion on the question, so that all administrative officers who desire to follow that opinion may govern themselves by a uniform rule.

The question as to what constitutes "contingent expenses" within the meaning of section 5585 of the General Code and statutes similar thereto has been considered several times by this department. The first of such opinions (all of which you have seen) was that of Attorney-General Hogan, addressed to the tax commission under date of April 24, 1914, (Annual Report for that year, Vol. I, p. 514). This opinion dealt with section 35 of the so-called "Warnes law" (103 O. L., 786-795), designated as section 5614 of the General Code, providing in part that:

"The contingent expenses of the district assessor and district board of complaints, including postage and express charges, their actual and necessary traveling expenses and those of their deputies, assistants, experts, clerks or employes on official business outside of the district when required by orders issued by the tax commission of Ohio shall be allowed and paid as claims against the county."

This language, it will be observed, is identical, save for the designation

of the officers involved, with that occurring in present section 5585 of the General Code.

The question submitted to Mr. Hogan was as follows:

“Does ‘contingent expenses’ include such expenses as automobile hire, car fare and the like for these various officers while in the exercise of their duties within their respective jurisdictions?”

Mr. Hogan in discussing this question used the following language:

“The term ‘contingent expenses’ has a well understood, technical meaning, viz.: those expenses miscellaneous in character, which the legislative body presumes will be incurred in the natural course of official business, but the exact character of which cannot be so definitely ascertained in advance as to permit specific enumeration of them.

\* \* \* \* \*

By specifically enacting that postage and express charges and certain traveling expenses shall be included within the purview of ‘contingent expenses’ of which the sentence speaks, the general assembly has made it plain, I think, that such charges and expenses would not, without the provision, have been contemplated within the meaning of the phrase, being expenses the incurring of which is a certainty and which are, therefore, not of the miscellaneous and unascertainable character ordinarily contemplated by the term ‘contingent expenses.’

\* \* \* \* \*

In the very nature of things the district assessors and their deputies are required to ‘travel’ in the performance of their duties. Real estate \* \* \* must be valued ‘on actual view’ (section 5554 G. C.) \* \* \*. In other words, the assessment of property which the Warnes law contemplates, cannot be made without going from place to place within the assessment district. This, in my judgment, does not constitute ‘traveling’ \* \* \*.

Therefore, the question \* \* \* is whether or not automobile hire constitutes a ‘contingent expense’ within the meaning of the term as used in the section without reference to the scope of the phrase as determined by the inclusion therein of certain ‘traveling expenses.’

If it is such a contingent expense, then the fact that it is incurred in the county would not prevent its lawful allowance.

In my opinion automobile hire might, under certain circumstances, constitute ‘contingent expense’. \* \* \* I am satisfied that in the ordinary discharge of the duties of their respective offices, the district assessor and the district board of complaints would not have any right to incur expenses of this character, but circumstances might conceivably arise in which the hire of an automobile or any vehicle might be necessary in order to enable the assessor or the board of complaints to discharge their respective duties.”

Later in the opinion Mr. Hogan remarks that he does not feel able to say “that under special circumstances an expenditure ‘for car fare’ might not be regarded as a contingent expense rather than as traveling expense.”

It will be seen that Mr. Hogan’s opinion is based upon the following points:

(1) No traveling expense, as such, can be allowed where the "travel" occurs within the county.

(2) The ordinary necessity of going from place to place to view property required to be assessed on actual view is neither "traveling" nor a matter of "contingency".

(3) But under special circumstances there might be necessity for going from place to place within the county otherwise than in the ordinary course of the routine duties of these officers, and where such necessity arises in this manner and expense is incurred for such purpose it is a proper "contingent expense" for which the auditor and the members of the board of complaints (though not their experts, deputies, assistants, etc.) may be lawfully reimbursed.

The second opinion, which was rendered by Mr. Turner, (Opinions of Attorney-General 1916, Vol. I, p. 623) was based upon section 36 of the so-called "Parrett-Whittemore law", which has become section 5585 G. C., the section now under consideration. It related both to expenses of the employes of the taxing department of the county auditor's office and to expenses of the members of the board of revision, by way of automobile hire, livery and car tickets in necessary trips made by them. Mr. Turner's opinion concurs in the conclusion of Mr. Hogan's opinion, but points out the change in the law which occurred when the Warnes law was repealed and the Parrett-Whittemore law was enacted in its stead. The conclusion of the opinion is expressed in the following paragraph:

"The fact must not be overlooked, however, that under the Parrett-Whittemore law, the duty of appraising property in the first instance is placed upon the local assessors \* \* \* and by the assistant assessors selected under the conditions and in the manner provided by \* \* \* said act. Inasmuch as the county auditor himself, or acting through his deputies or assistants, is not charged by any provision of the act with the duty of appraising real property in the first instance as was required of the district assessor and his deputies under the provisions of the Warnes law, and inasmuch as the members of the county board of revision in the performance of their ordinary duties as a board of equalization \* \* \* and as a board of complaints \* \* \* are not required to incur traveling expenses in the sense the term is above used, I think it necessarily follows that if circumstances arise which occasion the expenses referred to in your inquiry such expenses so incurred by the officers and employes named in the above provision of section 5585 G. C. could not in the very nature of things be determined in advance and are therefore 'contingent expenses' within the meaning of the term as used in said statute."

The third opinion referred to was rendered by Attorney-General McGhee (Opinions of Attorney-General 1918, Vol. I, p. 149). The question submitted to the then Attorney-General arose under the present law amending the Parrett-Whittemore law (107 O. L. 40), in which, however, what is now section 5585 was virtually re-enacted. That question related solely to the expenses of the county auditor and did not touch the question as to the expenses of the members of the county board of revision. Attorney-General McGhee departed from the reasoning of his predecessors to a certain extent, as will be evident from the following quotation from his opinion:

"I do not find myself able to follow Mr. Hogan in his application of the rule of construction involved in the conclusion reached by him that traveling expenses incurred by the assessing officers in the discharge of their duties within the county were not within the purview of the term 'contingent expenses' as used in the statute there under consideration, and which is found also in the provisions of section 5585 General Code, above quoted. This rule of construction stated in general terms is that where the legislature has expressly included certain things within the meaning of the general terms of an act a presumption of legislative intention arises that but for such express inclusion the particular things mentioned would be excluded from the meaning of the general terms. It is clear, however, that this rule of construction has no application where the particular things included within the meaning of the general provisions of the act are mentioned by way of abundant caution, and this, to my mind, is the case with respect to the matter of postage and express charges \* \* \*.

With respect to the matter of traveling expenses it may be observed as a limitation or modification of the rule of construction above noted that where there is some special reason for mentioning one thing and none for mentioning a second, which is otherwise within the statute, the absence of any mention of the latter will not exclude it. \* \* \* I think there were obvious reasons for making special inclusion of traveling expenses incurred by the assessing officer outside of his county which would not apply to the matter of traveling expenses in the discharge of his duties within the county. \* \* \*.

I do not think, therefore, that \* \* \* the matter of traveling expenses \* \* \* is to be necessarily excluded from the meaning of the term 'contingent expenses' as used in either of these sections by force of the rule of construction above discussed and applied by Attorney-General Hogan \* \* \*."

This difference of opinion seems to have turned out to be rather academic than practical, however, as Attorney-General McGhee goes on in his opinion as follows:

"Irrespective of this question, however, I am inclined to the view that Mr. Hogan was correct in his conclusion that \* \* \* traveling expenses incurred by the district assessor and his deputies \* \* \* within the county were not 'contingent expenses' within the meaning of the term as used in section 35 of the Warnes law. Section 5554 General Code as it then read required real estate to be valued on actual view \* \* \*. Now 'contingent expenses' are such as are possible or liable to be incurred, but which are not in any sense certain to be incurred; and measuring the question by this rule it might well be that expenses incurred by the assessor of real estate in traveling to and from the real property to be assessed could not be justly considered as 'contingent expenses' \* \* \*; and upon this view, \* \* \* Mr. Hogan was correct in holding that such traveling expenses could not be paid."

Thereupon, the opinion goes on to note that in the legislation of 1917 the requirement for actual view in the assessment of real estate had been dispensed with (section 5554), and concludes as follows:

"Although in special instances it may be both desirable and neces-

sary for the county auditor as such assessing officer to assess particular properties on a view of the same, and thus incur expenses in traveling in some way for the purpose of viewing said properties, such view \* \* \* is not now required and it can no longer be said that the matter of expenses incurred in traveling within the county for the purpose of viewing property to be assessed is one of such certainty as to be excluded from the essential meaning of the term 'contingent expenses'.

On consideration of the whole question I am inclined to the view that the reasonable official expenses incurred by the county auditor \* \* \* in the discharge of his duties in the assessment of such property may be said to be fairly authorized by the provisions of section 5585 of the General Code. This would include the matter of street car fare, automobile hire and expenses of like kind necessarily incurred in the discharge of his duties. \* \* \*."

The foregoing quotations make it clear that on any theory adopted by any of the former attorneys general whose opinions have been referred to, an expense of the kind about which you inquire, if proper and necessary, would be authorized for reimbursement as "contingent expenses". In Mr. Hogan's view it would not be a "traveling" expense and would be "contingent" because the ordinary and routine work of the board of complaints (now the board of revision) did not involve the incurring of such expenses in connection with the hearing of complaints. In Mr. McGhee's view such expenses would be "traveling expenses" but would not be on that account excluded from the category of "contingent expenses" and, the other conditions concurring, as above stated, could be authorized as such "contingent expenses".

In the opinion of this department, it is not only not unlawful for one or more members of the board of revision to visit real estate, the taxable value of which is in question in a proceeding on complaint before the board, but it is quite within the line of duty of the board to have such a view or inspection of the premises in question. If in securing such view expenses are incurred for transportation, it is believed that on the principles of the opinions quoted, with which this department now fully concurs, reimbursement may lawfully be afforded to the officers so incurring them.

As you point out, this principle does not cover the regular use of an automobile by the members of the board of revision while on duty, nor the payment of other transportation charges as a regular or routine matter. Your conclusion that occasional expenses of this kind occurring under the circumstances above outlined are proper "contingent expenses" is correct, and can be adopted without opening the door to the allowance of such expenses as those incurred by a member of the board in traveling to or from the county seat for the purpose of attending meetings, etc.

It is accordingly the opinion of this department that the members of the county board of revision are entitled to be reimbursed for expenses incurred by them in making an actual view of real estate, where they are dissatisfied with the character of the evidence which has been produced before them on complaints as to valuations.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*