

**Opinion No. 5.****Water Conservation Board—Governor  
—Traveling Expenses.**

HELD: Expenses of a trip to Washington, D. C., by the Governor at the direction of the Water Conservation Board for conferences in relation to an application for loan and in furtherance of the general program of the State for water conservation, are administrative expenses of the Board.

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December 11, 1934.

Hon. Sam W. Mitchell  
Secretary of State  
The Capitol

You inquire as to the validity of a claim for expenses paid by Governor F. H. Cooney on a trip to Washington, D. C., for conferences relative to application by the Water Conservation Board of the State of Montana to borrow money for the construction of dams for irrigation under a project commonly known as the Rock Creek Water Users' Association, in Carbon County, Montana.

On September 27, 1934, the Water Conservation Board unanimously adopted the following resolution:

"BE IT RESOLVED, that the State Water Conservation Board requests, authorizes and directs Governor F. H. Cooney to go to Washington, D. C. as soon as possible, to take up with the President of the United States or other governmental officials, the matter of the application of the Rock Creek Water Users' Association Project, and the allotment of funds for the development of the water conservation program for the State of Montana, and such other matters pertaining thereto which may be necessary to the welfare of the people of the State of Montana, and that the Water Conservation Board may best serve the people of the State; and that the expenses of such trip be paid from the funds of such Water Conservation Board."

In particular, the question is asked as to whether or not this expense may be considered as an administrative expense of said Board, or an expense directly chargeable to some project.

Section 5 of Article VII of the Constitution of Montana provides: "The supreme executive power of the state shall be vested in the governor, who shall see that the laws are faithfully executed."

The law creating the Water Conservation Board of Montana is Chapter 35 of the Laws of Montana, Extraordinary Session of the Twenty-third Legislative Assembly. Section 16 thereof provides for an administration fund and an appropriation therefor. It further provides: "All general administrative expenses of the board and the cost of investigations as authorized in Section 5, of this Act, shall be paid from the Administration Fund and also the cost of all preliminary work on any project, and all expenses directly chargeable to such project, prior to the receipt of the proceeds of bonds, shall be paid from the Administration Fund."

Section 5 of such Act provides for the construction of works such as are contemplated in connection with this project. It contains the following provision: "The purpose of this Act is to meet, so far as possible, a state-wide

need for the conservation and use of water, through the construction and operation of projects designed for such purposes."

The Board is therefore empowered to make such investigations as may be necessary to plan and carry out a comprehensive state-wide program of water conservation. Under Section 13 of said Act the Board is expressly authorized to enter into contracts with the United States in relation to such projects. Section 3 of the Act authorizes the Board to employ counsel. Section 1 of the Act declares water conservation a state purpose.

By virtue of this Act and its provisions the State Water Conservation Board requested and directed the Governor of this State, in the resolution quoted above, to make a trip to Washington, and during this trip the expenses were incurred concerning which inquiry is made in your letter.

When we compare the term "administrative", as used in connection with the terms "officers" or similar nouns, we find that the terms "executive" and "administrative" are construed as synonyms. (*Saint v. Allen*, 169 La. 1046, 126 So. 548, 555; *Sheely v. People*, 54 Colo. 136, 129 Pac. 201.)

The rule is thoroughly established that where an officer is required to perform a certain duty, and in the performance of such duty incurs necessary expenses and an appropriation is made to cover such expenses, he may be reimbursed for same. (*Andrews v. U. S.*, 2 Story 202, (Opinion by Judge Story); *U. S. v. Flanders*, 112 U. S. 88.)

Section 22 of the Act provides that same shall be liberally construed.

The Water Conservation Board, in the performance of its duties, determined that it was necessary that the Governor of this State be requested to travel to Washington in the furtherance of this project and the general program of the State for water conservation. It appears that such trip was warranted and that same was made in the performance of an administrative function.

It cannot be questioned but that, if in order to expedite and secure the approval of a pending application for a loan it became necessary for the

Board to send an attorney to Washington for that purpose, the Board would have authority to do so and to pay his expenses and a reasonable attorney fee therefor. It therefore appears clear that if the Board considered the Governor of the State to be able to render a greater service in this regard, the Board would have authority to request him to make such trip and to pay his expenses incurred therein.

The claim is legal and should be allowed.