



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 3, 2021

The Honorable Anthony Smith
Parole Board Member
660 North Street, Suite 100A
Jackson, Mississippi 39202

Re: Reimbursements for Parole Board Members

Dear Mr. Smith:

The Office of the Attorney General has received your request for an official opinion.

Issues Presented

- (1) If a Parole Board member submits an expense voucher and is reimbursed for necessary expenses (including mileage, meals, and lodging) as defined under Section 25-3-41, has that parole board member violated the restriction on receiving per diem pay?
- (2) At any point, does receiving regular reimbursements for necessary expenses pursuant to Section 25-3-41 become per diem pay?

Brief Response

As an initial matter, we note that opinions of this office are issued on prospective questions of law pursuant to Section 7-5-25. Official opinions do not validate nor invalidate past actions. Further, whether a particular statute has been violated is a factual question on which we do not opine. We offer the following for future guidance.

- (1) No. Reimbursements to Parole Board members for actual and necessary expenses authorized pursuant to Sections 47-7-5(2) and 25-3-41 are separate and distinct from per diem pay, which is prohibited for Parole Board members under Section 47-7-5(2).¹

¹ The statutes cited within this opinion reflect the law in effect as of the above date, and our conclusions herein reflect our interpretation of the law on such date. Section 47-7-5(2) currently provides, in relevant part: "A member shall not receive compensation or per diem in addition to his salary as prohibited under Section 25-3-38." Effective July 1, 2021, this provision will read: "A member shall receive compensation or per diem in addition to his salary." S.B. 2795, Reg. Sess. (Miss. 2021).

- (2) No. Reimbursements issued to Parole Board members pursuant to Sections 47-7-5(2) and 25-3-41 are for actual and necessary expenses. Per diem pay is a form of compensation calculated at a daily rate in accordance with Section 25-3-69. Section 47-7-5(2) authorizes Parole Board members to receive travel reimbursements and simultaneously prohibits them from receiving per diem pay.

Applicable Law and Discussion

Section 47-7-5 provides, in relevant part:

(2) Any person who is appointed to serve on the [State Parole Board] shall possess at least a bachelor's degree or a high school diploma and four (4) years' work experience. Each member shall devote his full time to the duties of his office and shall not engage in any other business or profession or hold any other public office. A member shall not receive compensation or per diem in addition to his salary as prohibited under Section 25-3-38. Each member shall keep such hours and workdays as required of full-time state employees under Section 25-1-98. Individuals shall be appointed to serve on the board without reference to their political affiliations. Each board member, including the chairman, may be reimbursed for actual and necessary expenses as authorized by Section 25-3-41.

Miss. Code Ann. § 47-7-5 (emphasis added).²

Pursuant to Section 25-3-41, certain public employees and officials are authorized to receive reimbursements for actual travel expenses, including mileage, lodging and meals, in accordance with the rules and regulations promulgated by the Department of Finance and Administration. Application of those rules to individual requests for reimbursement may be a question of fact determined by “the entity head or authorized designee.” (For example, see State Travel Policy Rules & Regulations Section 101 (F), (J), and (N)).

The amount of reimbursement received under Section 25-3-41 would depend on the actual cost of the meals and hotel room and number of miles traveled. In contrast, per diem pay is compensation at a standard daily rate of pay.³ For example, the general per diem statute, Section 25-3-69, provides:

² Section 25-3-38 provides, in part, that “[t]he salary for appointive and/or employed officials established herein shall be the total and complete salary, and it shall be unlawful for any additional funds to be paid from any source, including federal or private funds, to supplement salaries to a level in excess of that established herein.” Miss. Code. Ann. § 25-3-38. Payment under Section 25-3-38 is separate and distinct from reimbursement for actual and necessary expenses authorized pursuant to Section 25-3-41.

³ The Merriam-Webster Dictionary defines “per diem” as “a daily allowance” or “a daily fee,” *Per Diem*, Merriam-Webster (2020), <https://www.merriam-webster.com/dictionary/per%20diem>, and defines “reimbursement” as the noun form of the verb to reimburse, or “to pay back to someone: REPAY” or “to make restoration or payment of an equivalent to,” *Reimbursement*, Merriam-Webster (2020), <https://www.merriam-webster.com/dictionary/Reimbursement>.

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Unless otherwise provided by law, all officers and employees of state agencies, boards, commissions, departments and institutions authorized by law to receive per diem compensation for each day or fraction thereof occupied with the discharge of official duties shall be entitled to Forty Dollars (\$40.00) per diem compensation. When the Governor, Lieutenant Governor or Speaker of the House of Representatives appoints a person to a board, commission or other position that requires confirmation by the Senate, the person may receive per diem compensation for the performance of official duties before such appointment is confirmed by the Senate, as such per diem compensation is authorized under this section.

Accordingly, reimbursements to Parole Board members for actual and necessary expenses authorized pursuant to Sections 47-7-5(2) and 25-3-41 are separate and distinct from per diem pay.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Very truly yours,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General

OFFICIAL OPINION