

COUNTIES—Tax appeal board, travel and per diem; OFFICES AND OFFICERS—County tax appeal board, travel and per diem; TAXATION—County tax appeal board, travel and per diem. Sections 59-538, 59-539, 59-801 and 84-601, R.C.M. 1947.

HELD: The term "travel expenses" as used in section 84-601, R.C.M. 1947, as amended by the 1974 legislative session, is restricted to an allowance for mileage alone.

April 4, 1974

Mr. Ray J. Wayrynen, Chairman
State Tax Appeal Board
1400 Eleventh Avenue
Helena, Montana 59601

Dear Mr. Wayrynen:

You have requested my opinion on the following question:

Does the term "travel expenses" as used in section 84-601, R.C.M. 1947, as amended by the 1974 legislative session, mean mileage alone or both mileage and a per diem allowance?

On June 26, 1973, I issued my opinion (35 **Opinions of the Attorney General**, no. 16) regarding the amount of travel and per diem expenses members of a county tax appeal board were entitled to pursuant to section 84-601, Revised Codes of Montana, 1947.

Section 84-601, prior to the 1974 amendment, provided in pertinent part:

The members of each tax appeal board shall ... receive **travel and per diem only** when the county tax appeal board is in session ... (Emphasis supplied)

I had interpreted this provision to mean that when members of a county tax appeal board were in the performance of their official duties they were to be allowed 12¢ per mile for mileage when using their own automobiles and a per diem allowance of \$16 per day computed in accordance with section 59-539, R.C.M. 1947.

The 1973 amendment of section 84-601, R.C.M. 1947, did not provide for any service compensation for members who were not full-time state or county employees. It provided only for "travel expenses" and "per diem".

The 1974 session of the 43rd legislative assembly further amended section 84-601, R.C.M. 1947, by deleting the term "per diem" and providing in lieu thereof, "compensation of twenty-five dollars (\$25) per day and travel expenses".

By deleting the term "per diem" and substituting in its place the phrase "compensation of twenty-five dollars (\$25) per day", the legislature has exercised an affirmative intent to compensate the members of a county tax appeal board with a salary of \$25 per day plus travel expenses. It has deleted the

allowance for per diem provided by section 59-538, R.C.M. 1947 (\$16 per day maximum), and authorized that such board members be paid a salary of \$25 per day instead.

The deletion of the term "per diem" was an affirmative act.

In construing a statute, the intention of the legislature is controlling. ... The function of the court is simply to ascertain and declare what in terms or in substance is contained in the statute and **not to insert what has been omitted.** ... In short, it is simply the duty of the Supreme Court to construe the law as it finds it. (Emphasis supplied). **In re West Great Falls Flood Control & Drainage Dist.**, 159 Mont. 277, 496 P.2d 1143, 1149 (1972), quoting **Dunphy v. Anaconda Co.**, 151 Mont. 76, 438 P.2d 660, 662 (1968).

Both the 1973 and 1974 amendments to section 84-601 contain a provision for "travel expenses" which has been interpreted to mean an allowance for mileage pursuant to section 59-801, R.C.M. 1947. This interpretation of "travel expenses" coupled with the affirmative act of the legislature of deleting the allowance for "per diem" and substituting "compensation" in its place indicates that the term "travel expenses" has not been expanded to include any allowances other than mileage at a rate of 12¢ per mile.

THEREFORE, IT IS MY OPINION:

The term "travel expenses" as used in section 84-601, R.C.M. 1947, as amended by the 1974 legislative session, is restricted to an allowance for mileage alone.

Very truly yours,
ROBERT L. WOODAHL
Attorney General