

MAINE STATE LEGISLATURE

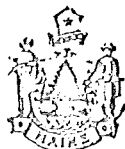
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Witness fees: State employees
15 M.R.S.A. 1319

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November 8, 1976

Henry Berry
District Attorney
Cumberland County Courthouse
Portland, Maine

RE: Witness Fees for State Chemists

Dear Henry:

This is to confirm our telephone conversation of October 12, 1976, in which I expressed the opinion that it is proper for you to authorize the payment of witness fees and mileage to the Public Health Laboratory (also known as the Diagnostic Laboratory) for the services of their chemists as witnesses in criminal prosecutions. My letter will briefly set out the reasons for this opinion.

I should state at the outset that the question does not really involve double compensation, insofar as the money paid by the County is not received by the chemists. Rather, it is included in the account of the Laboratory as reimbursement for the services of its employees. The chemists simply receive their regular salaries plus mileage. In short, the question becomes the propriety of Cumberland County paying a State agency for services rendered by one of the latter's employees.

Generally speaking, the statute which governs this situation is 15 M.R.S.A. §1319, set out below.

§1319. Authorization of payments by a prosecuting attorney

For purposes of this chapter, where a prosecuting attorney is permitted to authorize payment of fees or expenses incurred on behalf of the State in a criminal prosecution, payment of those fees and expenses shall be made by the proper authorities to the persons, municipalities or agencies to whom the payment is authorized upon certification to those authorities by the prosecuting attorney or his designee that the payment is reasonable and necessary to the prosecution of a given criminal case.

As a preliminary matter, §1319 comes into play whenever "a prosecuting attorney is permitted to authorize payment of fees. . . ." Since such permission exists with respect to the "payment of witness fees for State witnesses," see 15 M.R.S.A. §1320, the above provision would apply.

According to §1319, then, the payment is to be made upon certification by the prosecuting attorney "that the payment is reasonable and necessary to the prosecution of a given criminal case." (Emphasis added). These are the only criteria in the statute upon which the prosecuting attorney is to base his decision with respect to the authorization of the payments.

Since I assume that the chemists' testimony was necessary for the prosecution of criminal cases, the sole issue is the "reasonableness" of the payments. Unfortunately, the Legislature has not provided any guidance on how it intended that term to be interpreted. In the context of your question, however, the relevant inquiry would appear to be whether it is "reasonable" for one level of government to reimburse another for services rendered.

As a general rule, there would appear to be nothing inherently unreasonable about payments from one governmental unit to another. Specifically regarding witness fees and expenses, §1319 clearly contemplates such a possibility, insofar as it refers to payments made to "persons, municipalities or agencies."

An even stronger argument can be made in the case of the Public Health Laboratory. The Legislature has authorized both the Laboratory and the Department of Human Services to charge fees for their services. See 22 M.R.S.A. §562 and 22 M.R.S.A. §9, respectively. The Statement of Fact to the prior enactment clearly evidences an intent that the Laboratory become financially self-sufficient.

It is the purpose of this amendment to direct the diagnostic laboratory of the Department of Health and Welfare to become financially self-sufficient, insofar as possible, by allowing the laboratory to charge fees for service. It is proposed that the diagnostic laboratory be permitted to charge an average cost for certain of its services. These fees shall be placed in a specific dedicated revenue account to be used for these services. Committee amendment A to H.P. 246, L.D. 299 (107th Legislature)

Given the above legislative scheme, it is certainly fair to conclude that payments by the County to the Laboratory for the services of its chemists as witnesses in criminal prosecutions are not only reasonable but also consistent with the Legislature's intent. In fact, the totality of the legislation renders it far easier to justify such payments than to justify a refusal to make them. Accordingly, I believe that it is entirely proper for your office to authorize the payment of witness fees and mileage for State chemists.

I hope this letter answers your question. Please let me know if you need any additional information.

Very truly yours,

Stephen L. Diamond

STEPHEN L. DIAMOND
Assistant Attorney General

SLD/rh