

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

January 7, 1985

Honorable Dan A. Gwadosky  
House of Representatives  
State House Station #2  
Augusta, Maine 04333

Dear Representative Gwadosky:

This will respond to your letter of December 24, 1984, in which you seek this Department's interpretation of Chapter 812 of the Public Laws of 1983, "AN ACT to Establish Standards and a Policy for the Compensation of Members of Boards, Commissions and Similar Organizations" (effective July 25, 1984). In particular, you have asked whether certain pre-hearing and post-hearing activities of members of the State Claims Board are compensable under the provisions of 5 M.R.S.A. § 12002-B. For the reasons discussed below, it is the Opinion of this Department that the members of the State Claims Board may receive payment of compensation and reimbursement of expenses for holding pre-hearing conferences and for time spent in researching and preparing the formal decisions of the Board as required by law.

The State Claims Board, as established by the Legislature (5 M.R.S.A. § 12004(2) and 23 M.R.S.A. §§ 151-152), is empowered "to make awards of just compensation in highway condemnations and to establish before such a board a procedure designed to afford to any interested party an opportunity to appear, present his case and have his rights fully protected without the necessity of retaining professional assistance." 23 M.R.S.A. § 151. The Board is specifically authorized "to make rules and regulations and prescribe forms to secure a speedy, efficient and inexpensive disposition of all proceedings." 23 M.R.S.A. § 152. Upon the filing of a petition by the Department of Transportation, the Board is required to schedule a hearing "at the earliest possible

date," for the purpose of making an award of just compensation. 23 M.R.S.A. § 156. "As promptly as possible" after the hearing, the Board is required to make an award in writing specifically addressing the issues identified in 23 M.R.S.A. § 156(1)-(8) including the amount of the award, the amount of interest, the amount of withholding and the elements of damage.

By rule, the Board has authorized its Chairman or his designee to hold pre-hearing conferences in order to narrow the issues at the hearing and to expedite the proceedings before the Board. In some cases of a complex nature, it is not possible for the Board to issue a written decision immediately after the hearing. In those situations, the Chairman or his designee, with the assistance of the Board's clerk, may be required to research and draft a written decision for adoption by the Board. In your letter of December 24, 1984 you ask whether the payment of compensation and the reimbursement of expenses for such pre-hearing conferences and for post-hearing research and decision-writing is permissible pursuant to 5 M.R.S.A. §§ 12002-A and 12002-B, as enacted by P.L. 1983, c. 812. This Department concludes that it is.

Effective July 25, 1984, and by virtue of P.L. 1983, c. 812, the Legislature established specific standards and a policy for the payment of compensation and expense reimbursement to members of certain boards, commissions and similar organizations.<sup>1/</sup> With respect to the payment of a daily rate of compensation, 5 M.R.S.A. § 12002-B(1) provides that where it is authorized, it "may be paid only for a member's:"

- A. Actual attendance at meetings of the board within the State called by the chairman or by a majority of the members of the board;
- B. Actual attendance at public hearings held by the board within the State to fulfill the duties and responsibilities of the board;
- C. Actual attendance at meetings within the State of groups advisory to the board;  
or

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<sup>1/</sup> The State Claims Board is subject to the provisions of Chapter 812, and its members are authorized to receive \$100 per day as compensation plus expenses. 5 M.R.S.A. § 12004(2)(A)(4).

D. Participation in activities within the State necessary for fulfilling the responsibility of the board or achieving an objective required of the board.<sup>2/</sup>

Subsection 2 of 5 M.R.S.A. § 12002-B prohibits the payment of compensation "to any board member for any work in preparation or review of material for any meetings or hearing of any board." Moreover, payment of compensation is not permitted for out-of-state meetings or conferences "unless attendance is mandatory for training purposes." 5 M.R.S.A. § 12002-B(2).

Applying these statutory provisions to pre-hearing conferences and post-hearing research and decision-writing by the Chairman of the State Claims Board, or his designee, it is the Opinion of this Department that these activities satisfy the criteria of 5 M.R.S.A. §§ 12002-A and 12002-B for the reimbursement of expenses and the payment of compensation. The holding of pre-hearing conferences is clearly an activity "necessary for fulfilling the responsibility of the board or achieving an objective required of the board." 5 M.R.S.A. §§ 12002-A(E) and 12002-B(1)(D). In view of the fact that the State Claims Board is statutorily directed to provide for a "speedy, efficient and inexpensive" procedure in making awards of just compensation in highway condemnation cases, the holding of pre-hearing conferences designed to streamline the issues to be resolved by the Board would appear to be the type of activity which the Legislature contemplated would be compensable under Chapter 812.<sup>3/</sup> Similarly, since the Board is statutorily mandated to issue

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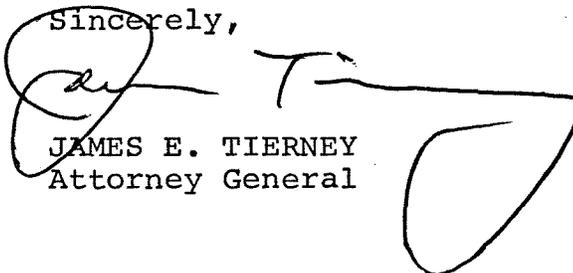
<sup>2/</sup> With respect to the payment of expenses, 5 M.R.S.A. § 12002-A basically parallels § 12002-B governing the payment of compensation, with the exception that the reimbursement of expenses for the actual attendance of out-of-state meetings is permitted if it "is necessary to the purpose of the board." 5 M.R.S.A. § 12002-A(D).

<sup>3/</sup> 5 M.R.S.A. § 12002-B(2), prohibiting compensation "for any work in preparation or review of material for any meetings or hearing of any board," does not require a different conclusion. In this Department's view, that language was intended to prohibit the payment of compensation for the review of material preparatory to a hearing of a board, not to forbid compensation for a pre-hearing conference specifically authorized by a rule of the Board.

written decisions, the payment of compensation and the reimbursement of expenses for post-hearing research and decision-making is, in this Department's Opinion, permissible pursuant to 5 M.R.S.A. § 12002-A(E) and § 12002-B(1)(D).

I hope this information is helpful to you, and please feel free to contact me if this Office can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'James E. Tierney', is written over the typed name. The signature is stylized with a large loop at the end.

JAMES E. TIERNEY  
Attorney General

JET/ec