S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

June 20, 2003

Opinion No. 03-079

Per Diem for Fire Fighting Personnel Board Members

QUESTIONS

1. Must a meeting of the Tennessee Commission on Firefighting Personnel Standards and Education last at least four hours for a member of the Commission to receive per diem compensation?

2. If a member must work a minimum of four hours on the day of a Commission meeting to receive per diem compensation, is travel time to and from the meeting counted in those four hours?

3. Is a member eligible for per diem compensation for travel time?

4. Is reimbursement for travel expenses pursuant to the State's travel regulations the sole compensation for a member's travel time?

OPINIONS

1. & 2. These two questions are pretermitted because the relevant statutes do not authorize per diem payment for members attending Commission meetings.

3. No.

4. Yes.

ANALYSIS

1. The questions you ask implicate several statutes. The first sets out certain conditions members of state boards or commissions must meet before they may receive any compensation, including per diem compensation. It provides, in relevant part:

> Any other provisions of law to the contrary notwithstanding, no member of any board or commission, established by law or pursuant to law, which receives an appropriation, regardless of the source of funding, shall receive any compensation, whether denominated per diem or by whatever name called, except for days in which such member actually works four (4) or more hours performing duties directly relating to that board's or commission's activities, or for time or days spent attending meetings of that board or commission where a quorum is present.

Tenn. Code Ann. § 8-23-205. The statute does not establish that any member of any board or commission is entitled to per diem compensation for any service. Instead, it provides that a member who is entitled to per diem compensation may only receive per diem compensation for time spent attending commission meetings where a quorum is present, or for days when a worker spends at least four hours performing duties directly related to the commission's activities.

The second statute sets out when a member of the Tennessee Commission on Firefighting Personnel Standards and Education is entitled to per diem and travel expenses. It provides, in full:

> (a) (1) Commission members shall receive a per diem payment for each day of attendance at a local firefighting unit pursuant to the provisions of § 4-24-110 in the amount of fifty dollars ($50.00) per day of attendance for not more than three hundred dollars ($300) per year per member.
>
> (2) Members shall receive a prorated share of such per diem payment for less than a full day's attendance.
>
> (b) A travel and expense allowance, consistent with state travel policy, shall be paid from the member's home to the location of the firefighting unit and return.

Tenn. Code Ann. § 4-24-105. The statute clearly distinguishes per diem compensation from travel and expense reimbursement. The statute does not authorize any per diem compensation to members for attending commission meetings, and this Office could discover no such authorization. They authorize per diem compensation to members only for each day of attendance at a local firefighting unit pursuant to Tenn. Code Ann. § 4-24-110. The latter statute provides, in pertinent part:

> Individual commission members may assist local firefighting units in the general area of their residence with the development of training and education programs for certification. Members may also administer examinations for certification if such administration is approved by the commission. Members shall receive a per diem

> payment for each day of attendance at a local firefighting unit as provided for in § 4-24-105, only if such attendance is in lieu of the attendance of a staff employee of the commission.

Tenn. Code Ann. § 4-24-110(a).

Taken together, Tenn. Code Ann. §§ 4-24-105 and 110(a) indicate that a member may receive per diem compensation only for time spent in "attendance at" a local firefighting unit, i.e., in actual presence at the unit, but not for time spent traveling to and from the unit. A member may receive $50.00 per diem compensation only for a full day's attendance at a local firefighting unit. While a "full day" is not defined in the two statutes, it seems reasonable to assume that a "full day" would be seven-and-one-half hours, which is the general rule of the Tennessee Department of Personnel. Tenn. Comp. R. & Regs. ch. 1120-6-.03. The member may receive prorated per diem compensation for less than a full day's attendance. Tenn. Code Ann. § 4-24-105(a)(2). However, a member may not receive any per diem compensation for days during which the member spends less than four hours in attendance at a local firefighting unit. Tenn. Code Ann. §§ 4-24-105(a)(2) and 8-23-205. For travel expenses to and from the firefighting unit, a member is entitled to reimbursement pursuant to the State's Comprehensive Travel Regulations, which are promulgated by the Department of Finance and Administration. *See* Tenn. Code Ann. § 4-3-1008(3).

Finally, it would appear that a member is entitled to reimbursement for travel expenses incurred in connection with all statutorily assigned duties, including attendance at commission meetings. The intent of Tennessee's Comprehensive Travel Regulations is to ensure that "employees do not suffer additional cost as a result of travel incurred to carry out assigned duties," and provide for reimbursement "subject to the limitations provided in this travel policy and the accompanying Reimbursement Rate Schedule." Policy 8, Comprehensive Travel Regulations, para. 1 (Tenn. Dep't of Finance and Administration 2003).[1] While a commission member may not be a state employee, such a member appears to be embraced within the policy's intent, as the policy's referenced attached rate schedule includes a "Board Member Reimbursement Rate Schedule."

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

[1]The referenced policy is available as of the date of this opinion at http://www.intranet.state.tn.us/finance/travel/travreg.pdf.

DOUGLAS EARL DIMOND
Assistant Attorney General

Requested by:

Honorable Tim Burchett
State Senator
7th Senatorial District
Suite 310A, War Memorial Building
Nashville, TN 37243-0207