

VOLUME NO. 33

Opinion No. 10

**STATE, employees, expenses; BOARDS AND COMMISSIONS, expenses.**

**HELD:** A revolving fund, from which is appropriated all income from reimbursable expenditures for audits of motor fuel producers, dealers and users, does not provide the basis for an exception to the rate of reimbursement for expenses incurred in the performance of official duties as set forth in sections 59-801 and 59-538, Revised Codes of Montana, 1947.

November 25, 1969

Mr. Morris L. Brusett  
Legislative Auditor  
State Capitol Building  
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion on the following question:

“Does the Montana state board of equalization have the authority to reimburse its employees for travel expenses in excess of the daily rate set forth in section 59-538, R.C.M. 1947, and the mileage rate of 9 cents per mile provided in section 59-801, R.C.M. 1947, while these employees are in the examination of motor fuel dealers and users records?”

Your question is concerned with reimbursement for expenses incurred in the performance of official duties. The applicable provisions are sections 59-801 and 59-538, R.C.M. 1947.

Section 59-801, R.C.M. 1947, provides:

“Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles or airplanes in the performance of official duties, shall be entitled to collect mileage at a rate of nine cents (9c) per mile for the distance actually traveled by automobile, and at the rate of twelve cents (12c) per air mile for the distance actually traveled by airplane, and no more unless otherwise specifically provided by law . . .” (Emphasis supplied.)

Section 59-538, R.C.M. 1947, provides for a per diem allowance of \$13.50 per day for the time engaged in travel within the state and \$22.50 per day outside the state. This section applies to “. . . every person engaged in any service in every department of state . . .” but certain elected state officials are specifically excluded.

According to your letter, the board of equalization has entered into contracts with special fuel users and dealers that provide for the payment of \$25.00 a day for an auditor and 10 cents a mile for mileage. The board cites as authority Extraordinary House Bill 21, Session Laws 1967, which established a revolving fund to the board of equalization account. The authorization for such expenditures for the biennium ending June 30, 1971 is Extraordinary House Bill 7, Session Laws 1969. The aforementioned bills establish a revolving fund from which is appropriated all income from reimbursable expenditures for audits of motor fuel producers, dealers and users.

A close reading of section 59-801, R.C.M. 1947, reveals that the rate of reimbursement set forth therein is exclusive unless otherwise specifically provided by law. The term “specifically” has been defined by the courts to mean in a specific manner, explicitly, particularly, definitely. *Straton v. Hodgkins*, 109 W. Va. 536, 155 S.E. 902 (1930). An

example of a specific exception to the mileage allowance provided by section 59-801, R.C.M. 1947, is the provision for actual travel expenses for district court judges permitted by sections 93-305 and 93-313, R.C.M. 1947. Opinions of the Attorney General, Volume 28, Opinion 11.

The same basic argument that a specific provision of the law is required to provide for a greater rate of reimbursement applies also to section 59-538, R.C.M. 1947. The courts have held very closely to the rule that when a certain compensation is allowed by statute there is no authority for allowing anything beyond the provisions of the statute. **Wight v. Board of County Commissioners**, 16 Mont. 479, 41 Pac. 271 (1895).

An examination of Extraordinary House Bill 21, Session Laws 1967, and Extraordinary House Bill 7, Session Laws 1969, reveals that no specific form of reimbursement is provided. The bills only contain a general statement appropriating all income from reimbursable expenditures for audits of motor fuel producers, dealers and users to a revolving fund.

Therefore, it is my opinion that an appropriation from the revolving fund of income from reimbursable expenditures for audits of motor fuel producers, dealers and users does not provide a specific exception to the rate of reimbursement provided in sections 59-801 and 59-538, R.C.M. 1947; hence, said auditors are only entitled to the rates set forth in these sections.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General