

Opinion No. 60-197

October 17, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Tom Wiley Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

QUESTION

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Are members of the State Board of Education entitled to per diem and mileage allowance at the rate provided by § 73-1-4, N.M.S.A., 1953 Comp. (PS), when performing duties other than attendance at State Board meetings?

CONCLUSION

See analysis.

OPINION

{*602} **ANALYSIS**

Your request requires an interpretation of § 73-1-4, N.M.S.A., 1953 Comp. (PS), which provides as follows:

"Said members [of the State Board of Education] shall while performing their duties as members of the State Board of Education, be entitled to per diem at the rate of twenty dollars (\$ 20.00) per day, and travel allowance at the rate of eight cents (\$.08) per mile."

It is our opinion that the plain meaning of the above statute is that board members are to be allowed reimbursement at the statutory rate when performing any duties imposed upon them in their capacity as members of the State Board. The only limitation that must be imposed upon this conclusion is that each occasion for application of the rule must be examined on its peculiar facts to determine that the particular activity involved is a duty imposed by law.

Some confusion may result from the interpretation given this section by A. G. Opn. No. 6360, 1956. That opinion ruled that State Board members were entitled to the per diem allowance then prescribed only for actual attendance at Board meetings. The different conclusion now reached is demanded by the amendment of the subject statute by Laws of 1959, Ch. 335, § 2. Under the old law, the then \$ 10.00 per diem allowance was authorized only for the days of "actual attendance at board meetings". The statute in its

present form authorizes per diem to board members at the rate of \$ 20.00 per day for all duties performed in their capacity as members {*603} of the State board. Therefore, § 73-1-4 is not limited in its application to attendance at State board meetings.

By: F. Harlan Flint

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