

**Opinion No. 47-5044**

June 24, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico

{\*63} This will acknowledge receipt of your letter of June 20, 1947 in which you request the opinion of this office with reference to the {\*64} per diem allowance under the Appropriation Bill (H. B. 300) passed by the Eighteenth Legislature.

Section 11 of the Appropriations Act provides, in part, as follows:

"State officers and department heads may allow, in lieu of actual expenses for lodging and subsistence, subsistence, the sum of four dollars (\$ 4.00) to six dollars (\$ 6.00) per day, the rate allowed being subject to the approval of the State Comptroller and the State Board of Finance. Expenses for lodging and subsistence also may be allowed not to exceed six dollars (\$ 6.00) per day when supported by bona fide receipts attached to the reimbursement voucher. \* \* \*"

Under Section 11, above quoted, the department head may allow state employees under his jurisdiction up to \$ 6.00 per day in lieu of actual expenses for lodging and subsistence. The amount set by the department head is subject to the approval of the State Comptroller and State Board of Finance.

I believe that the provision which permits payment of \$ 6.00 per day, when supported by bona fide receipts, is an alternative which the department head may use if he so desires. In other words, the department head may or may not require receipts before allowing per diem in either instance.

In your letter you reconcile the two provisions in your statement that the difference is that in the case of per diem allowance the employee must be away on a 24-hour basis, whereas in the second case the \$ 6.00 maximum, when supported by receipts, does not necessarily require absence for the full twenty-four hours.

I believe that your conclusion can be drawn from the language of Section 11 of the Appropriations Act. However, I also believe that the department head may allow a prorata per diem where the employee is on official business for less than a full day, with or without receipts, subject, of course, to the approval of the State Comptroller and the State Board of Finance.

By WM. R. FEDERICI,

Asst. Atty. General