

## Opinion No. 56-6360

January 18, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** D. N. Smith, State Comptroller, Santa Fe, New Mexico

Recently you requested an interpretation of § 73-1-4, N.M.S.A., 1953 Comp., which provides as follows:

"The members of the state board of education exclusive of the governor and the superintendent of public instruction shall each receive ten dollars (\$ 10.00) per day each day of actual attendance at board meetings. Said members shall, while performing their duties as members of the state board of education, be entitled to per diem and travel allowance in such amount as provided by law for state employees."

In respect to this section, you ask three questions which will be answered in order.

1. Is it proper to interpret the statute to allow compensation at the rate of \$ 10.00 per day for board members while enroute to and from board meetings, in addition to expenses?

The \$ 10.00 per day which is provided in this section is provided for the **actual attendance at board meetings**. This would not permit the payment of the \$ 10.00 per day allowance in this section unless the members were actually attending a board meeting. It is provided in the second sentence of that section, however, a travel and per diem allowance which is the same as that provided for other State employees for travel to and from the board meetings.

Therefore, the travel to and from the board meetings would be compensated at the rate which is the same as for other State employees and the time actually spent in board meetings would be compensated at the rate of \$ 10.00 per day, plus the per diem rate paid State employees.

2. Is it proper to interpret the statute to allow compensation at the rate of \$ 10.00 per day for each day or portion thereof to board members attending Court sessions when said members are required by the court to be present in their official capacities?

Attendance at a Court session is not a board meeting and the \$ 10.00 per day should not be permitted for such attendance. The \$ 10.00 per day is confined to the duties in connection with the board meetings and compensation will be at the rate paid witnesses.

3. Is it proper to interpret the statute to allow compensation at the rate of \$ 10.00 per day or portion thereof while enroute to and from Court sessions as delineated in Question No. 2?

Despite the answer in Question No. 2, we believe that travel and per diem at the rate provided for attendance at Court would be in order. You will note that the statute says travel and per diem shall be paid "while performing their duties as members of the state board of education." The attendance at Court sessions would be in compliance and in accordance with duties of board members but not be an actual board meeting.

We sincerely hope that this answers your inquiry.

By Fred M. Standley

Assistant Attorney General