

LETTER OPINION
74-423

January 14, 1974 (OPINION)

The Honorable Edward Metzger
State Representative
410 Shady Lane
Bismarck, North Dakota 58501

Dear Representative Metzger:

This is in response to your letter in which you state the following:

"I have been requested by one of my constituents to request the opinion of your office on the following legal questions:

1. Is a Special Assistant Attorney General appointed to your office to represent an agency of the state, and to be paid by the funds of that state agency, exempt from the provisions of 54-06-10 N.D.C.C.?
2. Is a member of the State Banking Board entitled to payment, or reimbursement, of expenses prescribed in 6-01-03 N.D.C.C., when he has performed special duties not directed by the board?"

Section 54-06-10 as amended provides as follows:

"54-06-10. OUT-OF-STATE TRAVEL - CONSENT OF GOVERNOR NECESSARY. - No expenses for out-of-state travel shall be allowed to any member, officer, or employee of any department of the state, except the judicial and legislative departments, and as otherwise provided by law, unless authority therefor first shall be granted in writing by the governor."

The provisions of this section relate to the allowance of expenses for out-of-state travel. It applies to any member, officer, or employee of any department of the state except the judicial and legislative departments.

A special assistant attorney general is appointed by the attorney general to represent or provide legal services to the state or any agency or department of the state. As such, a special assistant attorney general is either an employee or officer and comes within the terms "member, officer, or employee" as found in Section 54-06-10.

Section 54-06-10 was amended by the 1973 Legislature by the insertion of the words "and as otherwise provided by law," after the words "legislative department". The same chapter, namely, 136 of the 1973 Session Laws, also created another provision which pertains to out-of-state travel expenses by president of state institutions of higher learning and persons employed by such institutions. In examining Section 1 of Chapter 136 and the provisions of Section 54-06-10, it becomes relatively clear that the thrust of this law is that no expenses for out-of-state travel shall be allowed or

reimbursed until certain requirements have first been met. The requirements are either the approval of the Governor, as to members, officers, or employees of any state department, or approval of the board of higher education and the Governor, as to presidents of state institutions, or approval of the president of the institution and supervisor as to employees of such state institutions, as the case may be.

The net effect of these provisions is that if any person travels to other states, he will not be allowed expenses or reimbursement unless he first obtains the approval of the Governor in writing or of the approving authority as stated earlier.

With reference to special assistant attorney general, the approval must be from the Governor before any reimbursement or allowance for out-of-state travel is permitted.

If a member, officer or employee of any state department travels out of state or to another state without first obtaining approval of the Governor, he is taking the risk of traveling at his own expense. The reimbursement or the allowance for such expenses can be made only after first obtaining the approval of the Governor. It is a condition precedent which must be met before reimbursement is allowed.

In direct response to your question, it is our opinion that a special assistant attorney general comes within the terms of Section 54-06-10 and must have the approval of the Governor for out-of-state travel before reimbursement for expenses may be allowed and paid.

As to the second question, the pertinent provision of Section 6-01-03 provides as follows: " * * * the members of such board other than the state examiner, shall receive \$25.00 per day and their actual necessary expenses for transportation while attending meetings, or in the performance of such special duties as the board may direct." The allowance of expenses is limited to the conditions set forth in Section 6-01-03 quoted above. Individual board members may not assume a duty and expect to be reimbursed for the actual necessary expenses resulting therefrom unless directed by the board. Direction of the board is required. This, of course, implies the willingness of the individual to perform such duties.

In direct response to your second question, it is our opinion that a member of the state banking board is not entitled to payment or reimbursement of any expenses if the expenses resulted from performing a duty or function not directed by the board. However, it is recognized that the board may use various legal means, methods or procedures in directing the performance of special duties.

I trust this answers your inquiry.

Sincerely yours,

ALLEN I. OLSON

Attorney General