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PUBLIC OFFICERS OR EMPLOYEES—§313.05 RC—TRAVEL EXPENSES—METHOD OF REIMBURSEMENT; MAY NOT PROVIDE FOR MORE THAN ACTUAL EXPENSES—FLAT RATE—OPINION NO. 2184, OAG 1952, p. 794, MODIFIED

SYLLABUS:

When public officers or employees, including assistant coroners appointed as provided in Section 313.05, Revised Code, are allowed from public funds reimbursement for travel expenses necessarily incurred by them in the performance of a public duty, and when the basis for such payment is not specifically provided by statute, payment may be at a flat rate based upon average monthly expenses; but in no case may payment exceed the amount of expense actually incurred, and when the expense incurred by an officer or employee in any month does not equal the established flat rate, then only the amount of the actual expense and not the flat rate may be paid. Opinion No. 2184, Opinions of the Attorney General for 1952, page 794, modified.

Columbus, Ohio, July 9, 1957

Hon. John S. Ballard, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

In your request for my opinion you state that coroner's assistants in your county, being always on call and under the necessity of making numerous trips daily to hospitals in the county, are paid a flat rate of \$60 per month for their travel expenses. Your question is whether this procedure is authorized by law or whether these payments must be made on the basis of actual expenses incurred.

There appears to be no specific statute governing payment of the travel expenses of the coroner and his assistants, and they must be governed, therefore, by the principles of law generally applicable to travel expenses of public employees.

The travel expenses of public employees has been the subject of a number of opinions of the Attorney General. The general principle was clearly stated in Opinion No. 2169, Opinions of the Attorney General for 1930, page 1241, reading from the second paragraph of the syllabus :

“In the absence of statutory or charter provision prohibiting or limiting such action, a public officer or public employee may lawfully be reimbursed from public funds for traveling and other personal expenses *actually* and necessarily incurred by him in the performance of a public duty in furtherance of a definite project or undertaking then under way or in immediate prospective contemplation, provided in the exercise of a sound and proper discretion, it appears that the incurring of said expenses is necessary for the benefit of the political subdivision which the officer or employee serves, and in the performance of a duty enjoined or authorized by law. If by statute or charter provision such expenses are limited the officer or employee may be reimbursed within the limitations allowed by such law only.”

(Emphasis added.)

In Opinion No. 2184, Opinions of the Attorney General for 1952, page 794, it was said, reading the fourth paragraph of the syllabus :

“The allowance for travel expense for which provision is made in Section 1611, General Code, (1901.32, Revised Code) may properly be based on mileage and in exceptional cases, where sufficient statistical data relative to the average monthly travel expense actually incurred by the bailiff is available to permit the determination of a fixed monthly amount which is reasonably related to such average, such allowance may be made in a fixed monthly amount.”

Regardless of the *method* of payment adopted, payment may never exceed the amount of actual expense. If as suggested in Opinion No. 2184, *supra*, the method of payment is at a flat rate based on average monthly expense, the rate must be set so that the amount paid will not exceed actual expense. The flat rate may be regarded as a maximum amount. When in any case actual expense does not equal the flat rate, then only the amount of actual expense may be paid. Opinion No. 2184, *supra*, must be qualified to that extent.

It is my opinion, therefore, and you are advised, that when public officers or employees, including assistant coroners appointed as provided in Section 313.05, Revised Code, are allowed from public funds reimbursement for travel expenses necessarily incurred by them in the performance of a public duty, and when the basis for such payment is not specifically provided by statute, payment may be at a flat rate based upon average monthly expenses ; but in no case may payment exceed the amount of expense actually incurred, and when the expense incurred by an officer or employee in any month does not equal the established flat rate, then only the amount of the actual expense and not the flat rate may be paid. Opinion No. 2184, Opinions of the Attorney General for 1952, page 794, modified.

Respectfully,
WILLIAM SAXBE
Attorney General