

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date August 13, 1974

To William R. Adams, Jr., Commissioner Dept. Environmental Protection

From Jon A. Lund, Attorney General Dept. Attorney General

Subject Traveling Expenses of Orlando Delogu

## SYLLABUS:

The statutory provision concerning compensation to Board of Environmental Protection members for travel expenses to meetings includes travel expenses from outside the country, when a Board member is residing outside the country for professional purposes.

## FACTS:

38 M.R.S.A. § 361 states:

"The members appointed by the Governor shall receive \$25 per day for their services at meetings or hearings and all members shall receive necessary traveling expenses for attending any meeting of the board [Board of Environmental Protection] or for any other travel in connection with the official business of the board and under the specific authority of the board, which traveling expenses shall be paid out of the General Fund."

Professor Orlando Delogu, a member of the faculty of the University of Maine School of Law and a member of the Board of Environmental Protection (hereinafter referred to as "Board"), spent the academic year 1973-74 in Germany as a research fellow. While in Germany, he returned to Maine several times solely to attend Board hearings.

Delogu's travel was for the purpose of attending hearings and meetings of the Board in regard to the pending application of the Pittston Company. The Commissioner of the Department indicates that the issue was a matter of considerable importance and that due to the absence and illness of several Board members, he had made it a point to urge all Board members to attend such hearings. The hearings were scheduled for the convenience of the Board members and in particular to permit Delogu to be present with a minimum of transportation expenses.

Several times during the hearings the Commissioner consulted with Board members regarding procedure during the hearings. In one instance official Board action was necessary. In the view of the Commissioner, Delogu's presence was important and highly desirable.

QUESTION AND ANSWER:

Is a Board of Environmental Protection member entitled under 38 M.R.S.A. § 361 to reimbursement for travel expenses from outside the country to Board meetings when professional employment requires temporary residence outside the country? Yes.

REASONS:

Ordinarily expenses of a State employee of the kind incurred by Professor Delogu are governed by general regulations adopted by the Commissioner of Finance and Administration. Regulations Regarding Official Headquarters, Expense Accounts, Etc., January 17, 1973. These regulations were adopted to interpret and implement general statutory provisions regarding travel and expense accounts of State employees.

Those regulations in regard to travel state:

"§2. No official, commissioner or other employee of the State will be reimbursed for any travel expense between his OFFICIAL HEADQUARTERS or HIS POINT OF WORK FOR THE STATE and HIS PERSONAL RESIDENCE, except as covered by 4 below."

"§4. Exceptions to 2 and 3 will be made ONLY when (a) a STATUTORY PROVISION EXPRESSLY PROVIDES DIFFERENTLY or . . . ."

"§9. Prior GOVERNOR AND COUNCIL APPROVAL must be obtained for travel to Hawaii, Alaska and other areas outside the continental limits of the United States with the exception of neighboring cities of the Canadian Provinces within a radius of 700 miles of Augusta."

In the case of a full-time State employee, such expenses, absent a specific statutory provision, would not be reimbursable.

In this case, however, compensation to and reimbursement of members of the Board of Environmental Protection is specifically provided by 38 M.R.S.A. § 361. That section provides that members of the Board shall be reimbursed for "necessary traveling expenses" to attend Board meetings and "for other travel in connection with the official business of the Board and under the specific authority of the Board." The limitation in section 2 of the "Regulations" clearly does not apply since a statutory provision specifically defines the type of expenses of Board members which are considered reimbursable. Nor does the limitation in section 9 of the "Regulations" limit the right to reimbursement in this case. The Legislature has defined the type of expenses which shall be awarded to Board members and administrative regulations purporting to limit the scope of such expenses cannot supersede such legislative enactment. Vivian v. Bloom, 177 P.2d 541 (Colo., 1947); Hard v. State, 154 So. 77 (Ala. 1934); and Roxborough v. Michigan Unemployment Compensation Commission, 15 N.W.2d 724 (Mich., 1944). Delogu is entitled, therefore, to reimbursement if the expenses fall within the meaning and intent of 38 M.R.S.A. § 361.

The term "necessary travel expenses" has never been construed by the Maine Courts. However, the term "necessary" has been examined in cases which help illuminate the meaning of that word. In Bussey v. Gilmore 3 Me. 191 (1824), the Law Court, in determining whether certain town charges and expenditures were necessary, stated:

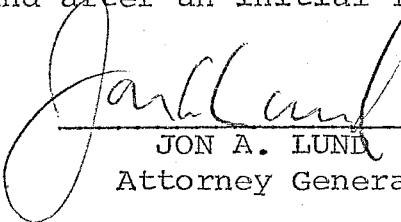
"Without enumerating the objects which this term, 'other necessary charges,' may be deemed to embrace, it may generally be considered as extending to such expenses as are clearly incident to the execution of the power granted, or which necessarily arise in the fulfillment of duties imposed by law."

In light of this judicial language and in view of the facts as stated in this opinion, and your memorandum of July 12, 1974, and the language in § 361, we are of the opinion that Delogu

is entitled to reimbursement for his traveling expenses to and from Germany to attend Board meetings and hearings and to engage in other official business of the Board. The facts as stated by you make it abundantly clear that Delogu's attendance at such meetings and hearings was "necessary" and constituted "official business" of the Board.

Furthermore, we believe that, although it is not expressly stated in § 361, compensation of such traveling expenses is clearly within the spirit and intent of § 361. Board members are part-time public officials. As such they have primary responsibility to the normal full-time demands of their business or profession. Included in such demands would inevitably be the requirement of travel outside the State or outside the country for professional or business needs. The Legislature in creating a part-time Board and the executive in appointing members thereto were obviously cognizant of the other full-time duties and responsibilities of potential Board members. By providing a statutory guarantee of reimbursement for travel expenses, the Legislature insured that Board members would never have to incur financial hardship in the fulfillment of their statutory duties or elect to not fulfill such duties. The Legislature apparently indicated its willingness to incur such costs to obtain high quality but part-time public servants. Indeed, the Legislature could have avoided this entire problem by creating a Board composed of full-time state officials subject to the general "Regulations" regarding reimbursement of travel expenses.

The opinion expressed here is, of course, limited to the facts of this case. Whether or not other travel expenses constitute "necessary traveling expenses for attending any meetings of the Board or for any other travel in connection with the official business of the Board" must be resolved on a case-by-case basis and after an initial factual determination by the Board.

  
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JON A. LUND  
Attorney General