

Opinion No. 55-6340

December 9, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

You have asked this office for an interpretation of the provision of our Statutes dealing with the salary of the Secretary of the Barbers' Board.

The section of our Statutes which is applicable is Section 67-14-22, N.M.S.A., 1953 Compilation. This section was enacted first in 1937, (Laws of 1937, Chapter 220, Section 22) and the pertinent part of same reads as follows:

"Each member of the board shall receive six (6.00) dollars per day for each day actually employed in the discharge of his official duties; eight (8c) cents per mile for transportation while in the discharge of his official duties, and his necessary expenses incurred therein; Provided, however, that the board may in their discretion place the secretary on a salary of not to exceed twelve hundred (\$ 1,200) dollars per annum in lieu of all other emoluments."

You will note that here the legislative intent was to give members of the Board, including the Secretary, six (\$ 6.00) dollars per day for each day actually employed in the discharge of his official duties, plus an allowance for mileage. The Legislature provided, however, that if the Board in the exercise of its discretion chose to pay the Secretary of the Board a salary of twelve hundred (\$ 1,200) dollars per year, then all other emoluments were excluded. We interpret this to mean that if the Board by proper resolution voted in favor of a salary of twelve hundred (\$ 1,200) dollars per year for the Secretary, he would not be entitled to the six (\$ 6.00) dollars per day for each day actually employed in the discharge of his official duties plus mileage, the salary was to be exclusive.

The Legislature in the Appropriation Bill, (Laws of 1953, Chapter 156, Section 5) contains the following change with respect to the salary provision:

"Provided that each member of the State Board of Barbers' Examiners shall receive ten dollars (\$ 10.00) per day for each day actually employed in the discharge of his official duties; and may charge for his transportation while in the discharge of his official duties and his necessary personal expense incurred herein; and provided that the secretary of the Board shall be paid a salary of one hundred dollars (\$ 100.00) per month; . . ."

We interpret this as a clear legislative intent to change the 1937 Law in this respect and provide that each Board member would receive a payment of \$ 10.00 per day for each day actually employed in the discharge of his official duties, transportation costs and in

addition that the Secretary of the Board was to receive one hundred (\$ 100.00) dollars per month, automatically without any action on the part of the Board in that regard. In other words, the Secretary was to receive one hundred (\$ 100.00) dollars per month, plus ten (\$ 10.00) dollars a day for each day actually employed in the discharge of his official duties, plus transportation costs. This conclusion is reached because the Legislature clearly changed the language of the previous Law.

In 1955 the Legislature again amended this Act, (Laws of 1955, Chapter 272) and provided as follows:

"Each member of the Board shall receive ten (\$ 10.00) dollars per day for each day actually employed in the discharge of his official duties; and may charge for his transportation while in the discharge of his official duties, and his necessary personal expenses incurred therein; provided, however, that the Board may in their discretion place the Secretary on a salary of not to exceed two hundred (\$ 200.00) dollars per month in lieu of all other emoluments."

It is to be noted that a return was made to the language of the 1937 Act, with the exception that the amount of money was increased and there is a change in the handling of the transportation costs. Our interpretation is the same in this regard as it was of the 1937 Act. If the Board chooses to pay the Secretary a salary of two hundred (\$ 200.00) dollars per month, this payment is exclusive and the Secretary cannot collect ten (\$ 10.00) dollars per day for each day in which he actually is employed in the discharge of his official duties.

In construing the provisos contained in this Act, we are aided by the case of Pease vs. Stephens, 21 Pac. 2d 294, 173 Wash., 12, wherein the following rule was announced:

"Where last proviso of statute is specific, it shall be regarded as further limitation on general portion of statute so that both may be given effect."

It should be pointed out that if the Board does not exercise its discretion on the placing of the Secretary on a salary, he then would be entitled to the ten (\$ 10.00) dollars per day for each day he devoted to his official duties, and it follows of course that he would not receive the two hundred (\$ 200.00) dollars a month salary.

Hoping this has been of benefit to you, we remain.

By: Jack A. Smith

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