

MAINE STATE LEGISLATURE

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30 M.R.S.A. 2

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DEPARTMENT OF THE ATTORNEY GENERAL
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May 26, 1977

John E. Welch, Esquire
District Attorney
Aroostook County Courthouse
Houlton, Maine 04736

Dear Mr. Welch:

We are writing in answer to your letter of April 21, 1977, regarding payments of expenses to Judges of Probate. The question arises from the fact that while Houlton is the shire town of Aroostook County and is the place at which probate records are kept and the place at which the probate court is in continuous session, the present Probate Judge resides in Presque Isle. The question is whether the Judge is entitled to mileage plus lunch expenses on those days which he travels from Presque Isle to Houlton to hold court. Our answer to this question is that it is a matter primarily for decision by the Aroostook County Commissioners.

Probate judges are elected county officials and details of their compensation and expenses are covered in statutory sections which are different than those for District Court Judges and Superior Court Justices. The salaries, other fees, costs or emoluments for county officials, including judges of probate, are set in 30 M.R.S.A. § 2. The salary of the Aroostook County Judge of Probate is set by that section at \$6,581 per year, and another part of that section states: "The salaries mentioned in this section shall be in full compensation for the performance of all official duties by those officers and judges." Section 2 continues by stating, "County Commissioners shall allow to the officers, excepting clerks of court, all office expense, clerk hire and travel which are necessary, just and proper to the performance of their official duties." (emphasis supplied) Therefore, it appears that the County Commissioners should decide whether the mileage and lunch expenses of the Judge of Probate are "necessary, just and proper" to the performance of his duties.

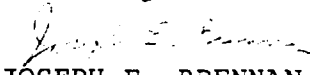
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It should be noted that there are two statutory sections which address the question of such expenses in specific cases. In 4 M.R.S.A. § 304 it is stated, in part, that ". . . when hearings are held at other places than those fixed for holding the regular terms of court, the Judge shall be allowed, in addition to his regular salary, \$5 per day and actual expenses which shall be paid by the State unless otherwise provided by law." In addition, 4 M.R.S.A. § 306 provides that when a judge of probate holds court or a hearing in a county other than the one in which he resides, reimbursement for expenses "actually and reasonably incurred" are to be paid by the county in which the court or hearing was held. However, these statutory sections do not appear to have a direct bearing upon the specific question you have presented.

Since you mentioned in your letter the practices which are used with regard to District Court Judges and Superior Court Justices, we will comment on these procedures for your information. It is our understanding that many Justices of the Superior Court are not assigned to a specific courthouse and that they must travel frequently to locations where the court is in session. Therefore, as a general rule, the Justices receive mileage from their doorstep to the appropriate courthouse, but not if this is within the same town in which they reside. The Justices are also reimbursed for their noon meal when they are away from home overnight and for their evening meal when they are sitting away overnight or working past normal business hours. Expenses of lodging are reimbursed when such lodging is required. It is also our understanding that these guidelines were adopted to conform generally to the regulations that apply to regular state employees with regard to reimbursement for expenses. The general guidelines with regard to the District Court Judges are substantially the same as those noted above for the Superior Court Justices, except for the fact that there are more District Court Judges who are permanently assigned to one location, and in such cases they are not paid mileage from their doorstep if they reside in the same county as their courthouse.

We have included the foregoing information in the hope that it may be of assistance. However, as previously stated, it is our opinion that the decision with regard to payment of expenses in any specific case is a matter which should be decided by the county commissioners of the specific county.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB/ec

cc: Hon. James P. Dunleavy
Hon. John L. Martin

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