

October 11, 1971

MEMORANDUM

To: Senator Stanley W. Holmquist

From: Office of Senate Counsel - H. Blair Klein

You have inquired as to the appropriate method of calculating reimbursable expenses to be paid to members of the Senate for their attendance at meetings of various commissions.

Prior to the enactment of Chapter 3 of the Extra Session Laws of 1971, members of the Senate who served as members of the various permanent and interim commissions were reimbursed for their expenses, including travel, on the basis of the particular statutes dealing with each commission, supplemented by the general provisions of Minnesota Statutes 1969, §3.101. Section 3.101 reads as follows:

A member of the legislature in addition to the compensation and mileage otherwise provided for by law shall be reimbursed for his living and other expenses incurred in the performance of his duties during a regular session, a special session, and when the legislature is not in session in the manner and in such amount as may be prescribed by the senate as to senate members and by the house of representatives as to house members.

This general provision of law, permitting each house to determine for itself the manner and amount of such reimbursement was acknowledged by the full Senate in portions of three items adopted on Monday, May 26, 1969, as follows:

House Concurrent Resolution No. 10

AND BE IT ALSO RESOLVED, that the standing committee of Legislative Administration and Rules as to the expenditures of moneys in the legislative expense fund of the House of Representatives, and the standing committee on Rules and Legislative

Expense of the Senate as to expenditures of moneys in the legislative expense fund of the Senate, shall determine the method and procedures for making payments from the respective funds and may direct the Chief Clerk as to the House and the Secretary of the Senate as to the Senate as to such expenses.

Senate Resolution (Senate Journal, 1969 regular session, page 3351)

BE IT RESOLVED, that the Secretary of the Senate, with the approval of the Committee on Rules and Legislative Expense, is hereby authorized and directed to draw warrants --

10) For such other items necessary to the conduct of the Senate, subject to the approval of the Committee on Rules and Legislative Expense.

Report of the Committee on Rules and Legislative Expense (Senate Journal, 1969 regular session, page 3356)

That all members of activated standing committees or subcommittees of the Senate, and staff, shall be reimbursed for all expenses actually and necessarily incurred in the performance of their duties, such payment to be made by the Secretary of the Senate out of monies appropriated to the Senate for the standing committees; that the Committee on Rules and Legislative Expense shall determine the amount and manner for reimbursement for living and other expenses of each member of the Senate incurred in the performance of his duties when the legislature is not in session.

As a result, the full Senate delegated to the Rules Committee the responsibility for making determinations required by §3.101 of the statutes. The Rules Committee did in fact exercise this responsibility, and at a regular meeting held on June 13, 1969 (minutes pp. 1 and 2) determined the manner and amount of such reimbursement.

Because the Rules Committee adopted the same manner and amount of reimbursement for members of the Senate as was provided for other state employees, the specific provisions of law relating to the various commissions on which members of the Senate were required to serve were satisfied with consistency and no difficulty.

By way of example, the Minnesota Commission on Indian Affairs is made up of various elected and appointed state officials in addition to public members representing the Indian community. M.S. 1969, §3.922, Subd. 3, provides that members of the commission who are not state officials shall be compensated at the rate of \$10 per meeting attended in addition to receiving reimbursement "for actual and necessary traveling expenses incurred on official business. Reimbursement shall be made in the manner provided by law for state employees." A member of the commission who was a "state official" received only his actual and necessary traveling expenses. Because the Rules Committee had made precisely the same provisions, no conflict appeared.

Chapter 3, §83 of the Extra Session Laws of 1971 substantially altered the existing law and practice by providing a flat rate of \$25 per day plus travel expenses for members of the legislature as follows:

INTERIM LIVING EXPENSES. Each member of the legislature shall be reimbursed for his expenses when he is required to attend meetings of standing committees, commissions, or is engaged in other legislative activity when the legislature is not in session. The amount of such reimbursement is \$25 per day as a per diem expense allowance for all expenses incurred except travel. He shall also be reimbursed for his travel expenses in the same amount as state employees are reimbursed for such travel.

Reimbursements to members of the legislature for out-of-state meetings or other legislative activity shall be in the same amounts as state employees are reimbursed for such out-of-state expenses.

Expenses for members of the legislature are payable in the manner designated by the senate committee on rules and administration as to members of the senate and by the committee on rules and legislative administration as to members of the house of representatives.

The expense allowances provided for herein to the persons designated are in lieu of any other expenses authorized by law or resolution for the same purposes.

Because of the preemptory provision emphasized above, it is our opinion that the provisions of §83 govern the compensation of legislators "when the legislature is not in session."

When read in conjunction with the provisions of Minnesota Statutes 1969, §3.101 and §70 of Chapter 3 of the Extra Session Laws of 1971, it is apparent that certain ambiguities and inconsistencies have been adopted in the laws of this state. These provisions have been codified so as to read as follows in Minnesota Statutes 1970:

3.101 LIVING EXPENSES DURING SESSION. A member of the legislature in addition to the compensation and mileage otherwise provided for by law shall be reimbursed for his living and other expenses incurred in the performance of his duties during a regular session, a special session, and when the legislature is not in session in the manner and in such amount as may be prescribed by the senate as to senate members and by the house of representatives as to house members.

3.102 INTERIM LIVING EXPENSES. Each member of the legislature shall be reimbursed for his expenses when he is required to attend meetings of standing committees, commissions, or is engaged in other legislative activity when the legislature is not in session. The amount of such reimbursement is \$25 per day as a per diem expense allowance for all expenses incurred except travel. He shall also be reimbursed for his travel expenses in the same amount as state employees are reimbursed for such travel.

Reimbursements to members of the legislature for out-of-state meetings or other legislative activity shall be in the same amounts as state employees are reimbursed for such out-of-state expenses.

Expenses for members of the legislature are payable in the manner designated by the senate committee on rules and administration as to members of the senate and by the committee on rules and legislative administration as to members of the house of representatives.

The expense allowances provided for herein to the persons designated are in lieu of any other expenses authorized by law or resolution for the same purposes.

3.103 SPECIAL SESSION LIVING EXPENSES. Each member of the legislature, during a special session thereof, shall be reimbursed for expenses incurred in the performance of his duties in the same amounts, for the same purposes, and in the same manner as were authorized for the members of the senate and the members of the house of representatives at the last regular session occurring immediately prior to such special session. Reimbursement for travel, however, shall not exceed more than one round trip per member per each seven calendar days in which the legislature meets in such special session. This section applies to each special session of the legislature commencing after May 24, 1971.

Our conclusion stated above, that the provision codified as §3.102 is controlling under the circumstances, is based upon the general precepts and canons of statutory construction as provided in Minnesota Statutes, Chapter 645. Nevertheless, it is our opinion that a variety of both substantive and administrative difficulties can and will arise in the course of any attempted application of these three inconsistent and overlapping statutes, some of which may be noted as follows:

A. §3.101 empowers the Senate to prescribe the manner and amount of reimbursement for living and other expenses incurred during

- 1) a regular session,
- 2) a special session,
- 3) when the legislature is not in session.

§§ 3.102 and 3.103, however, have the effect of nullifying the Senate's prerogatives as to items 2) and 3) above.

B. All commissions other than strictly legislative ~~com-~~ *Committee* ~~missions~~ must operate exclusively out of funds appropriated by the legislature. It can be assumed that commissions such as the Indian Affairs Commission, the Minnesota Resources Commission, and the Minnesota-Wisconsin Boundary Area Commission have not budgeted for the relatively high cost of reimbursing legislators at the rate of \$25 per diem plus travel for in-state meetings.

C. The Indian Affairs Commission is governed by the unique provisions of the statute cited above. If, when the legislature is not in session, the provisions of §83 of Chapter 3 (§3.102) are applied, while members of the Indian community will continue to receive their \$10 per diem, members of the legislature will receive a \$25 per diem. It would appear that such a disparity would be unwelcome.

D. Some commissions, notably the Advisory Committee to the Minnesota-Wisconsin Boundary Area Commission, are made up of legislators from two or more states. In that particular instance, if a meeting of the Advisory Committee is held in Minnesota, the Minnesota legislators would receive the \$25 per diem plus their travel, while the Wisconsin legislators would receive only their expenses. On the other hand, if a meeting of the Committee were to be held in Wisconsin, legislators from both states would receive the same reimbursement for expenses. Presumably, such idiosyncrasies are not desirable.

- E. Using the example of the Minnesota-Wisconsin Boundary Area Commission, the pertinent statute (M.S. 1969, §1.31) provides that members of the Commission shall be reimbursed only for their actual and necessary expenses. The Legislative Advisory Committee to that Commission is, by the terms of Subd. 5 of §2 of that statute, to be reimbursed in the same manner as is provided for the commissioners. The application of the provisions of §3.102 would contravene the expressed intent of this interstate compact.
  
- F. That the provisions of §3.102 are a fundamental diversion in legislative policy and intent is evidenced by noting the provisions for reimbursement of expenses for members of the State Claims Commission. M.S. 1969, §3.70, provides:  
"Each member of the commission shall receive actual expenses incurred in the performance of his duties."

HBK:mc

cc - Sen. W. G. Popham  
Mrs. Dorothy Abell  
Mr. G. G. Goodwin  
Mr. Dave Johnson