

1926

MEMBERS OF PARDON AND PAROLE COMMISSION MAY BE REIMBURSED FOR TRAVELING AND OTHER EXPENSES WHILE ON OFFICIAL BUSINESS—MEMBERS MAY NOT HAVE ANY OTHER OCCUPATION OR EMPLOYMENT—§§2965.07, .08, 2965.03 OAG 1124-1960.

SYLLABUS:

1. Under Section 2965.07, Revised Code, members of the pardon and parole commission may properly be reimbursed for traveling and other expenses incurred while on a journey on official business between the city of Columbus, which is the central office of the commission under Section 2965.08, Revised Code, and other locations.

2. Under Section 2965.03, Revised Code, members of the pardon and parole commission are required to devote their entire time to the duties of the office which they hold and may not have any other occupation or employment; and they cannot properly be paid an allowance to cover the expense of travel between the central office, the city of Columbus, and the places where they reside, nor an allowance to cover travel expenses from their residences in Columbus, if they reside in such city, to the central office. (Opinion No. 1124, Opinions of the Attorney General for 1960, issued on January 27, 1960, distinguished.)

Columbus, Ohio, December 29, 1960

Hon. Joseph E. Doneghy, Chairman
Ohio Pardon and Parole Commission
307 Wyandotte Building, Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The present Pardon and Parole Commission was created by act of the 103rd General Assembly effective October 1, 1959.

Section 1 of the Act (128 v. H. 671) Section 2965.07, Revised Code, provides in part as follows:

“* * * each member shall be compensated for his actual and necessary traveling and other expenses incurred while on the business of the commission * * *

“In your opinion No. 1124, January 27, 1960, you interpreted almost identical language in Section 4301.07, Revised Code of Ohio, applying to the Board of Liquor Control, which reads as follows:

“* * * each member shall receive the actual and necessary travel expenses in connection with board hearings and business. * * *

“It is noted, however, that under Section 2965.07, Revised Code, members of the Pardon and Parole Commission are to be compensated, not only for actual and necessary traveling expenses, but also ‘other expenses’ incurred while on the business of the Commission.

“Section 2965.03, Revised Code, provides in part:

“‘Each member of the pardon and parole commission shall be a citizen and resident of this state. * * *

“There is no provision that the members of the Commission must reside in the city of Columbus. Of the present commission, two are residents of Columbus and three reside elsewhere. The business of the Commission is transacted in Columbus, Marysville, Marion, Mansfield, London and Lebanon, Ohio.

“In view of your holding in Opinion 1124, January 1960, please give me your opinion on the following:

- “1. Are members of the commission who reside out of Columbus entitled to compensation for their travel expenses from their home to Columbus and return?
- “2. Are such members entitled to compensation for parking or storing their automobile while in Columbus on commission business?
- “3. Are such members, in view of the ‘other expense’ provision, entitled to compensation for meals and lodging while in Columbus on commission business?
- “4. Are all members entitled to compensation for meals out of town on commission business, whether or not overnight travel is involved?
- “5. Are members of the commission who reside in Columbus entitled to compensation for travel to and from their home to place of business, including parking expense for their automobile?”

Section 2965.07, Revised Code, relating to the salary, and expense reimbursement of members of the pardon and parole commission reads as follows :

“Each member of the pardon and parole commission shall receive an annual salary of twelve thousand dollars payable as the salaries of other state officers are paid. In addition, each member shall be compensated for his actual and necessary traveling and other expenses incurred while on the business of the commission, from funds appropriated for the use of the commission, after being approved by the director of mental hygiene and correction. An itemized statement of traveling expenses shall be certified to by the member incurring the same before payment is made.”

That the office of member of the commission is intended to be a full-time employment is demonstrated by Section 2965.03, Revised Code, reading in part :

“* * * During his term of office, no member, shall hold any other office of trust or profit under the government of the United States, or of this state, or of any political subdivision thereof, or engage in any other occupation or employment. Each member shall give his entire time to his official duties on the commission.”

Of further significance in the consideration of the question at hand is the fact that the principal office of the pardon and parole commission is in the city of Columbus. In this regard Section 2965.08, Revised Code, provides :

* * *

* * *

* * *

“The pardon and parole commission is a part of the department of mental hygiene and correction for administrative purposes as provided in sections 2965.01 to 2965.22, inclusive, of the Revised Code. * * * The director shall provide the pardon and parole commission, its officers, and employees, with suitable quarters and offices at the seat of government, and furnish the necessary furniture and supplies.”

Thus, although business of the commission is transacted outside of the city of Columbus, it would appear that members of the commission are regularly and customarily engaged in the transaction of business at the central office in Columbus maintained for such purpose.

In the case of *State, ex rel. Leis, v. Ferguson*, 149 Ohio St., 555, it was held that members of the board of liquor control could not be reimbursed for expenses incurred in transacting business of the board in Columbus. The syllabus of that case reads as follows :

"1. The members of the Board of Liquor Control of the state of Ohio are public officers and entitled only to the compensation and allowances provided by law.

"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.

"3. As commonly understood and accepted, the expression, 'traveling expenses,' comprehends transportation costs and other charges reasonably incident thereto incurred while on a journey, including lodging, food and kindred expenses.

"4. The term, 'traveling expenses,' contained in Section 6064-5, General Code, in relation to members of the Board of Liquor Control, does not embrace expenditures for subsistence, lodging, telephone calls and local transportation made by a member of such board after arriving at his destination for the transaction of the business in which he is regularly and customarily engaged in the 'central office' maintained for such purpose."

In referring to the *Leis* case, *supra*, my predecessor stated in Opinion No. 1178, Opinions of the Attorney General for 1957, page 589, at page 595:

"In my opinion the *Leis* case must be regarded merely as holding that a statutory authorization to pay the expenses of subsistence, lodging, and the like, incurred by a state officer while performing his duties at the 'central office' of the agency on which he serves, but rather that the term 'traveling expense' includes only such necessary expenses as are incurred 'on a journey' on official business."

And, starting at page 596 of Opinion No. 1178, *supra*, it is stated:

"In the *Leis* case, Judge Zimmerman noted that the statute required each department to maintain a central office in Columbus, and required each member to 'devote his entire time to the duties of his office.' See Sections 154-17 and 6064-6, General Code, now Sections 121.15 and 4301.07, Revised Code. Moreover, in the fourth paragraph of the syllabus the court clearly limited its ruling to an officer whose journey was made "for the transaction of business in which he is *regularly and customarily engaged at the central office* maintained for such purpose."

"The words emphasized above, considered in relation to the reference already noted to a central office, and the devotion of a member's 'entire time to the duties of his office.' quite plainly suggest that a contrary view may well have been reached had the court been dealing with a part-time board member who was 'regularly and customarily' engaged in a private vocation at a

place of residence other than Columbus and who only occasionally journeyed to Columbus for a temporary stay to transact official public business. In the case of such part-time officer it is clear that the journey is made from the residence to the central office for the purpose of transacting official business; but where the full-time officer, who is 'regularly and customarily' on duty at the departmental 'central office,' it is just as clear that the weekend journey to his place of residence is for personal rather than for official business reasons.

"This question was not decided in the Leis case, the State Auditor having conceded in his brief and on oral argument that the expense of such travel could properly be reimbursed. In my view that concession was improvidently made, but however that may be, the Leis case is no authority for a view contrary to that expressed above, and I thus answer your first query as to weekend travel to and from Columbus, in the negative."

As you point out, I held in Opinion No. 1124, Opinions of the Attorney General for 1960, issued on January 27, 1960, in the second paragraph of the syllabus, as follows:

While pursuant to Section 121.12, Revised Code, a member of the board of liquor control would be entitled only to the same expenses as other state officers included in such section, under Section 4301.07, Revised Code, a member may properly be reimbursed for his actual and necessary travel expenses incurred in traveling to attend board hearings or on other board business to the city of Columbus from his place of residence, and for such expenses incurred in returning to said place of residence."

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

1. Immediately prior to October 23, 1959, the only authority for reimbursing a member of the board of liquor control for actual and necessary expenses was the general authority for state officers and members of boards and commissions as found in Section 121.12, Revised Code.
2. Prior to October 23, 1959, members of the board were not being reimbursed for travel between their homes and the city of Columbus (Opinion No. 1178, *supra*).
3. Effective October 23, 1959, a new provision of law (Section 4301.07, Revised Code) gave members reimbursement for actual and necessary expenses.

I thus concluded that the enactment of the new provision of law indicated the intention of the legislature to provide some new reimburse-

ment for members, such being reimbursement for expenses incurred in traveling between their homes and the city of Columbus on official business.

Coming to the case here under consideration, there has been no recent change in the law as to reimbursement of pardon and parole commission members for expenses. Although Section 2965.07, *supra*, was amended in 1959, the only change was in the amount of salary to be paid a member. Also, the practice has been not to reimburse members for expenses incurred in traveling between their homes and the city of Columbus, such having been the construction placed on Section 2965.07, *supra*, by the administrative departments concerned since the enactment of the section.

Regarding past administrative construction, in 37 Ohio Jurisprudence, starting at page 698, Sections 387 and 388 read as follows:

“Section 387. In interpreting a statute, it is a well-settled rule that a resort may, under proper circumstances, be had to the construction given thereto by those charged with its execution and application, especially where it has long prevailed. Judicial notice may be taken of such construction for such purpose.”

“Section 388. The construction placed upon a statute by executive departments or bureaus is not only persuasive, but is entitled to great respect and should, perhaps, be regarded as decisive in a case of doubt or when the obligation imposed or the duty enjoined is not plain and specific. This is especially true in so far as that interpretation affects vested rights preserved or acquired under the act as so interpreted. Ordinarily, however, the construction of executive or administrative officers is not conclusive, either upon the courts or upon the state, particularly where there has not been uniform usage in regard to such interpretation.”

As you note in your letter of request, the language of Section 2965.07, *supra*, as to expenses of members of the pardon and parole commission is similar to that of Section 4301.07, Revised Code, pertaining to expenses of members of the liquor board. In view of the special fact situation as existing in the consideration of the liquor board opinion and in view of the past administrative interpretation of the law pertaining to the pardon and parole commission, however, I believe that the reasoning and conclusion of the liquor board opinion can not be applied to the instant case.

As noted earlier, the office of member of the pardon and parole commission is a full-time position and the central or home office of the

commission is in Columbus. Moreover, the latest expression of the legislature on this subject was to clearly provide that a commission member serves in a full-time position and may not hold any other position (Amended Substitute House Bill No. 671 of the 103rd General Assembly, effective October 1, 1959).

While a trip from the home office to some other location in the state on official business would entail the incurring of actual and necessary traveling and other expenses, a trip by a member from Columbus to his residence would necessarily be for personal rather than official reasons. Answering your first question, therefore, I conclude that members of the commission who reside out of Columbus are not entitled to reimbursement for expenses incurred in traveling from their homes to Columbus and return.

Coming to your second and third questions, since the city of Columbus is the home office of the commission, members are not entitled to reimbursement for parking or storing their automobiles, nor for meals and lodging while in Columbus on official business.

Answering your fourth question, I am of the opinion that where a member is required to leave the city of Columbus on official business, any meals eaten while on such trip are within the purview of "actual traveling and other expenses" as used in Section 2965.07, *supra*, and the cost of such meals should be reimbursed under said section.

For the reason that Columbus is the home office of the commission as discussed above, I must answer your fifth question in the negative.

In conclusion, it is my opinion and you are advised:

1. Under Section 2965.07, Revised Code, members of the pardon and parole commission may properly be reimbursed for traveling and other expenses incurred while on a journey on official business between the city of Columbus, which is the central office of the commission under Section 2965.09, Revised Code, and other locations.

2. Under Section 2965.03, Revised Code, members of the pardon and parole commission are required to devote their entire time to the duties of the office which they hold and may not have any other occupation or employment; and they cannot properly be paid an allowance to cover the expense of travel between the central office, the city of Columbus, and the

places where they reside, nor an allowance to cover travel expenses from their residence in Columbus, if they reside in such city, to the central office. (Opinion No. 1124, Opinions of the Attorney General for 1960, issued on January 27, 1960, distinguished.)

Respectfully,

MARK McELROY

Attorney General