

this issue was approved by this office in an opinion rendered to the Teachers Retirement System under date of June 18, 1935, being Opinion No. 4343.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2862.

STATE DENTAL BOARD—INDIVIDUALS MAKING INVESTIGATIONS OR PERFORMING OTHER SERVICES IN ADMINISTRATION OF LAWS REGULATING PRACTICE OF DENTISTRY—NO AUTHORITY FOR PAYMENT OF COMPENSATION OR EXPENSES—SEE OPINIONS ATTORNEY GENERAL, 1915, VOL. I, P. 827.

SYLLABUS:

There is no authority for payment of compensation or expenses of members of the State Dental Board while individually engaged in making investigations or performing other services for the board as individuals in connection with the administration of the laws regulating the practice of dentistry. Opinions of the Attorney General for 1915, Vol. I, page 827, approved and followed.

COLUMBUS, OHIO, August 23, 1938.

Ohio State Dental Board, Columbus, Ohio.

GENTLEMEN: Your letter of recent date is as follows:

"We are submitting to you for consideration and opinion a matter recently presented to the Ohio State Dental Board.

A member of the Ohio State Dental Board has been and is, devoting one day each week to Dental Board investigations in his particular locality.

Section 1317 of the General Code of Ohio provides that 'Each member of the Ohio State Dental Board shall receive ten dollars for each day actually employed in the discharge of his official duties, and his necessary expenses incurred.'

In view of this stipulation in the statutes, this member of the Ohio State Dental Board has presented to the Secretary of the Ohio State Dental Board a bill covering the number of full days engaged in this work at the statutory per diem rate of \$10, plus expenses incurred for meals of \$2.50 per day.

The question that arises is: Do these activities of a member of the Ohio State Dental Board constitute a 'discharge of his official duties' as set forth in Section 1317 of the General Code of Ohio, and is he entitled to the per diem of \$10, plus expenses of \$2.50 per day for meals incurred therefor?

Your opinion on the above questions is respectfully requested."

There are many other provisions in the General Code authorizing a per diem compensation for members of so-called state professional boards based upon days employed in the performance of their duties and upon days actually employed in the performance of their duties. See Section 1081-4, relating to the State Board of Barber Examiners; Section 1334-2, relating to the State Architect Examiners' Board; Section 1083-5, relating to the State Board of Engineers and Surveyors; Section 1264, relating to the State Medical Board; Section 1295-26, to the State Board of Optometry; and Section 1297, to the State Board of Pharmacy.

Particularly pertinent in a determination of your question is an opinion of this office appearing in Opinions of the Attorney General for 1931, Vol. III, page 1511, in which the then Attorney General considered Section 1334-2, General Code, relating to the State Board of Examiners of Architects, which section provides inter alia:

"Each member of said board shall be entitled to receive, as part of the expense of the board, ten dollars per diem while actually engaged in attendance at meetings, in conducting examinations, or in the performance of their duties under this act."

The first branch of the syllabus of such opinion is as follows:

"A member of the State Board of Examiners of Architects is entitled to be paid ten dollars per diem while actually engaged in carrying out the instructions of the board in the performance of the duties imposed upon such members by House Bill 282 of the 89th General Assembly."

On page 1513, in referring to the above quoted paragraph of such Section 1334-2, the then Attorney General said:

"From a careful reading of the fourth paragraph of the foregoing section, I think it is clear that the compensation of ten dollars per day should be paid to the various members of the State Board of Examiners of Architects, first, while actually engaged in attendance at meetings of the board, second, while actually engaged in conducting examinations of the board, and, third, while actually engaged in the performance of their duties under the law prescribing such duties, being House Bill No. 282 as enacted by the 89th General Assembly. It necessarily follows, therefore, that it is not necessary that the various members be engaged in attendance at meetings to be entitled to this allowance if such members are engaged in the performance of their duties under the act.

Under the provisions of Section 1334-2, supra, the board is charged with the duty of enforcing the provisions of the act and should the board in the performance of this duty see fit in the interests of economy and efficiency to delegate to the various members certain duties in their various cities in which they live in connection with the enforcement of the provisions of the act, the rendition of such services would in my judgment constitute the performance of their duties under the act for which the ten dollar per day compensation should be paid as set forth in Section 1334-2, General Code."

It is apparent from a reading of the above quoted portion of the opinion that the conclusion that the board there under consideration could, by appropriate action, delegate to the various members thereof certain duties in connection with the enforcement of the provisions of the act, was based upon the express provision of such Section 1334-2, in the first paragraph thereof, that "the board shall be charged with the duty of enforcing the provisions of this act, and may incur such expenses as shall be necessary."

It becomes necessary, therefore, to determine whether or not the General Assembly has imposed upon the State Dental Board a similar duty to enforce the provisions of the act administered by such board. An examination of these statutes, comprising Sections 1314 to 1333-1, both inclusive, General Code, discloses no specific provision that the act regulating the practice of dentistry shall be enforced directly by the board. On the contrary, this duty has been expressly imposed upon the Secretary of the State Dental Board by Section 1333, General Code, which reads as follows:

"The secretary of the state dental board shall enforce the provisions of the laws relating to the practice of dentistry.

The prosecuting attorney of a county, or the solicitor of a municipality, wherein a provision of such law is violated, shall, when so requested by the secretary of the board, take charge of and conduct the prosecution."

Upon consideration of the fact that, unlike in the case of the State Board of Examiners of Architects, the General Assembly has not imposed upon the State Dental Board the duty to enforce the act, but rather has placed this duty upon the secretary of the board, there would be ample basis for concluding that the conduct of investigations by a member of the board, even under authority of the board, would not constitute "the discharge of his official duties" within the meaning of the phrase as used in Section 1317, General Code, as quoted in your letter, and hence the rendition of services for which the per diem therein provided could be paid. This position would seem to be justified upon consideration of the well established principle long adhered to by the courts that in case of doubt as to the authority to expend public funds for any given purpose, that doubt must be resolved against the expenditure.

It is not, however, necessary to resolve your question upon a mere consideration of the fact that the general duty to enforce the provisions of the Dental Practice Act has been imposed upon the secretary rather than upon the board,—this for the reason that Section 1317-1, General Code, provides as follows:

"The state dental board may affiliate with the national association of dental examiners, as an active member, and pay regular annual dues to said association and may send a delegate to the meetings of the said national association of dental examiners; such delegate shall receive the compensation provided in Section 1317 of the General Code."

There is here suggested a clear case for the application of the doctrine of *expressio unius est exclusio alterius*. The conclusion would appear to be inescapable that where the General Assembly saw fit to authorize the payment of the per diem compensation to members of your board for other than the performance of the duties enjoined upon them by law, such as attendance at meetings, express provision has been made therefor.

This view is in harmony with the position taken in an opinion of this office rendered to your board May 22, 1915, reported in Opinions of the Attorney General for that year, Vol. I, page 827. The then Attorney General, following an opinion appearing on page 124 of the Report of the Attorney General for 1912, held that members of your board are not

entitled to their per diem compensation for days required coming to and returning from the place where meetings of your board are held. The syllabus of this 1915 opinion is as follows:

“Members of the State Dental Board may be paid compensation only for the days on which such board is actually in session for the transaction of the business and performance of the official duties of such board.”

An application of the doctrine of administrative practice is here indicated. It is said in *State, ex rel vs. Brown*, 121 O. S. 73, 75:

“It has been held in this state that ‘administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do.’ *Industrial Commission vs. Brown*, 92 Ohio St., 309, 311, 110 N. E., 744, 745 (L. R. A., 1916B, 1277). See, also, 36 Cyc., 1140 and 25 Ruling Case Law 1043, and cases cited.”

In specific answer to your question, it is my opinion that there is no authority for payment of compensation or expenses of members of the State Dental Board while individually engaged in making investigations or performing other services for the board as individuals in connection with the administration of the laws regulating the practice of dentistry.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2863.

DEPARTMENT OF PUBLIC WELFARE—CANNOT LICENSE INSTITUTION LOCATED IN FOREIGN STATE—JUVENILE COURT—NO AUTHORITY TO COMMIT CHILD TO ANY UNLICENSED INSTITUTION OR AGENCY—SECTION 1352-1, GENERAL CODE—IF CHILD SO COMMITTED, NO AUTHORITY FOR PAYMENT OF EXPENSE OF MAINTENANCE OUT OF COUNTY TREASURY.

SYLLABUS:

The Department of Public Welfare cannot license an institution which has its location outside of the state. Therefore, an agency or