

VOLUME NO. 37

OPINION NO. 149

BOARD OF NATURAL RESOURCES AND CONSERVATION - Members - Right to compensation for time spent on board related matters other than at board meetings; REVISED CODES OF MONTANA, 1947 - Section 82A-112(7).

HELD: Members of the Board of Natural Resources and Conservation are entitled to be compensated under section 82A-112(7), R.C.M. 1947, for the time spent on necessary Board related matters other than board meetings.

11 July, 1978

Donald MacIntyre, Esq.
Chief Legal Counsel
Department of Natural Resources
and Conservation
32 South Ewing
Helena, Montana 59601

Dear Mr. MacIntyre:

You have requested my opinion concerning the following question:

Are members of the Board of Natural Resources and Conservation entitled to compensation under section 82A-112(7), R.C.M. 1947, for the time spent on board related matters other than at board meetings?

The law concerning payment to board members is codified at section 82A-112(7), R.C.M. 1947. In pertinent part it states:

Unless he is a full-time salaried officer or employee of this state, each member is entitled to be paid \$25.00 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 59-538, 59-539, and 59-801, incurred while in the performance of board duties.

The Montana Supreme Court has not interpreted this statutory language. However, other jurisdictions have addressed similar statutory forms of compensation.

In State ex rel Greb v. Hurn, 102 Wash. 328, 172 P. 1147, 1148 (1918), the Washington Supreme Court held that "where a statute fixes an officer's compensation at a certain sum per day, such officer performing any substantial service on a particular day, has a right to the per diem for that day."

The Colorado Supreme Court in Smith v. Board of County Commissioners of Jefferson County, 10 Colo. 17, 13 P. 917 (1887) construed a statute regarding the compensation of the superintendent of schools which provided: "For the time necessarily spent in the discharge of his duty he shall receive five dollars per day...." Section 3020, Gen. St. Colo. 1885. The Colorado Court held that when the law provides a per diem compensation for the time necessarily devoted to the duties of an office, "the officer is entitled to this daily compensation for each day on which it becomes necessary for him to perform any substantial official service ...regardless of the time occupied in its performance." Id., at 13 P. 920.

In construing section 82A-112(7), R.C.M. 1947, the controlling words of the statute are "necessarily and actually engaged in the performance of board duties." The statute does not limit the right to compensation only to actual board meetings. In light of the reasoning of the decisions of other jurisdictions, any time members engage in services necessary to the performance of their board duties, they are entitled to compensation. For example, a member of the board must take certain actions to adequately prepare for regularly scheduled meetings or to render decisions required of the board. While engaged in such activity the board member is "actually and necessarily engaged in the performance of board duties."

THEREFORE, IT IS MY OPINION:

A member of the Board of Natural Resources and Conservation is entitled to be compensated under section 82A-112(7), R.C.M. 1947, for the time spent on necessary Board related matters other than board meetings.

Very truly yours,

MIKE GREELY
Attorney General