

Opinion No. [29-100]

April 5, 1929

TO: Office of the Attorney General of New Mexico

STATE BOARD OF EDUCATION -- Members per diem and mileage attending meetings.

OPINION

Reference is made to your communication under date of April 2, 1929, in which you quote Section 103, Chapter 148, Laws of 1923, relative to the per diem and mileage to be paid appointive members of the State Board of Education, the statute providing five (\$ 5.00) dollars per day of "actual attendance" and six (\$.06) cents for each mile "necessarily traveled by them from and to their respective places of residence."

You ask for a construction of the word "actual", as applied to the attendance, and the word "necessarily" as limiting the miles traveled.

We understand the word "actual", as used in this statute, to mean real or personal, as distinguished from constructive attendance or attendance by proxy. That is, the board member is entitled to his per diem for each day's attendance in person at a meeting regularly held.

The word "necessarily", as applied to distance traveled, has at times been before the courts for construction, from which constructions we get expressions such as the following:

"The word 'necessarily' has not a fixed meaning or character peculiar to itself, but is flexible and relative. It may mean something reasonable, useful and proper."

The expression in our statute, "necessarily traveled", does not mean that the mileage is to be cut to the lowest possible minimum, but means rather, the number of miles actually traveled computed by the usual traveled route, that is, the route which would be taken by persons generally between the place of residence of the board member and the meeting place of the state board. In an Iowa case occurs this sentence:

"Travelers now estimate rather by time of travel than by miles. The route by which they will most speedily perform the journey is considered the most direct."

We are of the opinion that a board member is not entitled to his per diem for time consumed either in going to or in returning from a board meeting. Harsh as this may seem, it appears to be the way the legislature has left it.

The mileage allowed is limited to six (\$.06) cents a mile, whether that be more or less than the actual cost to the board member, the number of miles to be computed as hereinbefore indicated, whether travel be by rail or otherwise.