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HEADQUARTERS FOR EMPLOYEES—IN ABSENCE OF CONSTITUTIONAL OR STATUTORY LIMITATIONS, HEAD OF EXECUTIVE BRANCH OF STATE GOVERNMENT MAY ESTABLISH HEADQUARTERS FOR EMPLOYEES OF DEPARTMENT—ANY PLACE WITHIN STATE—SITUS SHOULD BEAR REASONABLE RELATIONSHIP TO WORK AND AREA TO BE COVERED BY EMPLOYEES ASSIGNED THERE—USUAL MILEAGE RATE FOR TRAVEL WITHIN AREA MAY BE PROPERLY ALLOWED—SECRETARY OF STATE.

SYLLABUS:

In the absence of constitutional or statutory limitations, the head of an executive branch of the state government may establish headquarters for employees of his department any place within the state so long as the situs of such headquarters bears a reasonable relationship to the work of or the area to be covered by the employees assigned there, and properly allow the usual mileage rate for travel within such area.

Columbus, Ohio, July 14, 1949

Hon. Charles F. Sweeney, Secretary of State
Columbus, Ohio

Dear Sir:

This is in reply to your recent request for my opinion, which reads as follows:

“I have employed in the office of Secretary of State, four gentlemen who are representing the office of Secretary of State in the division of Public Relations of this office.

“These four gentlemen reside in cities outside Columbus and will make their headquarters in those cities. The state has been divided into four separate divisions and each one of these above mentioned four gentlemen will contact the county boards of elections in their respective districts. In view of the fact that the main part of the travel of these four gentlemen will be from these cities outside Columbus and also from the fact that every two weeks these four gentlemen will come to the office of Secretary of State here in Columbus with reports and for further instructions, I am at this time writing you for a formal opinion as to whether or not these four gentlemen can charge and collect from the State of Ohio the usual mileage rate for travel, using

their *place of residence, outside of the city of Columbus*, as headquarters in their respective districts in which each one of these gentlemen will be working.”

Your question, as I see it, is whether the employees to whom you referred may use their residences as their headquarters in computing mileage covered on behalf of the State of Ohio, or are they required to regard Columbus as their headquarters for purposes of mileage computation? You have assured me that it would be more economical to the State if these employees are permitted to use their places of residence as their headquarters.

The Constitution of Ohio, Article XV, §1, provides that “Columbus shall be the seat of government * * *.” Sections 14222-14225 of the General Code implement this constitutional provision. Section 14225 refers specifically to your office and those of the auditor and treasurer of state, and provides as follows :

“That the auditor, treasurer, and secretary of state, shall in the month of October next, remove or cause to be removed, the books, maps and papers in their respective offices, to the offices prepared and designated for them severally, in the town of Columbus; and the treasurer shall also remove any public money which may be in his office; and the said public officers shall there attend and keep their offices respectively, from and after that time, any law to the contrary notwithstanding.”

While it is clear that under the above constitutional and statutory provisions you must attend and maintain the office assigned to you in Columbus, I am sure that neither provision was intended, nor could they be construed, to require you to maintain offices in the city of Columbus for each of the employees of your department. The precedent is too long established and too well recognized for anyone to suggest that state officers and employees may not be assigned posts of duty away from Columbus. I should think, in the absence of constitutional or statutory limitations, that the heads of the departments of the executive branch of our state government have discretionary authority to determine the place of duty of the individual employees of their departments, as long as the place has a reasonable relationship to the duties of or the areas to be covered by the employees assigned to such office.

It is interesting to note the provision of the Regulations Governing Traveling Expense, as revised on November 14, 1944, issued by the

Department of Finance, with respect to headquarters of state employees, which reads as follows :

“4. *Headquarters*—A headquarters must be established for every State employe at which expenses will not be allowed. Where actual headquarters are different from department headquarters, a statement to that effect shall be made in duplicate and filed with the Director of Finance before any claim for expense can be allowed. Any officer or employe living in one community and having the official office for all or a major portion of his work in another community shall not present a claim for expenses resulting from the fact that he lives in another community from that in which he works. Whenever an employe lives in a suburb of a city in which he is required to work, he shall not be allowed expenses while engaged in work in the city, nor shall he be allowed expenses for transportation to and from his place of residence.”

I assume that you are complying with the requirements of this paragraph.

Let us attempt to apply the general rule set forth above to the four employees referred to in your letter. In view of the duties assigned to these employees, I must assume that they have been retained to assist you in your capacity as chief election officer of the state of Ohio. (Perhaps I should add parenthetically at this point that according to my understanding these positions have not been created by you but are of long standing, and that there is substantial precedent for the residences of such employees to be regarded as their headquarters.) Under Section 4785-7, General Code, your duties as chief election officer include :

“* * * to advise with members of such boards as to the proper methods of conducting elections ; to prepare rules, regulations and instructions for the conduct of elections ; * * * to receive and to determine the sufficiency of all initiative and referendum petitions on state questions and issues as hereinafter provided, and to certify to the sufficiency of such petitions ; to require such reports from the several boards as are provided by law, or as he may deem necessary ; to compel the observance, by election officers in the several counties, of the requirements of the election laws ; to investigate the administration of election laws, frauds and irregularities in elections in any county, and to report violations of election laws to the attorney general or prosecuting attorney or both for prosecution ; to make an annual report to the governor containing the results of elections, cost of elections in the various counties, a tabulation of the votes in the several political subdi-

visions, and such other information and recommendations relative to elections as he may deem desirable; and to perform such other duties as may be required by law. * * *

It is readily seen that you or your representative should be in close touch with the county boards of elections. And it should follow that in order to maintain the supervision required and to carry out properly your statutory duties, it would be reasonable for you to divide the state into several zones and to establish headquarters in each zone from which an employee of your office could operate and cover the territory within the zone. I do not think it is of any particular significance if the place designated by you as the headquarters of any employee should be the residence of the employee assigned to cover the zone.

Before concluding, I believe it appropriate to mention that the office of Secretary of State is established within the executive branch of the government by the Constitution of the State of Ohio, Article III, Section 1. In this connection I should like to refer you to an opinion which I rendered during my previous term of office, Opinion No. 487 of April 19, 1937 (1937 O. A. G. p. 778) in which is discussed among other things the discretion allowed constitutional officers in passing upon traveling expenses for employees of their respective offices.

I think it was a reasonable exercise of discretion, in order to carry out the duties assigned to you as chief election officer, for you to divide the state into four zones and to assign an employee of your office to cover each zone; and it would also be reasonable to permit such employee to use his place of residence within the zone as his headquarters for purposes of computing the mileage covered by him on behalf of the state of Ohio, especially in view of the fact that this method of computation would result in a saving to the state.

In view of the preceding, I am of the opinion that the secretary of state, in the absence of constitutional or statutory limitations, may in the exercise of his discretion establish headquarters for his employees any place within the state of Ohio so long as the headquarters established bear a reasonable relationship to the duties assigned or the area to be covered by the employees stationed there, and properly allow the usual mileage rate for travel within such area.

Respectfully,

HERBERT S. DUFFY,
Attorney General.