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COUNTY BOARD OF SUPERVISORS: Finance Committee.

Chairman of the finance committee of the county board of supervisors cannot be compensated on a per diem basis under section 30(1)(c) of Public Act 199 of 1937, as amended, for committee work performed outside of committee meetings.

No. 4251

January 8, 1964.

Mr. Robert L. Richardson, Jr.
Saginaw County Civil Counsel
3434 Davenport Avenue
Saginaw, Michigan

You have asked my opinion on the following question relative to the Saginaw County Board of Supervisors:

"Can the Chairman of the Finance Committee of the County Board of Supervisors be compensated on a per diem basis under the provisions of Sec. 30(1)(c) of Public Act 199 of 1937, as amended (5.353 M.S.A.) for committee work performed outside of committee meetings and when the Board is not in session, provided such work is ordered by either the Board of Supervisors or the Chairman of said Board in accordance with the statute?"

Section 30(1)(c)¹ of Act 156, P.A. 1851, as amended by Act 136, P.A. 1962, states:

"Each member of the board shall receive compensation as established for attendance at board meetings when he is serving as a member of any committee of the board when the board is not in session. No member of any committee shall be entitled to payment under the provisions of this subdivision where the services performed were not ordered by said board or the chairman of said board or for more than 60 days in any one year as a member of such committee, except that in counties now or hereafter having a population of more than 400,000 and not more than 1,500,000, members serving on each committee shall be entitled to payment of not exceeding a total of 120 days for each committee, but not to exceed a total of 150 days for all committee work in any calendar year, as provided under the provisions of this subdivision, when ordered to serve by the board or chairman of the board. Nothing herein contained shall be construed so as to in any way repeal other acts providing for compensation to members of boards engaged in committee work or change in number of days allowed therein for regular or special sessions in any one year, and said act shall stand the same as if this act had not been passed. The chairman of said board as an ex officio member of the several committees of the board and for the performance of any extra duties assigned to him by the board in connection with attendance at meetings of the several committees of the board, or other assignments, the limitation of number of days for which he may receive compensation shall not apply."

¹ M.S.A. Cur. Mat. § 5.353, p. 172.

The last quoted section provides compensation for work done outside committee meetings for the chairman of the board and for no other member of the board or committee. Thus it is clear that the chairman of the finance committee may not draw per diem compensation for committee work performed outside of committee meetings. Although there are no pertinent Michigan cases, similar statutory language was construed by the Illinois Supreme Court in *Sprinkle v. County of Cass*.² The court quoted the statute as follows (p. 721):

[Sec. 39] "Supervisors and assistant supervisors when attending the sessions of the county board of supervisors or engaged in the regular committee work of such board shall receive for their services the sum of five (\$5.00) per day and five cents per mile for each mile necessarily traveled in going to or from the county seat or place of committee meeting, payable out of the county treasury. Supervisors and assistant supervisors shall receive, directly or indirectly, no other allowance or emolument."

It was claimed that a member of the road and bridge committee in fact attended a meeting of that committee when he alone supervised and inspected road work and was, for that reason, entitled to the per diem and mileage prescribed by Sec. 39. The court stated at p. 721:

"* * * No authority is found in this section for the payment of compensation to an individual member of a board of supervisors or of a road and bridge committee who, acting alone, supervised and inspected work upon highways in the county. Compensation is allowed supervisors when 'engaged in the regular committee work' of the board. To entitle a supervisor to compensation, this provision contemplates a meeting of a committee of which he is a member, and not isolated individual action by the supervisor. This construction is emphasized because mileage is allowed not to or from points upon one or more highways which a supervisor may have inspected, but to or from the place where the members of the committee met for the consideration of official business, a definite place necessarily fixed before the meeting. If the contention of the plaintiff in error that his individual supervision and inspection of road work constituted attendance upon a meeting of the road and bridge committee is sound, then there would be as many road and bridge committees of the particular county board as there were members of that committee. Such a multiplication of committees would necessarily result in the payment of compensation and mileage not authorized or permitted by section 39, for that section is not only specific in those respects but it concludes with the prohibition that supervisors shall not receive, directly or indirectly, any other allowance or emolument."

The reasoning of the Illinois Supreme Court is useful in construing the Michigan statute. The language of subparagraph (d) of Section 30(1) is comparable to that of the Illinois statute and provides mileage only when "going to and returning from the place of the meeting of such committee

² 172 N.E. 720, 340 Ill. 382 (1930).

for which he is entitled to compensation under the provisions of subdivision (c)."

Your letter cited the case of *Stetler, et al. v. McFarlane*.³ However, it is my opinion that the statute construed therein is readily distinguishable from the one in Michigan. The New York court quoted the statute, in part, on p. 594 of its opinion as follows:

"Each supervisor * * * may also receive compensation from the county at the rate of four dollars per day while actually engaged in any investigation or other duty, which may be lawfully committed to him by the board, except for services rendered when the board is in session."

Since that statute specifically authorized a per diem for investigation or other duties committed to a supervisor by the board, the *Stetler* case is not applicable to the Michigan statute which does not contain such language for any board or committee member except the chairman of the board of supervisors.

It is my opinion that the chairman of the finance committee of the county board of supervisors cannot be compensated on a per diem basis under section 30(1)(c), as amended, for committee work performed outside of committee meetings.

FRANK J. KELLEY,
Attorney General.

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CONSTITUTIONAL LAW:

1. Right to Appeal — A statute which provides for the appeal of a misdemeanor to the Supreme Court as appellate court, rather than the circuit court for the county in which the offense was committed, constitutes "an appeal as a matter of right," as required by Article I, Sec. 20, Constitution of 1963.
2. Different method of appeal from Recorder's Court for the City of Detroit — The statute providing for appeals in misdemeanor cases originally tried in the Recorder's Court for the City of Detroit, is not rendered unconstitutional because it varies from the method of appeal provided for like offenses in other parts of the state.

No. 4229

January 20, 1964.

Hon. William D. Ford
The Senate
Lansing, Michigan

You have requested the opinion of this office as to the constitutionality of the proposed bill to amend Section 24 of Act 326, Local Acts of 1883,¹ entitled "An act to provide a charter for the city of Detroit, and to repeal all acts and parts of acts in conflict therewith." I express no opinion as to the wisdom of the proposal. The proposed bill to amend reads as follows:

³ 130 N.E. 591, 230 N.Y. 390 (1921).

¹ C.L. 1948 § 726.24; M.S.A. 1962 Rev. Vol. § 27.3574.