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TOWNSHIP TRUSTEES — PER DIEM COMPENSATION, SECTION 3294 G. C.—NECESSARY EXPENSES—CANNOT BE ALLOWED FOR TIME IN ATTENDANCE AT OHIO STATE FAIR —“GOOD ROADS DAY”—INVITATION OF STATE HIGHWAY DEPARTMENT OR OTHER STATE DEPARTMENT OR OFFICIAL—PURPOSE: HEAR LECTURES ON CONSTRUCTION, MAINTENANCE AND REPAIR OF ROADS—INTERPRETATION, PAY “FOR EACH DAY OF SERVICE IN THE BUSINESS OF THE TOWNSHIP.”

SYLLABUS:

The per diem compensation fixed for township trustees by Section 3294, General Code, can not lawfully be allowed to such township trustees for time expended in attending upon invitation of the State Highway Department or other state department or official, what is designated as “Good Roads Day” at the Ohio State Fair, for the purpose of hearing lectures relating to the methods of construction, maintenance and repair of roads, nor can such trustees be paid their necessary expenses for attending such a meeting.

Columbus, Ohio, September 23, 1940.

Bureau of Inspection and Supervision of Public Offices,
Columbus, Ohio.

Gentlemen:

I am in receipt of your request for my opinion, which reads as follows:

“The State Highway Department is sponsoring what is known as a ‘Good Roads Day’ at the Ohio State Fair.

We are informed that lectures are to be given relating to the methods of construction, maintenance and repair of roads, and that invitations have been extended to all township trustees in the state to attend such meeting; that each trustee will be required to register, and will be given a certificate of attendance by the Highway Department.

May we respectfully request your opinion on the question of whether or not township trustees would be entitled to their per diem compensation and their expenses for attending such meeting.”

By "per diem compensation" as mentioned by you, you no doubt have reference to the compensation fixed by law for township trustees which by the terms of Section 3294 of the General Code of Ohio, is fixed at a stated amount to be paid to the trustees "for each day of service in the business of the township."

If it should be determined that the township trustees would be "in the business of the township" if they accept the invitation extended and attend the State Fair and the lectures to be given on road construction, maintenance and repair, they clearly would be entitled to per diem compensation fixed by law for them, and it would follow in the light of opinions of former Attorneys General that they would also be entitled to their expenses while so attending the Fair and the lectures.

Your inquiry therefore narrows down to a determination of the one question, that is, whether or not township trustees, in attendance at the Fair, in response to the invitation extended as stated in your letter, are "in the business of the township." I am not unmindful of the fact that there is considerable conflict of authority on the question of payment of expenses of public officials, and in almost every case the right of public officials to be reimbursed for expenses incurred is dependent to a great extent upon circumstances in the absence of some controlling statute, and each case presents a problem of its own. There is, however, a general principle of law applicable to the question to which former Attorneys General have quite consistently adhered, and I am not disposed to disregard that principle and fail to apply it in proper cases. In Opinions of the Attorney General for 1930, page 1447, the then Attorney General stated:

"It has been generally held that public officers may be reimbursed for actual expenses incurred in the performance of the duties imposed by law, even though no statute specifically authorizes such payments. McQuillin on Municipal Corporations, Section 697; Throop on Public Officers, Section 495; Opinion No. 2082, issued under date of July 11, 1930 (page 1091 of Opinions of the Attorney General for 1930); and Opinion No. 2170 issued July 29, 1930 (p. 1241 Opinions of the Attorney General for 1930).

The controlling principle running through the observations of text writers and Opinions of former Attorneys General, is that an officer may be reimbursed for expenses when in the actual performance of duties imposed by law, but that those expenses may not be allowed when such public employe or officer is on a mis-

sion simply to acquire general information with respect to the duties of his office or position and not in furtherance of some specific project or undertaking then under way. See Annual Report of the Attorney General for 1910-1911, page 242; Annual Report of the Attorney General for 1912, page 432; Opinions of the Attorney General for 1919, at pages 143 and 343; Opinions Nos. 2082 and 2170, referred to above; and *State vs. Wright*, 17 C. C. N. S.), 396.”

See also, Opinions of the Attorney General for 1924, page 652; for 1929, page 1975; for 1936, page 1377; for 1937, page 407; for 1939, page 113; and Opinion No. 2615, addressed to your Bureau, rendered August 3, 1940.

An examination of the several statutes setting forth the duties and powers of township trustees discloses no statutory authority which expressly or impliedly authorizes or directs the township trustees to attend conferences, conventions or meetings where road building or the administration of poor relief or management of cemeteries or any other of the statutory duties of the township trustees are to be considered, or where lectures are to be delivered pertaining to those duties, nor will any statutory authority be found for any state officer or department to call together the township trustees throughout the state for such a conference. The question of liberalizing the statutes to permit such conferences and authorizing compensation for attendance is of course a legislative problem and not one for this office to consider.

I am aware that an opinion published in the Opinions of the Attorney General for 1936, page 89 held as follows:

“In the absence of an apparent abuse of discretion or the evidence of bad faith in a particular case, it cannot be said as a matter of law that it is unlawful for township trustees after determining the need and propriety of attending the annual meeting of the State Association of Township Trustees and Clerks held in Columbus, for the purpose of discussing matters pertaining to the duties of township trustees in carrying out their powers with respect to the performing of their official duties as trustees, to credit themselves with the time expended in attending such a meeting as being ‘service in the business of the township’ for which they are entitled to per diem compensation in accordance with Section 3294, General Code.”

The conclusion reached by the Attorney General in that opinion, as stated in the syllabus quoted above, was predicated to a great extent upon an

earlier opinion found in the Opinions of the Attorney General for 1930, page 274, where it was held:

“In the absence of an apparent abuse of discretion or evidence of bad faith in a particular case, it cannot be said as a matter of law, that it is unlawful for township trustees, after determining the need and propriety of a conference with the trustees of other townships for the purpose of discussing matters pertaining to the duties of township trustees in carrying out their powers with respect to highways, cemeteries and poor relief, to credit themselves with the time expended in attending such a meeting as being ‘service in the business of the township’ for which they are entitled to per diem compensation, in accordance with Section 3294, General Code.”

It will be observed that in each of the above opinions the conclusion of the Attorney General was predicated on a situation where the trustees themselves had recognized the necessity and propriety of holding a conference presumably for some purpose then pertaining to their immediate duties and there was involved in each instance the matter of discretion on the part of the trustees in calling the meeting and participating therein. The Attorneys General in neither of the above opinions said as a matter of law that the trustees could be paid their per diem compensation for attendance on these meetings under all circumstances, but left the door wide open for a showing that they had abused their discretion in the matter, if such was the case.

Under circumstances involved in the present inquiry the proposed attendance of the trustees at the State Fair is not upon the call of the trustees themselves, and the element of discretion on the part of the trustees is entirely absent. I think the circumstances upon which the two opinions referred to were predicated and those involved in the present inquiry are clearly distinguishable.

The situation here involved is, in my opinion, more nearly parallel to that under discussion in an opinion of a former Attorney General published in the Opinions of the Attorney General for 1930, page 1445. At the time that opinion was rendered, as now, members of a county soldiers' relief commission were compensated for services and for expenses by an allowance made by the county commissioners in pursuance of Section 2932, General Code. The question before the Attorney General was whether or not an allowance could lawfully be made by county commissioners to members of county soldiers' relief commissions for services and expenses where they had

attended a meeting of the various members of the soldiers' relief commission throughout the state, which meeting was called by the Governor. It was held as stated in the syllabus:

"County commissioners are not authorized by law to allow to the persons composing the several soldiers' relief commissions throughout the State their actual expenses incurred and a fair compensation for their services for attendance upon the meeting of the members of the said several soldiers' relief commissions held at Columbus, Ohio, on July 19 and 20, 1930."

It was pointed out in that opinion that upon examination of the law relating to the duties of the members of county soldiers' relief commissions it was found that their duties were confined strictly to the county for which they had been appointed. Nothing in the law required county soldiers' relief commissions to cooperate in any respect with the commissioners of other counties. The extension of relief which they were authorized to make is confined strictly to their own county and does not require the cooperation of other counties, nor does it require the members of the commission to leave their own county for any purpose whatever, unless perhaps it might be for the investigation of some exceptional specific case. It was further said in that opinion:

"Nor do I find that the Adjutant General or the Governor has any control over the administration of the law providing for the extension of relief in counties to indigent soldiers, sailors or marines or their families, or any control over the members of the county soldiers' relief commissions in their administration of this law, or any authority to call together the members of the several county soldiers' relief commissions so as to impose a duty upon the members to attend. * * *

The purpose of the attendance of the members of the several county soldiers' relief commissions at the meeting referred to was not in furtherance of any specific duty enjoined by law or of any specific immediate project or undertaking then under way, but merely for a discussion of the general principles underlying the law for the extension of soldiers' relief and of comparing notes as to the actual administration of the law."

The conclusion that township trustees are not on official business when responding to an invitation of the Highway Director or other state official, to attend a meeting where general matters pertaining to their duties as public officials are to be discussed, is fortified by the fact that the Legislature has definitely provided in Section 1183-1, General Code, that the Director

of Highways is authorized to call the resident district deputy directors and assistants together once a year in their respective divisions for the purpose of conducting a conference or school, in which the best methods of road building or other matters of interest shall be discussed, and at which instructions may be given to said resident district deputy directors and assistants pertaining to their work. This statute also provides that the Director of Highways be authorized to call resident district deputy directors and assistants or county commissioners into a conference at any time for any purpose connected with their official duties, and that such county officers shall in addition to their salary, receive from their respective counties their actual and necessary expenses incurred in such attendance. No mention is made in this statute of township trustees nor is there any similar statute applicable to township trustees. The fact that the Legislature made these provisions with respect to the county commissioners and resident district deputy directors and assistants and made no similar provision with respect to township trustees would certainly tend to the conclusion that it was not the intention of the Legislature that the Highway Director should have the authority to call township trustees for a conference at the expense of their respective townships.

A similar question relating to a conference of engineers and operators of water purification plants called by the State Department of Health for the purpose of giving instruction to these engineers and operators regarding the operation of water purification plants was considered in an opinion of my immediate predecessor, and it was held that these engineers and operators of water purification plants could not lawfully be paid their expenses in attendance at such a meeting for the reason that no authority existed for the State Department of Health to call such a meeting. See Opinions of the Attorney General for 1938, page 1783. In another opinion of a former Attorney General rendered by the then Attorney General in 1920, at which time there was in force Section 1185-1, General Code, as enacted in 1919 (108 O. L., Part I, page 481), authorizing the State Highway Commissioner to call the county surveyors together once each year for the purpose of conducting a conference or school in which the best methods of road building and other matters of interest might be discussed, and at which conference instructions were to be given to the county surveyors pertaining to their work by the State Highway Commissioner or by other persons designated by him for that purpose, the question arose whether or not deputy county surveyors,

if they should be included in the call, might be paid their expenses upon attendance at such a meeting. It was held that deputy county surveyors could not be paid their expenses for attending these meetings for the reason that the statute did not authorize the State Highway Commissioner to include them in his call. Opinions of the Attorney General for 1920, page 411.

In the light of what has been said, I am of the opinion that the per diem compensation fixed for township trustees by Section 3294, General Code, can not lawfully be allowed to such township trustees for time expended in attending upon invitation of the State Highway Department or other state department or official, what is designated as "Good Roads Day" at the Ohio State Fair, for the purpose of hearing lectures relating to the methods of construction, maintenance and repair of roads, nor can such trustees be paid their necessary expenses for attending such a meeting.

Respectfully,

THOMAS J. HERBERT,
Attorney General.