

Opinion No. 65-179

September 14, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Ben Mason, Chief, Budget Division, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

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What rate of reimbursement for travel expense applies to board and commission members who are non-salaried state officials?

CONCLUSION

These set forth in the Per Diem and Mileage Act.

OPINION

{*294} ANALYSIS

The 1965 Session of the Legislature enacted two separate statutes {*295} on this general subject. Chapter 313, Laws 1965 (General Appropriation Act) provides as follows in Section 18:

The state board of finance shall allow in lieu of actual expenses of subsistence and lodging for official travel of public officers and employees an amount not to exceed twenty dollars (\$ 20.00) per diem for travel within the state. The rate of per diem or expense allowance for out-of-state travel shall be at the discretion of the governor but not to exceed twenty-five dollars (\$ 25.00) per diem. The state board of finance shall allow a mileage rate for travel by privately owned automobiles in an amount not to exceed ten cents (\$.10) per mile, and for travel by privately owned aircraft in an amount not to exceed fifteen cents (\$.15) per air mile."

The 1965 legislature also enacted Chapter 259, Laws 1965, which provides as follows:

"Notwithstanding any specific law to the contrary, any appointed, **non-salaried state official** of the executive department who serves on a state board or commission shall receive for his service on such board or commission reimbursement in the form of per diem and mileage **at the rates set in the Per Diem and Mileage Act** and shall receive no other compensation, prerequisite or allowance.

Nothing in this act shall prevent a person who receives a salary from state funds from serving as a member of any board or commission, **but if he does serve, he shall not be entitled to per diem and mileage for service on the board or commission, unless the service is away from the term in which his duty station is located, and in that case he shall receive per diem and mileage allowance at the rate set for salaried state employees,** rather than the rate set in the Per Diem and Mileage Act.

If any board or commission cannot within its budgeted funds pay per diem and mileage at the rate set in the Per Diem and Mileage Act, and this fact is certified to by the department of finance and administration, the amount allowed may be reduced by the board or commission, but the reduction in the rate shall not entitle the member to any other compensation, perquisite or allowance which may have been heretofore allowed by the statute relating to the compensation of that particular board or commission."
(Emphasis added)

It is quite obvious that there is a conflict between the two statutes set forth above insofar as nonsalaried members of executive boards and commissions are concerned. This is so because in some respects the amounts provided in the Per Diem and Mileage Act, Section 5-10-1, et seq., are not the same as those provided in the General Appropriation Act.

Where two statutes cover the same subject matter, and one of them does so in general terms and the other in a more detailed way, the two should be harmonized, if possible, and construed together. **State v. Rue**, 72 N.M. 212, 382 P. 2d 697. But to the extent of any irreconcilable conflict, the more specific statute will control. **State v. Spahr**, 64 N.M. 395, 328, P. 2d 1093.

Here the more specific statute is Chapter 259, Laws 1965, dealing with reimbursement of appointive board and commission members. The provision in the General Appropriation Act, on the other hand, refers to public officers and employees. Thus, non-salaried board and commission members are to be reimbursed in accordance with the Per Diem and Mileage Act. State salaried board and commission {*296} members are to be reimbursed in accordance with the General Appropriation Act provision.