

OPINION NO. 75-081**Syllabus:**

R.C. 121.05 and 121.12 constitute the authorization by law required by R.C. 127.05, that entitles the Assistant Tax Commissioner to be reimbursed for those expenses incurred in the performance of official duties outside the state, without first obtaining the approval of the Emergency Board.

To: Edgar L. Lindley, Tax Commissioner, Dept. of Taxation, Columbus, Ohio
By: William J. Brown, Attorney General, November 18, 1975

I have your predecessor's request for my opinion concerning whether a person appointed Tax Commissioner and also designated as an Assistant Tax Commissioner is, by virtue of R.C. 121.12, authorized by law to be reimbursed for expenses incurred in the performance of official duties outside the state, without authorization by the emergency board.

Your attention is directed to R.C. 127.05, which reads as follows:

"No executive, legislative, or judicial officer, board, commission, or employee of the state shall, at state expense, attend any association, conference, convention, or perform official duties outside the state unless authorized by law or by the emergency board. Before such allowance may be made, the head of the department shall make application in writing to the emergency board showing necessity for such attendance and the probable cost to the state. If a majority of the members of the emergency board approve the application, such expense shall be paid from any moneys appropriated to said department, board, bureau, or commission for traveling expenses."

(Emphasis added.)

Pursuant to the provision it is clear that emergency board approval is not required where authority otherwise exists for reimbursement of necessary expenses. See 1961 Op. Att'y Gen. No. 2538.

The question then, is whether the Assistant Tax Commissioner has been specifically authorized by law to be reimbursed for necessary expenses incurred in the performance of his duties outside the state.

R.C. 121.05 mandates that "In each department there shall be an assistant director designated by the direction . . .", which in the case of the Ohio Department of Taxation is the Assistant Tax Commissioner. Consequently, R.C. 121.12 clearly indicates that the Assistant Tax Commissioner is to be reimbursed for actual and necessary expenses. R.C. 121.12 provides that:

"Each officer whose office is created by sections 121.02, 121.04, and 121.05 of the Revised Code shall devote his entire time to the duties of his office, and shall hold no other office or position of profit. In addition to his salary, each such officer and each member of the boards and commissions in the departments shall be entitled to his actual and necessary expenses incurred in the performance of his official duties."

There can be no question that the Assistant Tax Commissioner need not receive Emergency Board approval in order to be reimbursed for out-of-state travel expenditures, which are incurred as an actual and necessary expense of his official duties. In the case

of State ex rel. Ferguson v. Maloon, 172 Ohio St. 343 (1961), the Ohio Supreme Court mentioned R.C. 121.12 as one of the numerous statutory provisions which specifically provide for the payment of travel expenses, thus providing the requisite statutory authorization required by R.C. 127.05.

In specific answer to your request, it is my opinion and you are so advised that R.C. 121.05 and R.C. 121.12 constitute the authorization by law required by R.C. 127.05, that entitles the Assistant Tax Commissioner to be reimbursed for those expenses incurred in the performance of official duties outside the state, without first obtaining the approval of the Emergency Board.