

Presidential Electors, Payment of Mileage and Per Diem Of.

The State Auditor cannot draw his warrant on the treasurer, in accordance with the provisions of Section 1470 of the Political Code, for the payment of mileage and per diem of presidential

electors until appropriation is made for the payment of such expense.

January 11, 1905.

Mr. H. R. Cunningham, State Auditor, Helena, Montana.

Dear Sir:—In response to your inquiry, as to whether or not you are, under the law, permitted to audit and draw warrant for the amount due the presidential electors for per diem and mileage, it is my opinion that you cannot draw your warrant, nor can such expense be paid, until a special appropriation is made therefor.

By the provisions of Section 1470 of the Political Code, it would seem at first blush as though your plain duty would be, upon the certification of the accounts of electors by the secretary of state, to audit and draw your warrant for the amount due upon the state treasurer, payable out of the general fund. But Section 34, of Article V., of the Constitution, controls and places a limitation upon the operation of said Section 1470.

Section 34, of Article V., of the Constitution, provides:

“No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt.”

Therefore, until appropriation is made for the payment of the per diem and mileage of the electors, you are not at liberty to follow the provisions of Section 1470.

Yours very truly,
ALBERT J. GALEN,
Attorney General.