

VOLUME NO. 33

Opinion No. 3

STATE ELECTED OFFICIALS, EMPLOYEES, AND APPOINTEES, expenses of persons in state service — per diem allowance — Chapter 273, Laws of 1969; Section 59-538, Revised Codes of Montana, 1947.

- HELD:**
1. Employees and appointees of the state are to receive thirteen dollars and fifty cents (\$13.50) per day for service within the state and twenty-two dollars and fifty cents (\$22.50) per day for service out of state for meals and expenses.
 2. The Governor is to receive his actual and necessary expenses in an amount not to exceed sixty dollars (\$60.00) per day for state service, both within and without the state while away from Helena.
 3. All elected state officials except the Governor are to receive actual and necessary expenses for state service within the state while away from Helena and are to receive actual and necessary expenses for state service out of state not to exceed forty dollars (\$40.00) per day.
 4. All elected state officials are entitled to actual and necessary expenses only and are not entitled to receive the full amount designated in the statute as a limitation unless that amount is actually expended.

The Honorable Forrest H. Anderson
Governor of Montana
State Capitol
Helena, Montana 59601

May 1, 1969

Dear Governor Anderson:

You have requested my opinion and interpretation of House Bill 441, Chapter 273, Laws of 1969, relating to travel and per diem allowances for state officials and employees. House Bill 441 in its present form is a composite statute having application to two general classes of persons. The first class mentioned in the bill may generally be summarized as employees and appointees in state service. The second class of persons are the designated elective state officials.

In that part relevant to state employees and appointees, House Bill 441 provides in part that:

“Every person engaged in any service in every department of state . . . whose duties consist of full or partial time in traveling to perform any service for the state . . . shall be allowed . . . \$13.50 per day for travel within the state . . . and for travel outside the state . . . the sum of \$22.50 per day . . .”

As to employees and appointees of the state, it is clear that they may receive thirteen dollars and fifty cents (\$13.50) per day for in-state service and twenty-two dollars and fifty cents (\$22.50) per day for out-of-state service for meals and expenses.

As to the designated state elected officials, the bill provides as follows:

“ . . . The governor and attorney general, state auditor, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, clerk of the supreme court and justices of the supreme court . . . shall be paid **actual and necessary expenses** as hereinafter provided. . . . The governor shall be authorized actual and necessary expenses not to exceed sixty dollars (\$60.00) per day. The attorney general, state auditor, superintendent of public instruction, state treasurer, clerk of the supreme court, and justices of the supreme court shall be authorized actual and necessary expenses not to exceed forty dollars (\$40.00) per day while engaged in state service away from Montana.” (Emphasis added).

The legislature has provided statutory guidelines to be followed in construing statutes, and in this regard it is the law of this state that “in the construction of a statute . . . where there are several provisions or particulars such a construction is, if possible, to be adopted as will give effect to all.” Section 93-401-15, Revised Codes of Montana, 1947.

Furthermore, in the construction of a statute the intention of the legislature is to be pursued if possible; and where a general and a particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it. Section 93-401-16, Revised Codes of Montana, 1947.

Applying the above rules of statutory construction to the language of House Bill 441 relevant to the named state elective officials, except the governor, it appears that the general intent of the legislature was to allow the named elective officials, except the governor, to receive "actual and necessary expenses" for service within the state. The legislature, however, specified with particularity that for out-of-state services the authorized expenditure could not exceed forty dollars (\$40.00) per day.

The legislature directed specifically that the governor's authorized expenditures could not exceed sixty dollars (\$60.00) per day. The legislature made no distinction between in-state service and out-of-state service in the governor's case as it did in the case of the other named elective officials.

As a passing comment, the terms in-state service or service within the state as used in this opinion must be construed to mean service away from Helena since under Section 2 of Article X of the Montana Constitution the seat of state government must be in Helena. All officials are adequately compensated for service in Helena under other appropriate statutes.

In addition to House Bill 441, there is other authority to allow state officers expense money for in-state service. Section 25-508, R.C.M. 1947, allows state officers or employees to receive payment from public funds for "traveling expenses" or "other expenses" for attendance upon any meeting of public officers as said officers or employees may by virtue of their office find necessary to attend. (Emphasis added).

This section has been construed to authorize expenses for both travel and per diem. See Opinions of the Attorney General, Vol. 30, p. 68, number 25.

Consequently, the allowance of actual and necessary expenses for within-state service to state officials is not necessarily contingent upon House Bill 441, now section 59-538, R.C.M. 1947, but can be authorized under section 25-508, *supra*.

In view of the foregoing, it is my opinion that elected state officials are to receive the following amounts for service away from Helena.

The governor is to receive a sum not to exceed sixty dollars (\$60.00) per day for service both within and without the state for actual and

necessary expenses; all other named elected state officials are to receive a sum not to exceed forty dollars (\$40.00) per day for out-of-state service in view of the specific statement in House Bill 441, and are to receive "actual and necessary expenses for service within the state" away from Helena.

The expenses of all elected state officials are limited by the above amounts. However, said elected officials are not entitled to the full amount per day unless it is actually expended as the statute authorizes reimbursement only for "actual and necessary expenses".

Very truly yours,

ROBERT L. WOODAHL
Attorney General

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