

No. 214

**WELFARE DEPARTMENT—STATE BOARD OF PUBLIC
WELFARE, members of—TRAVELING EXPENSES AND
SUBSISTENCE**

Held: Members of the State Board of Public Welfare are not entitled to reimbursement for expenses incurred for travel and subsistence when not in attendance at a regular or special meeting of the Board.

August 20, 1941.

° Mr. J. B. Convery, Administrator
Department of Public Welfare
Helena, Montana

Dear Mr. Convery:

You have made the following inquiry:

“Are members of the State Board of Public Welfare entitled to reimbursement for expenses incurred for travel and subsistence in performance of official duties carried out at the request of the Board when not in attendance at regular or special meetings of the Board?”

Your attention is directed and called to Part I, Section II, Subdivision (e) of Chapter 82, Laws of 1937, which fixes the compensation of members of the State Board of Public Welfare:

"Members of the State Board shall receive no compensation for their travel other than the actual amount of traveling expenses actually incurred in respect to the performance of their official duties in attendance at regular or special meetings of the board and ten (\$10.00) dollars per diem for each day actually in attendance at such board meetings. The per diem of such individual member of the board shall be limited to not exceed the amount of five hundred (\$500.00) dollars per year. No member of State Board shall have any direct financial interest in or profit by any of the operations of the state department of public welfare or any of its agencies.

"Per diem and expenses of state board members shall, upon claims being presented according to state law, be paid out of funds appropriated to the state department of public welfare."

It will be noted, by a careful reading of the above section, it specifically prohibits the payment of compensation for services of the state board when said services are not in attendance at regular or special meetings of the board. In other words, the only provision made by this section is that the members of the State Board of Public Welfare are to be paid their expenses while traveling to and from regular and special meetings of the state board, together with the per diem compensation of ten dollars (\$10.00) for each day actually in attendance at such board meetings. The Public Welfare Act does not make any other provision for payment of compensation to members of the state board who incur expenses for travel and subsistence when not at a regular meeting of said board or at any special meeting.

It has been the well settled law of Montana and consistently adhered to for many years, as clearly set out in one of the recent cases of State ex rel. Matson, Attorney General v. O'Hern, 104 Mont. 126, 65 Pac. (2nd) 619:

"The general rule of law is that public officials can only claim compensation for services rendered where the compensation is provided by law, and that where no compensation is provided the rendition of such services is deemed to be gratuitous. (29 C. J. 572; 46 C. J. 1014.) Statutes relating to the fees or compensation of public officers must be strictly construed in favor of the government, and such officers are only entitled to what is clearly given by law. (45 C. J. 1019; see also, Holcombe v. Kennedy, 158 Ark. 585, 251 S. W. 7; Bradley County Road Improvement District v. Wilson, 168 Ark. 204; 269 S. W. 583; Kind v. Guilford County, 152 N. C. 438, 67 S. E. 919; 1 Dillon on Municipal Corporations (5th Ed.) 426; Delaplane v. Crenshaw, 15 Grat. (Va.) 457.)"

Our Supreme Court many years ago annunciated the above general principle of law in the case of Charles Sears v. Gallatin County, 20 Mont. 462, 52 Pac. 204, where it stated:

"Public officials can only claim compensation for services rendered where compensation is provided by law."

Part I, Section II, Subdivision (e) of Chapter 82, Laws of 1937, makes provision for the payment of compensation to the members of the state board only when in regular meetings or at special meetings. No mention is made, in the above stated section, of the payment of compensation or expenses to members of the board who perform services when not in attendance at regular or special meetings of the board. Hence, it follows the rendition of such services is deemed to be gratuitous.

In view of the authorities cited above and the emphatic language of the statute, it is my opinion members of the State Board of Public Welfare

are not entitled to reimbursement for expenses incurred for travel and subsistence when not in attendance at regular or special meetings of the board.

Sincerely yours,

JOHN W. BONNER
Attorney General