

## **Opinion No. 63-108**

August 22, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Mr. Bob White Director Aviation & Pipeline Division State Corporation Commission  
Santa Fe, New Mexico

### **QUESTION**

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1. May the Aviation Board employ a director under Chapter 314, Section 5D, Laws of 1963, during the current year, in view of the fact that Section 5D, limits the cost of the director's salary and expenses, including office expenses, to 15% of the previous year's income to the "State Aviation Fund" when there was no aviation fund for the previous year?
2. What is the meaning of the term "including office expenses" in limiting the expenditure for the director's salary and expenses?

#### **CONCLUSIONS**

1. Yes, but see analysis.
2. See analysis

### **OPINION**

#### **{\*236} ANALYSIS**

Your first question requires an interpretation of the legislative intent in limiting the Aviation Board director's salary and expenses to a maximum of 15% of the previous year's income to the "State Aviation Fund." The primary problem in determining the answer to this question arises from the fact that, since this is the first year that the Aviation Fund has been in existence, and since there is apparently no reasonable means for determining the amount of unrefunded aviation fuel tax during the past year, there is no way of directly determining what 15% percent of the previous year's income to the State Aviation Fund would be. It is obvious from reading the statutory section involved that the primary intent of the maximum limitation on the Aviation Board Director's salary was to insure against excess expenditures by the Director. It is also obvious that a literal interpretation of the statutory language would render the statute unworkable, and therefore attribute an absurd intention to the legislature. Such intent is not favored in law. It is presumed that the legislature did not intend to pass an unworkable statute. Thus, the issue becomes one of determining what the intent of the

legislature was for the first year of operation of the Aviation Board, prior to the ascertaining of the "previous year's income to the State Aviation Fund."

We are informed that there is only one reasonable way to ascertain approximately the income to the state aviation fund for the previous year. This is what the income would have been had the State Aviation Fund been in existence. It is obvious that since there was no fund for the previous year, that the intent of the legislature was for the Aviation Board to estimate what the fund would have been had it been in existence.

Thus, in order to make the statute creating the Aviation Fund, {237} and setting up the office of Aviation Director, workable a reasonable estimate must be made as to what the Aviation Fund for last year would have been had it been in existence. We are informed that by September, 1963, a part of this year's unrefunded Aviation Fuel Tax will be credited to the Aviation Fund. From this amount it will be possible to make a reasonable estimate as to what the total fund for the year 1963 will be. This fund will approximate the fund for last year since there is no reason to assume any substantial difference between the unrefunded aviation fuel tax for last year and that for this year. It should be noted here that it is usual in budgeting for appropriations for each year to base the budget on a reasonable approximation of the anticipated earnings for that year. These budgets are then revised in accordance with change in condition. Since it is obvious that the only purpose behind the 15% limitation on the Director's office salary, including office expenditures, was to prevent abuses of the fund; the reasonable approximation of last year's aviation fund based on a reasonable estimate of this year's aviation fund will accomplish the same purpose, and thus carry out the intent of the legislature. It is obvious also that this problem would only arise during the first year of operation of the Aviation Board since the unrefunded Aviation Fuel Tax is now being set aside in Aviation Fund.

Section 7 of Chapter 314 which created the "State Aviation Fund" requires that all expenditures shall be made in accordance with budgets approved by the Department of Finance and Administration. It can be determined from this that the expenditures for the present year from the Aviation Fund must be budgeted. Thus, it is obvious that the 15% limitation on the Director's salary, including office expenses, should be interpreted to mean 15% of the estimated income for this year based upon a reasonable extrapolation of the income to the fund for the first few months. In other words, the statute should not be taken to mean that the Aviation Board can only expend 15% of the accrued amount in the Aviation Fund each month for the Director's salary but rather would expend 15% of the eliminated Aviation Fund for the entire year. Of course, this should not be taken to mean that the budget must specify 15% of the Aviation Fund for the Director's salary, but rather that this is the maximum salary, including office expenses, which may be paid.

The second question asked for a definition of the term "including office expenses" in Section 5 D, Chapter 314, Laws of 1963 in limiting the expenditure for the director's salary and expenses. Webster's New Collegiate Dictionary, second edition, defines the term "office" as; "the place where a particular kind of business or service for others is

transacted; especially; a. the building, room, or department in which clerical work of an establishment is done. b. The building room etc., for an (or the) executive and his assistants, for the work of administration or for its administrative department."

From the above definition of the term office, a definition of "office expenses" can be derived. It will immediately be seen that the term office expenses does not include, for instance, salaries of assistants or other employees. This fact is re-enforced by reference to Section 6 of Chapter 314, Laws of 1963 which specifically authorizes the director, with the consent of the board, to employ necessary personnel. Rather, the term "office expenses" would {\*238} seem to include expenses incident to the administration of the physical facilities for the board.

Thus, such things as rent, office supplies, office furniture, etc., would seem to be those expenses which come within the definition of "office expenses." Although the issue is not directly presented at this time it, would seem in order to point out that the limitation on "office expenses" seems to be pertinent only to the director's office and not to some other separate department of the board. This interpretation of Section D is obvious by reference to the definition above quoted of "office" which included "a. the building, room, or **department** in which the clerical work of an establishment is done." It is our opinion that the term "office expenses" is limited to those expenses incident to the administration of the director's office. Note should be taken of the fact that all of the director's salary and expenses, including office expenses, are limited to 15% of the previous year's budget. As was pointed out above, this is merely a maximum limitation and is not a required expenditure.

By: James E. Snead

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