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1. TRAVEL EXPENSES—COUNTY OFFICERS AND EMPLOYEES—MAY BE REIMBURSED FOR NECESSARY TRAVEL EXPENSES—USE, PERSONALLY OWNED AUTOMOBILES IN OFFICIAL COUNTY BUSINESS—COUNTY OFFICIALS WHO HAVE FINAL AUTHORITY—MAY USE DISCRETION AS TO METHOD OF PAYMENT.
2. METHOD MAY PROVIDE FOR REIMBURSEMENT FOR ACTUAL EXPENSES—SEPARATE PAYMENT OF ITEMIZED PARKING CHARGES OR MAY PROVIDE FOR FLAT PAYMENT COMPUTED ON MILES OF OPERATION.
3. PARKING EXPENSE AS SEPARATE ITEM—QUESTION OF FACT—LANGUAGE AND CIRCUMSTANCES OF AUTHORIZATION.
4. REGISTRATION FEES—ATTENDANCE AT ASSOCIATION MEETINGS AND CONVENTIONS—COUNTY OFFICERS, DEPUTIES, EMPLOYEES—COUNTY EXPENSE—SECTION 2989-1 G. C.

SYLLABUS:

1. County officers and employes may be reimbursed for necessary travel expenses incurred by them while using their personally owned automobiles on official county business, and in such cases, the method adopted for payment of such expenses is discretionary with the county officials having final authority in such regard.

2. In the exercise of such discretion, the method of payment as reimbursement for actual expenses incurred may provide for separate payment of itemized parking charges or may include the expenses of such parking within a flat payment computed on the basis solely of miles of operation.

3. Whether or not the method of payment so adopted includes within its scope parking expense as a separate item is a question of fact to be determined from the language and circumstances of each authorization.

4. Section 2989-1, General Code, by authorizing the attendance, at county expense, at association meetings and conventions by county officers, deputies and employes, necessarily authorizes the payment of registration fees required for attendance at such association meetings or conventions.

Columbus, Ohio, August 28, 1951

Hon. William H. Irwin, Prosecuting Attorney
Belmont County, St. Clairsville, Ohio

Dear Sir:

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

"On May 18, 1950, the County Auditor of Belmont County received a letter from the Bureau of Inspection and Supervision of Public Offices which letter contained a part of Circular #1090 dated March 7, 1950, setting forth a regulation of the Department of Finance of the State of Ohio governing the use of personally owned automobiles.

"This regulation holds that it is illegal for county officials and employes to include any expense for the parking or storage of their automobiles when used for official business. Said regulation further holds that the rate per mile to be paid by the subdivisions will constitute the full amount to be paid from public funds for this incidental expense.

"Prior to the issuance of this letter the various county officials of Belmont County have been charging in addition to the rate per mile the money expended for parking or storage. Heretofore, no findings were made as these additional expenses charged for parking and storage were considered to be legitimate expenses.

"It has been the understanding that the rate per mile charged by said public officials was the actual cost of driving their automobiles to and from their destination and did not cover the incidental expense of storage.

"The undersigned respectfully requests your opinion as to whether a political sub-division can pay the expense for parking or storage for a motor vehicle in addition to the rate per mile when said rate per mile is sufficient to cover only the actual operating expenses of said vehicle.

"We would also appreciate your opinion as to whether or not public officials attending meetings can charge as a legitimate expense their registration fee."

That portion of your request regarding the propriety of payment to county officials of parking expenses incurred by them cites Circular

No. 1090 issued by the Bureau of Inspection and Supervision of Public Offices on March 7, 1950. The pertinent part of that circular, as it relates to your first question, reads as follows:

“PERSONALLY OWNED AUTOMOBILES:

“It has come to our attention that some officials and employes have included such items as storage, gasoline and oil in expense accounts when they have received a fixed price per mile for the use of their personal cars.

“The Department of Finance of the State has adopted a regulation governing the use of personally owned automobiles which reads as follows:

‘The use of personally owned automobiles in state service must first be authorized by the Department of Finance on forms furnished for that purpose before such cars may be considered to be operated on a regular mileage basis. The standard rate at which claim may be made for the use of personally owned cars on official business is six and one-half cents ($6\frac{1}{2}\phi$) per mile. The voucher shall show the point from which and to which the personal automobile was used and the exact mileage covered. The mileage paid for the use of personally owned automobiles shall cover all obligations of the state by reason of the use of such cars in connection with the state’s business, including any expense for parking or storage, but not including any bridge toll. Only single mileage shall be allowed when two or more employes of a department are making the same trip on the same day in one automobile.’

“While we do not presume to establish the rate per mile to be paid by subdivisions, we do consider it necessary to hold that when a rate per mile is paid such amount will constitute the full amount to be paid from public funds and you will make findings for recovery for all incidental expenses, such as storage, fuel, etc.”

By issuing this circular the Bureau of Inspection and Supervision of Public Offices is attempting to prescribe the method by which counties may pay their employes for traveling expenses incurred by them. The Bureau is holding that when a fixed rate per mile is paid, rate discretionary with county, but limited by reasonableness, such payment shall cover all obligations of the various counties by reason of an employe of theirs operating his own automobile in the business of the county, including any expense for parking or storage. The Bureau, in arriving at this result, has adopted the same method of payment used by the Department of

Finance—namely, a fixed rate per mile. It should be noted at this point that the Department of Finance has no authority, by statute or otherwise, to dictate the method by which the various counties of the State of Ohio may reimburse their employes for travel expenses. The basic question involved in your request is whether the Bureau of Inspection and Supervision of Public Offices is authorized by statute to prescribe such a rule or regulation.

Apparently, the Bureau believed that such power was granted to it by Section 277, General Code, which is quoted as follows:

“The auditor of state, as chief inspector and supervisor, shall prescribe and require the installation of a system of accounting and reporting for the public offices, named in section two hundred seventy-four. Such system shall be uniform in its application to offices of the same grade and accounts of the same class, and shall prescribe the form of receipt, vouchers and documents, required to separate and verify such transaction, and forms of reports and statements required for the administration of such offices or for the information of the public.”

It might be argued that this statute gives to the Bureau the right to prescribe the method by which counties may pay their employes for traveling expenses. This argument does not, it seems to me, relate the true legislative intent of that statute. The purpose for which counties make reports of public expenditures to the Bureau is to enable said Bureau to determine whether public funds have been spent properly. The primary duty of the Bureau is to secure complete information as to how, when, where and why public moneys were spent. As to travel expense, the duty of the Bureau is to ascertain that payments do not exceed allowable and proper expenses. Whether a county reimburses its employes for their total travel expenses by paying them a fixed rate per mile as total compensation for all expenses, or whether it reimburses them by paying for each of the several items of their travel expense is a matter for the county officials, in their sound discretion, to determine. I conclude that it is not within the province of the Bureau of Inspection and Supervision of Public Offices to prescribe one such method in preference to others so long as the method used does not authorize payment in excess of actual and reasonable expenses.

I refer you to an opinion of one of my predecessors, Opinion No. 2170, Opinions of the Attorney General for 1930, page 1241. The then

Attorney General was faced with a problem similar in nature to the question you have presented. That problem is best explained by quoting a paragraph from that opinion at page 1242:

“Some time later the said deputy surveyor presented to the county surveyor his expense account, showing expenditures incurred on said trip to Cleveland, for meals and lodging for four persons, garage bill, gas, oil and service on car enroute, amounting in all, to \$28.52.”

The opinion goes on to say that the deputy surveyor may be paid for his expenses but that the expenses of the county commissioners who accompanied the deputy surveyor can not be a charge upon the surveyor's travel reimbursement fund. My predecessor's conclusion is stated in the syllabus to that opinion, which reads as follows:

“1. The actual and necessary traveling and personal expenses of a deputy county surveyor incurred on a trip outside his county, necessarily made in furtherance of his duties as such deputy surveyor and at the instance of the county commissioners, may be allowed to him upon the approval of the county surveyor.

“2. In the absence of statutory or charter provision prohibiting or limiting such action, a public officer or public employe may lawfully be reimbursed from public funds for traveling and other personal expenses actually and necessarily incurred by him in the performance of a public duty in furtherance of a definite project or undertaking then under way or in immediate prospective contemplation, provided in the exercise of a sound and proper discretion, it appears that the incurring of said expenses is necessary for the benefit of the political subdivision which the officer or employe serves, and in the performance of a duty enjoined or authorized by law. If by statute or charter provision such expenses are limited the officer or employe may be reimbursed within the limitations allowed by such law only.

“3. Keeping in mind the rule of law stated in the second branch of this syllabus, the determination of the lawfulness of the allowance of traveling and other personal expenditures of a public officer or employe when in the performance of his public duties requires consideration of pertinent questions of fact, and is thereby reduced to a pure question of auditing.”

I concur with the syllabus in that opinion and feel that the reasoning contained therein is equally applicable to your question.

The answer to your first question, therefore, is that county officers and employes may be reimbursed for necessary travel expenses incurred

by them while using their personally owned automobiles on official county business; that the method adopted for payment of these expenses is discretionary with the county officials who have final authority in this regard, unless otherwise provided by law; and that whether the method of payment so adopted provides for separate payment of itemized parking charges or, instead, covers all expenses including parking by the payment of a flat rate per mile is a question of fact to be determined by the language and circumstances of each authorization.

I shall now consider your second question which relates to the propriety or impropriety of reimbursing county officials for registration fees paid by them while in attendance at an authorized convention or association meeting. Section 2989-1, General Code, is the statute which governs county commissioners with regard to their approval of convention expenses. That statute is quoted as follows:

“Except as otherwise provided by law, no elected county officer, deputy or employe of the county, *shall attend, at county expense, any association meeting, or convention, unless authorized by the board of county commissioners. Before such allowance may be made, the head of the county office desiring such allowance, shall make application in writing to the board of county commissioners showing the necessity of such attendance and the probable costs to the county. If a majority of the members of the board of county commissioners approve the application, such expenses shall be paid from the moneys appropriated to the said office for traveling expenses.*” (Emphasis added.)

It will be noted from reading this section of the General Code that convention expenses are to be paid from the moneys appropriated for traveling expenses. The fact that these convention expenses are paid out of the travel fund indicates, only, the fund from which these payments are made.

The question, then, resolves itself into one of determining what the Legislature meant when it provided that “no elected county officer, deputy or employe of the county, shall attend, *at county expense, any association meeting, or convention, unless authorized by the board of county commissioners.*” (Emphasis added.) In the first place, this section calls for a determination by the county commissioners that a particular association meeting or convention is a proper one for the county officials to attend. The commissioners are then given discretion to decide which expenses are proper.

Since the Legislature has determined that some conventions and association meetings serve a valid public purpose and that their attendance by county officials, at county expense, is permissible, it necessarily follows that the incidental payment of a registration fee for the purpose of gaining the desired admittance is proper.

For a discussion of a related matter see *State, ex rel. McClure, City Mgr. v. Hagerman, Director of Finance*, 155 Ohio St., 320, where the Supreme Court upheld payment of membership dues in an association of municipal finance officers by the City of Dayton for the reason that said payment was for a public purpose.

In specific answer to your questions, it is my opinion, and you are accordingly advised, that:

1. County officers and employes may be reimbursed for necessary travel expenses incurred by them while using their personally owned automobiles on official county business, and in such cases, the method adopted for payment of such expenses is discretionary with the county officials having final authority in such regard.

2. In the exercise of such discretion, the method of payment as **reimbursement for actual expenses** incurred may provide for separate payment of itemized parking charges or may include the expenses of such parking within a flat payment computed on the basis solely of miles of operation.

3. Whether or not the method of payment so adopted includes within its scope parking expense as a separate item is a question of fact to be determined from the language and circumstances of each authorization.

4. Section 2989-1, General Code, by authorizing the attendance, at county expense, at association meetings and conventions by county officers, deputies and employes, necessarily authorizes the payment of registration fees required for attendance at such association meetings or conventions.

Respectfully,

C. WILLIAM O'NEILL

Attorney General