

# 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

September 9, 1985

Frederick P. O'Connell, Esq.  
Secretary, State Board of  
Assessment Review  
P.O. Box R  
Augusta, Maine 04330

Dear Mr. O'Connell:

This will respond to your letter of July 22, 1985 in which you request this Department's opinion as to whether certain activities of the members of the State Board of Assessment Review are compensable under the provisions of 5 M.R.S.A. §§ 12001-A and 12002-B, as amended by Chapter 295 of the Public Laws of 1985. In particular, you have asked whether members may be entitled to compensation and reimbursement of expenses for reviewing material prior to a Board hearing and preparing and writing written decisions of the Board. You have also asked whether the Chairman of the State Board of Assessment Review is entitled to compensation and reimbursement of expenses for meetings with the Secretary of the Board in connection with the ongoing administration of the Board. For the reasons discussed below, it is the opinion of this Department that the Chairman and members of the State Board of Assessment Review may receive compensation and reimbursement of expenses for the activities described above.

The answers to your inquiries appear to be found in the recent amendments to 5 M.R.S.A. §§ 12001-A and 12001-B. See P.L. 1985, c. 295. As amended, effective June 10, 1985, 5 M.R.S.A. § 12001-B(1-A) provides:

A daily rate of compensation may be paid to the following persons for the preparation of a written decision of the board:

A. The chairman of any board who is required by law to prepare and issue a written decision of the board; and

B. A member of the board who has been assigned to serve as a hearing examiner in an adjudicatory proceeding.

Payment of compensation as provided in this subsection shall be provided only in the event that a statutorily required written decision cannot be prepared at a meeting or hearing of the board and shall not exceed the payment of five days of compensation for the preparation and issue [sic] of a written decision.

The State Board of Assessment Review is clearly the type of agency which is required to issue written decisions and therefore, in appropriate circumstances as provided in Section 12002-B(1-A) of Title 5, the Chairman or a member of the Board who is required to prepare and issue a decision of the Board may be entitled to compensation for that work. See 36 M.R.S.A. §§ 486, 843(2); 5 M.R.S.A. § 12005(2).

Because the State Board of Assessment Review adjudicates disputes, the members of the Board may be entitled to the payment of compensation for the preparation and review of materials prior to an actual meeting or hearing. As amended by Chapter 295 of the Public Laws of 1985, Section 9, 5 M.R.S.A. § 12002-B(2) now provides, in relevant part, as follows:

No daily, hourly or annual rate of compensation may be paid to any board member for any of the following:

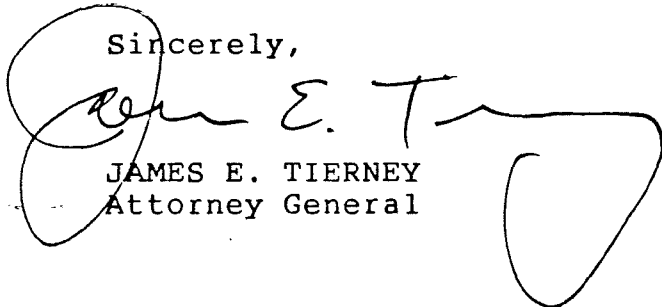
A. Preparation or review of materials for any meetings or hearings of any board, unless the member is preparing or reviewing materials in his capacity as the assigned hearing examiner in an adjudicatory proceeding.

Where a member of the State Board of Assessment Review has been assigned as a hearing examiner in an adjudicatory proceeding for the Board, the Legislature has now authorized the payment of compensation for the preparation and review of materials in connection with that adjudicatory proceeding. The legislative authorization for the payment of compensation for the review and preparation of materials is limited to those situations where the Board member is acting as a hearing examiner and is preparing for an adjudicatory proceeding. It does not authorize the payment of compensation for the preparation or review of materials in other contexts.

Finally, you have asked whether the Chairman of the State Board of Assessment Review is entitled to the reimbursement of expenses and the payment of compensation for meetings with the Board regarding the ongoing administration of the Board. 5 M.R.S.A. § 12002-B(1)(D), as amended by P.L. 1985, c. 295, § 7, provides that the authorized rate of compensation may be paid for a board member's "[p]articipation in official business of the board required by law or by rule of the board or a procedure which is necessary to fulfill the statutory responsibilities of the board, but shall not include any of the prohibited activities as defined in subsection 2."<sup>1/</sup> The only prohibited activity specified in Section 12002-B(2) arguably applicable here would be that contained in paragraph B, which prohibits the payment of compensation or expenses for the "[c]ompletion of work, except as provided in Section 1-A, following meetings or hearings of the board." In this Department's view, this provision was not intended to prohibit the payment of compensation or the reimbursement of expenses to the chairman of a board or commission who has administrative responsibilities regarding the operation of that board or commission. It is, of course, assumed that compensation would not be requested or received for minor expenditures of time by a board chairman and that in all cases the request for payment must be reasonable.

I hope this information is helpful to you, and please do not hesitate to contact this office if we can be of further assistance.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "James E. Tierney". The signature is written over the typed name and title.

JAMES E. TIERNEY  
Attorney General

JET/ec

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<sup>1/</sup> 5 M.R.S.A. § 12002-A(1)(E), as amended by P.L. 1985, c. 295, § 6, contains a virtually identical provision regarding payment of expenses.