

Opinion No. 23-3675

February 21, 1923

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: Hon. Juan N. Vigil, State Auditor, Santa Fe, New Mexico.

Tips are not Necessary Traveling Expenses of Officers Payable Out of Public Funds.

OPINION

{*20} This inquiry comes from the State Auditor on the following facts:

An employee of a state department has presented a voucher for the payment of traveling expenses incurred in connection with the business of the department, out of the regular appropriation made for such department by the general appropriation act of 1921. A number of items in the voucher are tips paid to railway porters, hotel bell-boys and waiters. Inquiry is made whether these tips are proper items to be paid.

The payment of traveling expenses in this particular case is covered by Section 7 of Chapter 206 of the Laws of 1921, which is the act making the appropriation against which this voucher is presented. This section says, among other things that "no officer or employee of the State shall be allowed or paid any sum for transportation, lodging or subsistence, except when traveling on duty away from his designated post of duty, nor in excess of necessary traveling expenses actually incurred and paid." In other words, only "necessary traveling expenses actually incurred and paid" can be allowed to state officers and employees and the answer to this inquiry depends upon whether tips are necessary traveling expenses. The terms "necessary traveling expenses" and "actual traveling expenses" when used in statutes relating to public officers or employees have been defined several times by Courts and in every such decision which I have examined, I find that the Courts are inclined to make strict, rather than liberal definitions of the terms. The word "necessary" when used in statutes has been given a wide variety of meanings ranging all the way from "convenient" to "indispensable." The general rule of law is emphatically to the effect that statutes relating to the compensation, reimbursement and emoluments of public officers and employees are to be strictly construed. An officer seeking compensation or remuneration of any sort must point to a clear, positive and specific statutory authorization for the same. From these considerations I believe that the term "necessary traveling expenses" contained in Section 7 of the appropriation Act of 1921 must be strictly construed.

Tips are gratuities which a traveler habitually gives voluntarily in accordance with custom, to employees of trains, hotels and eating places, for the purpose of obtaining services and attentions which minister to the traveler's comfort and render his journey {*21} less arduous and inconvenient. While the giving of tips is ordinarily appropriate

and expedient, yet the fact remains that the giving is voluntary and consequently not "necessary." The advantage of tipping is primarily for the personal comfort of the traveler, but the journey can be accomplished and the state's business attended to without tips. I am therefore of the opinion that tips are not necessary traveling expenses and should not be paid out of any appropriations contained in the 1921 act.