

MAINE STATE LEGISLATURE

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Board of Optometry: Payment to Secretary
32 M.R.S.A. § 2502

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AUGUSTA, MAINE 04333
April 3, 1978

George S. Bournakel, O.D.
Secretary-Treasurer
Maine State Board of Optometry
168 East Avenue
Lewiston, Maine 04240

Re: Per diem payments for the Secretary of the Board

Dear Dr. Bournakel:

This responds to your request of March 10, 1978 for an opinion of this Office concerning the question of whether the Secretary of the Board is entitled to receive per diem payments as well as his \$500 annual stipend. Specifically your question is whether the fact that the statute provides a \$500 per year salary for the Secretary is meant to preclude the Secretary from receiving the \$25 per diem to which Board members are entitled, or whether the law intended the Secretary to receive the \$25 per diem in addition to his \$500 salary. I hope the following discussion is helpful.

The statutes dealing with officers and compensation of the Board of Optometry have undergone several changes since the 1964 codification of the statutes. In 1964, Title 32 M.R.S.A. § 2502 provided in pertinent part:

The members of the Board shall each receive \$10 for each day actually engaged in the duties of his office, and actual expenses incurred in connection therewith, except that the Secretary of said Board shall receive an annual salary of \$200.

Chapter 125 of the Public Laws of 1967 (L.D. 705) increased the per diem to \$25 and the Secretary's salary to \$500. In addition, L.D. 705 added the following words: "And the per diem shall be allowed to the Secretary only when engaged in Board duties away from his residence or office." In 1973 the section was amended again and the language limiting per diem to times when the Secretary is away from his office or residence was deleted. The section currently reads:

The members of the Board shall each receive \$25.00 for each day actually engaged in the duties of his office, and actual expenses incurred in connection therewith, except that the Secretary of said Board shall receive an annual salary of \$500.

There is no history in the Legislative Record relating to any of these changes.

In determining what the intent of the law is, all of these statutes must be looked at together. The statutes from 1964 until 1967 were silent on the question of whether or not the Secretary was entitled to per diem in addition to his salary. From 1967 until 1973 the statute provided that the Secretary was allowed per diem only when engaged in Board duties away from his residence or office. From 1973 until the present the statute was again silent as to the Secretary's right to receive per diem. In general, in construing a statute, no word should be treated as surplus if a reasonable interpretation supplying meaning and force to those words is possible. Finks vs. Maine State Highway Commission, 328 A.2d 791 (Maine 1974). In applying this principle to the statutory history of the statute in question, it is clear that the language added by Chapter 125 of the Public Laws of 1967 limiting the Secretary's eligibility for per diem must have meant something. The clear implication of this language is that the legislature already understood the Secretary to receive per diem, and intended by adding this provision to limit the eligibility for that per diem to the situation in which the Secretary was required to leave his office or his residence in order to perform his Board duties.

The fact that the Legislature deemed it necessary to explicitly limit the availability of per diem to the Secretary, gives rise to the implication that the Secretary was always understood by the Legislature to be entitled to receive per diem despite the fact that he also received a salary. Similarly, the deletion of the limitation on the availability of per diem to the Secretary in the 1973 amendment would give rise to the inference that the Secretary is now again entitled to per diem whether he is working in his office or his home or is away from his home in the performance of his Board duties.

Another useful aid in determining the meaning of statutes relating to administrative boards or agencies is the interpretation of those statutes which has been given to them by the Board or agency itself, especially if this interpretation has continued unchallenged and unquestioned over a long period of time. In the present case you have indicated that it has always been the practice of the Board of Optometry to pay per diem to its Secretary, despite the fact that the Secretary also receives an annual salary. Based on these two factors, i.e., the fact that the statutory amendment in 1967 must be presumed to have some meaning, and the long standing administrative interpretation in favor of the Secretary receiving per diem, I conclude that the statute was intended and is intended to permit the Secretary to receive the \$25 statutory per diem in addition to his annual salary.

Sincerely yours,

Kate Clark Flora

KATE CLARK FLORA

Assistant Attorney General

KCF:jg

1/ This would be in accordance with the normal use of per diem, which is to provide living expenses for someone when they were required to be away from their home during the course of their employment.