

Members of the Highway Commission may attend a meeting of Highway officials, outside of the State and have the expenses therefor paid by the State.

September 3, 1941

1016
Mr. C. W. Brown
Chief Engineer
State Highway Department
Jefferson City, Missouri



Dear Sir:

This Department is in receipt of your request for an official opinion which reads as follows:

"Would you please give me your opinion as to whether the members of the Missouri State Highway Commission may attend the Mexico Road Convention to be held in Mexico City, and have the expense therefor paid by the State."

Article IV, Section 44a, of the Constitution of Missouri, provides for the State Highway System, and therein it is stated that "the cost of maintaining the State Highway Department and the State Highway Commission" shall be paid out of the funds provided for in the section.

The word "maintain" has been defined in Lucas v. St. Louis and Suburban Railway Co., 73 S. W. 589, 174 Mo. 270, as:

"To bear the expense of; to support; to keep up; to supply with what is needed."

Therefore, the cost of supporting and keeping up and supplying to the Highway Commission what is needed may be paid out of the Highway funds.

We next look to the statutes to determine whether the Legislature has given the right to the Highway Department

to travel outside of the State and for what particular instances this right may be so exercised.

In State ex rel. Lankin v. Hackmann, 204 S. W. 513, the Supreme Court ruled that the State Superintendent of Public Schools could have his traveling expenses paid in attending educational conferences outside the State because it is part of his official duty. The court pointed out that the Legislature had provided that the Superintendent should attend and assist in the meetings of teachers and do everything to elevate the standard and efficiency of the instruction given in the public schools of this State. Furthermore, the Legislature in its appropriation act had provided for traveling expenses. The court so ruled that since these educational conferences tended to assist him in carrying out his duties that such expenses could be paid.

In the later case of State ex rel. Bradshaw v. Hackmann, 208 S. W. 445, the court held that the State Warehouse Commissioner was not authorized to attend a conference of Warehouse Commissioners in Washington because there is nothing in his statutory duties which requires him to travel outside of the State.

In the Bradshaw Case, supra, the court said:

"No officer in this State can pay out the money of the State except pursuant to statutory authority authorizing and warranting such payment."

However, the court noted the exception in this rule in that:

"Whenever a duty or power is conferred by statute upon a public officer all necessary authority to make such powers fully efficacious or to render the performance of such duties effectual is conferred by implication."

The appropriation act passed by the General Assembly in 1941 for the Highway Department (House Bill No. 15, Section 1, sub-section (d)) provides money to be used for "travel expenses within and without the state." This, as was said in

the Lanekin Case, supra, is a legislative construction of the powers of the Highway Commission in so far as traveling expenses are concerned. In Hite v. Keene, 137 Wis. 625, 119 N. W. 303, it was held that a foreign country was included in the phrase "without the state."

Furthermore, a reading of the statutes relating to the Highway Commission discloses the following:

Section 8743, R. S. Mo. 1939, provides that the members of the Commission shall receive:

"their necessary traveling and other expenses incurred while actually engaged in the discharge of their official duties."

Their official duties as provided for in Section 8752, R. S. Mo. 1939, are:

"(4) Cause standard plans, specifications and estimates to be prepared for the repair and improvement of highways and the construction and repair of bridges by civil subdivisions.

"(5) Investigate and determine upon the various methods of road and bridge construction adapted to different sections of the state and as to the best methods of construction and maintenance of highways and bridges.

"(6) Compile statistics relating to public highways throughout the state and collect such information in regard thereto as it shall deem expedient.

"(7) Aid at all times in promoting highway improvement throughout the state.

"(8) Prepare plans, specifications and estimates for all state highways."

The duties imposed by the statute above require the Highway Commission to have "standard plans, specifications and estimates" and require them to investigate and determine the various methods of road and bridge construction adapted to the different sections of the State. They must also compile statistics and collect such information as they deem expedient, and are required to aid in promoting highway improvement. We believe it is obvious that information can well be obtained at various meetings with highway officials of other states which will assist the Missouri Commission in carrying out efficiently these duties.

As was said in the Lamkin Case, supra (l. c. 515):

"It is, we think, necessary if standards and efficiency in education in this State are to be kept abreast of the progress in other states, that the head of the public school system should be advised as to what educators elsewhere are doing. No better way, perhaps, for doing this has been devised than by conventions and conferences of the leaders in educational progress."

From the facts submitted in your request we are unable to ascertain the type of meeting that is to be held in Mexico City, but, in view of the rules laid down above, we believe that you should be able to ascertain whether such meeting is one which will enable the members of the Commission to carry out the duties of their office or not.

Conclusion

Therefore, in view of the above authorities, it is the opinion of this Department that the members of the Missouri State Highway Commission may attend a conference held outside of the State, if, at said conference, discussions are held relating to highway matters, which will enable the members of the Commission to carry out the duties of

Mr. C. W. Brown

-5-

Sept. 3, 1941

their office, and that the expense of attending such conferences may be paid by the State.

Respectfully submitted,

ARTHUR O'KEEFE
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

AO'K:EG