

Opinion No. 23-3704

May 9, 1923

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: Hon. James F. Hinkle, Governor of the State of New Mexico, Santa Fe, New Mexico.

Where the Governor has Permitted Travel Outside of the State by an Officer it is not His Duty to Approve the Items of Expense Voucher but this Duty Rests with the Auditor.

OPINION

{*54} This inquiry arises upon that portion of Section 6 of Chapter 48 of the Sessions Laws of 1923, known as the Comptroller Act, which reads as follows:

"No allowance or payment for lodging and subsistence shall in any event exceed the sum of Five (\$ 5.00) Dollars per day, except in cases where public officials are out of the state on necessary official business, and only then when such travel outside of the state shall have been approved in writing by the Governor of the state as being necessary and essential to the public service, and all claims and vouchers for reimbursement for such lodging and subsistence when away from the state shall have the approval of the Governor in writing attached thereto."

A construction of this provision is desired and it is asked specifically whether the Governor shall approve the items of the voucher presented by the official, in addition to his approval of the taking of the trip by the official.

I do not believe that it was the intent of the legislature, in passing this law, to require the Governor to scrutinize the items of the voucher. The official presenting the voucher has to swear to the correctness of the items and the auditor of the state has to examine them to see if they are legally chargeable against the state. It does not seem to be the intention of the law to require the Governor to usurp the functions of the Auditor in this regard. I think the law refers to but one approval by the Governor and that is an approval of the trip beyond the state limits, and it is this approval that should be attached to the voucher which the official presents to the Auditor. In other words, the authority for the payment of more than \$ 5.00 per day is dependent upon two circumstances: First, that the expenditure was contracted out of the state; second, that the Governor approved {*55} in writing, the trip beyond the state limits. Obviously, this approval must be attached to the voucher before the Auditor can allow it and I think it is this approval that is referred to in that part of the law which says:

"And all claims and vouchers for reimbursement for such lodging and subsistence, when away from the state, shall have the approval of the Governor, in writing, attached thereto."

I do not think it was intended to require two approvals of the Governor to be attached to the voucher, but I think the approval referred to in the clause just quoted, is the same approval mentioned in the prior part of the same section. I do not believe it was the intention of the legislature to relieve the auditor of the duty of scrutinizing the voucher and place it upon the Governor. I think the use of the word "attached" is significant because if it had been intended that the Governor should approve the items of the voucher, it is reasonable to suppose that such approval should be endorsed upon the face of the voucher and not on a separate paper. In my opinion, the use of this word indicates very clearly that the original approval of the Governor to the taking of the trip by the official is the approval which is to be attached to the voucher.