

OPINION NO. 94-023**Syllabus:**

Pursuant to R.C. 3709.02, a member of a board of health of a general health district is entitled to be paid for mileage travelled to and from each meeting listed in that statute at the rate established by the Director of Budget and Management in 3 Ohio Admin. Code 126-1-02(C). In addition, a member is entitled to be paid an amount not to exceed eighty dollars per day for those necessary expenses that the member actually incurs in attending such meeting.

To: C. Keith Plummer, Guernsey County Prosecuting Attorney, Cambridge, Ohio

By: Lee Fisher, Attorney General, May 6, 1994

You have requested an opinion concerning the reimbursement of the members of the board of health of a general health district. By way of background, your opinion request states that previously, members of the board of health were paid eighty dollars for their attendance at monthly board meetings. Due to the amendment of R.C. 3709.02 in Am. S.B. 297, 119th Gen. A. (1992) (eff. April 16, 1993), however, you question whether "board members are to be reimbursed for actual expenses, or if \$80.00 of compensation can be given for attendance at their monthly board meetings." Your letter also states that, "[s]ince frequently board members do not actually incur \$80.00 worth of expense in their attendance at the monthly board meeting, is such \$80.00 per meeting compensation excessive and inappropriate?"

Reimbursement of Members of General Health District Board

The reimbursement of general health district board members is governed by R.C. 3709.02, which states in part:

Each member of the board may be paid a sum *not to exceed* eighty dollars a day and mileage to and from the place of meeting at the rate established by the director of budget and management pursuant to [R.C. 126.31] to cover the *actual and necessary* expenses incurred during his attendance at any meeting of the board and not exceeding five meetings of board committees in any one year. (Emphasis added.)

The payment to a board member under R.C. 3709.02 is for actual and necessary expenses incurred in attending any meeting of the board of health of the general health district and for up to five committee meetings per year. The amount of such payment has two components: an amount not to exceed eighty dollars per day for actual and necessary expenses, other than mileage, incurred in attending the meeting and a mileage reimbursement for travel to and from the meeting.

Mileage Reimbursement Portion

R.C. 3709.02 entitles a member of a board of health of a general health district to be paid for mileage travelled to and from a meeting at "the rate established by the director of budget and management pursuant to [R.C. 126.31]."¹ In accordance with R.C. 126.31, the Director has adopted 3 Ohio Admin. Code 126-1-02, part of which authorizes payment for travel by privately owned automobile at the rate of twenty-five cents per mile, effective July 1, 1993. Rule 126-1-02(C)(2)(b). *See also* rule 126-1-02(C)(3) (travel by privately owned motorcycle); rule 126-1-02(C)(4) (travel by common carrier). Thus, assuming that a board member travels to and from a board meeting by privately owned automobile, R.C. 3709.02 entitles the member to be paid twenty-five cents per mile for the distance travelled to and from the meeting.

Actual and Necessary Expenses Other than Mileage

In addition to the payment for mileage, R.C. 3709.02 entitles a member of a board of health of a general health district to receive an amount not to exceed eighty dollars per day for the reimbursement of "actual and necessary expenses incurred," other than for mileage, during his attendance at each meeting authorized by that statute. Your concern appears to be that members are being paid eighty dollars per meeting, regardless of whether the figure constitutes reimbursement for the amount of expenses the member actually incurs in attending any such meeting.

According to *Webster's New World Dictionary* 14 (2d college ed. 1978), the word "actual" means, in part, "existing in reality or in fact; not merely possible, but real; as it really is [the *actual* cost of the dam]." In addition, "necessary" expenses are those "that cannot be dispensed with; essential; indispensable ... inherent in the situation." *Id.* at 950. *See generally* 1993 Op. Att'y Gen. No. 93-066 (discussing "necessary and reasonable expenses"). Thus, by modifying the word "expenses" with the words "actual and necessary" as provided in R.C. 3709.02, the General Assembly has limited the expenses for which payment may be made in three specific respects. First, board members are to be reimbursed only for their actual expenses incurred in attending a meeting. Second, they are to be reimbursed only for such expenses as are necessary and reasonably incurred in attending a meeting. Third, in any event, the amount of this reimbursement in no circumstances is to exceed eighty dollars per day, exclusive of mileage costs.

Conclusion

It is, therefore, my opinion, and you are hereby advised that, pursuant to R.C. 3709.02, a member of a board of health of a general health district is entitled to be paid for mileage travelled to and from each meeting listed in that statute at the rate established by the Director of Budget and Management in 3 Ohio Admin. Code 126-1-02(C). In addition, a member is entitled to be paid an amount not to exceed eighty dollars per day for those necessary expenses that the member actually incurs in attending such meeting.

¹ R.C. 126.31 authorizes the Director of Budget and Management to establish, by rule, the manner and rate of travel reimbursement for officers, members, employees of, or consultants to, state agencies.