

OPINION
65-211

July 12, 1965 (OPINION)

Mr. Walter R. Hjelle

Highway Commissioner

RE: Officers - Expense Accounts - Interpretation of Statute

You have asked two questions to clarify House Bill 531. The first question is: Are meals and lodging to be reimbursed on an actual basis not to exceed the maximum established by law, or are they to be based on a per diem? For example, the law allows a maximum of \$6.75 for the fourth quarter and only \$5.50 is spent, is the employee reimbursed maximum amounts of \$6.75, or merely for the actual amount?

The language of the amendments of section 44-08-03, 04, 05 and section 54-06-03, 04 and 09 by House Bill 531 is not exactly clear and therefore it will be necessary to construe the legislative intent in enacting H.B. 531.

There are many guide posts in this bill to find legislative intent and they all point to one conclusion: the legislature in passing House Bill 531 enacted an "allowance" expense law. The first guide post is the repeal of section 44-08-04 which had reimbursement for actual expenses as the basis for payment for meals and lodging away from an employee's residence.

Prior to amendment, section 44-08-04 read:

"Expense account - Amount allowed. - No elective officer other than the governor and members of the legislature, nor any appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, shall make claim upon any public fund for any sum in excess of ten dollars for any one day for actual expenses of meals and lodging while engaged in the discharge of a public duty and while upon a public expense account within the state, or in excess of six dollars for any one day for meals, and in addition thereto actual lodging expense, while so engaged without this state. In no event shall any such elective or appointive officer, employee, representative, or agent make claim upon such public expense account for an amount in excess of that actually paid for expenses while engaged in the public service."

The words "actual expenses of meals" and "actual lodging expense" are absent from the amendment, as is the prohibition in the last sentence underlined above, which states that no officer, etc., shall make claim upon such public expense account for an amount in excess of that actually paid for expenses while engaged in the public service. Under Chapter 44-08 no person could make a claim in excess of that money which he actually expended.

There is not the use of similar language in the amendment and thus it appears that what the legislature intended was to authorize an allowance.

Section 44-08-04 reads in part, now, that an officer etc "may make claim and shall upon approval of such claim be paid as an allowance for meals and lodging while engaged within this state in the discharge of a public duty away from his normal working and living residence. . ."

The second guide post is the use of the word "allowance" in the above underline quotation.

This allowance for meals and lodging is fixed by this statute. Allowance is defined in Webster's New International Dictionary, 2nd Edition

1. . . .
2. . . .
3. That which is allowed; a share or portion allotted or granted; a sum granted . . as for personal and household expenses."

This is synonymous with the definition of allowance which in United States v. Jackson, 302 U.S. 628, 53 Sup. Ct. 390, 83 L. Ed. 488 was held to be extra and special items in addition to regular compensation. The definition of allowance further comprehends a fixed and, usually restricted quantity.

That the legislature intended to authorize an allowance for expenses rather than actual expense reimbursement can also be seen from the amendatory language of 44-08-04 where it reads "Verification of claims shall not be required for the first three quarters listed above and only a lodging receipt shall be required for the fourth quarter; provided, however, the amount paid for such lodging shall not be required to be listed." This language indicates that the legislature intended only a receipt showing actual occupancy in a lodging place, but it is not required that a sum be listed for the amount paid for such lodging. A person is entitled to payment of \$6.75 for the fourth quarter if he was registered in a bona fide lodging place, even though the actual cost of such lodging might only be \$5.50 or any less sum. The exclusion of the words "actual expenses of meals" and "actual lodging expenses" in this bill point to a legislative intent to create an allowance rather than continuing the actual expense laws.

Another guide post is at once apparent when one compares the strict language covering out of state expenses (where the statute is clear that a person may claim \$8 a day for meals without receipting them but he must voucher his actual lodging expenses) with the in-state portion of the bill where only a lodging receipt shall be required for the fourth quarter. This indicates that actual expenses are to be paid for out of state lodging, but allowance payments are vouchered and paid for in-state travel.

The last guide post is found in section 3 of House Bill 531 which has been denominated as 44-08-05 N.D.C.C. (now amended) held a violation of the provisions of 44-08-03 and 44-08-04 was a felony. Section 44-08-04 stated clearly that no officer, etc., shall make a claim in excess of that actually paid by him for meals and lodging. By the amendment, it is contemplated that the criminal penalty will be assessed against those who claim amounts in excess of those allowed by law and not in excess of that amount actually expended by the employee, thereby showing that an employee may make claim upon the allowed maximum even though the employee spent less than that amount.

Any public officer or employee who has to approve a voucher must determine before approving the voucher (1) that the expenditure for travel or other expenditures were for lawful and official purposes (2) If for travel expense, that the travel actually occurred and that the sums claimed for travel expenses are actually due to the individual who seeks reimbursement, allowance, or payment. There is no duty assessed against an official having power to approve vouchers to ascertain that the employee making claim upon the state is claiming in excess of that amount which he actually spent. The duty is that the official having the power to approve a voucher must ascertain that the employee making the claim upon the state is not claiming in excess of the amounts set as allowance for the appropriate quarter days. If an official having the power to approve vouchers ascertains that the total claimed by the employee vouchering his expense is not in excess of the total amount due for any of the four quarters for which he was away from his residence, the official approving the vouchers has performed fully under the law and is not liable for any penalties.

The net effect of the current legislation must be that the assembly has statutorily established a conclusive legal presumption that the statutorily specified amounts are actually expended and are to be reimbursed upon proper claim therefor made - without regard to possible exceptional circumstances in any given case.

The answer to your first question must be that the legislature intended to pass and did authorize an allowance and that the \$6.75 will be paid for the fourth quarter if the employee submitting the voucher stayed at a bona fide lodging place and submits a receipt to that effect, even though the amount of money he spent for his lodging was, by your illustration, only \$5.50.

Your second question reads: "Can meals be charged during the fourth quarter? The law states 'Receipts are not required for the first three quarters and only lodging receipts are required for the fourth quarter.' Am I to interpret this to mean that if I have no lodging expense, I can get reimbursed for the full amount of \$6.75 if I am away from my headquarters and residence between 12:00 midnight and 6:00 A.M.? A number of other employees are required to be on duty from 12:00 midnight to 6:00 A.M. and I would like to know whether they can be reimbursed for meals during this time."

The answer to this question involves an interpretation of the legislative intent. The bill as originally introduced, providing for an allowance "for all or any part of any quarter of a day", was

amended to provide that the four subsections of section 44-08-04 N.D.C.C. "shall not be applicable unless the person concerned has been out of the headquarters or normal place of employment for six hours or overnight." Also, there is the provision in the statute that "a lodging receipt shall be required for the fourth quarter."

It is therefore our opinion that without a lodging receipt, no allowance can be paid for the fourth quarter; and because of the six hour or overnight limitation, no allowance can be paid for any other quarter unless during that quarter, the six hour limitation is or has been reached. Thus, for example, a person leaving his station at 8:00 A.M. and returning at 5:00 P.M. would be entitled to an allowance for the second quarter only or \$1.50 and would be expected to eat his breakfast and his evening meal at home or at no expense to the state.

The statute, of course, provides that any department may set rates less than the allowances provided.

HELGI JOHANNESON

Attorney General