

MAINE STATE LEGISLATURE

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

April 12, 1995

Senator John J. O'Dea
Maine State Senate
State House Station #3
Augusta, ME 04333

Dear Senator O'Dea:

I am writing in response to your recent inquiry asking whether the action of the President of the Senate and the Speaker of the House in adopting a policy limiting the ability of legislators to receive reimbursement for expenses for lodging and meals on the day before a session of the Legislature is consistent with 3 M.R.S.A. § 2. For the reasons which follow, it is the Opinion of this Department that the policy adopted by the President and the Speaker is not consistent with the statute.

3 M.R.S.A. § 2, third paragraph, provides, in pertinent part

Each member of the Senate and House of Representatives shall be entitled to a meal allowance in the amount of \$32 and a housing allowance in the amount of \$38 for each day in attendance at sessions of the Legislature and for each day the member occupies overnight accommodations away from home either immediately preceding or immediately following attendance at daily sessions of the Legislature.

The statute thus clearly contemplates that if a legislator actually occupies overnight accommodations on the day immediately preceding a session of the Legislature, the legislator is entitled to a housing allowance of \$38 and a meal allowance of \$32.

On February 17, 1995, the President of the Senate and the Speaker of the House issued a document entitled "Rules Regarding Payment of Expenses During the Regular Session" (copy attached) which included the following provisions

Only those legislators whose round trip is 150 miles or more may claim the "night before."

* * *

The rationale for this rule is that legislators who live within 75 miles of Augusta can leave their home at a reasonable hour in the morning in order to reach the State House for a 9:00 a.m. committee meeting or work session.

We will authorize reimbursement of \$58 to those legislators who claim the "night before" (\$38 lodging allowance and \$20 for dinner):

Thus the President and the Speaker indicated that, notwithstanding the provisions of 3 M.R.S.A. § 2, they would not authorize a meal and housing allowance for legislators actually staying overnight in Augusta the night before a legislative session if those legislators lived less than 75 miles from Augusta; and, for those legislators living farther than 75 miles from Augusta and actually staying overnight the night before a legislative session, a meal allowance of \$20 rather than \$32, would be authorized.

The first question which your inquiry raises is the authority of the President and the Speaker to issue such a policy. Presumably, the President and Speaker acted pursuant to the ninth paragraph of 3 M.R.S.A. § 2, which provides

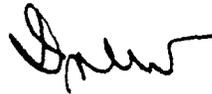
The President of the Senate or the Speaker of the House shall, at all times, whether the Legislature be in session or not, have the authority to approve accounts and vouchers for payment.

While this section clearly authorizes the President and Speaker to ensure that members of the Legislature making claims for reimbursement for overnight accommodations actually incurred overnight accommodation expenses, it does not appear to give the President or the Speaker the authority to alter the terms under which legislators are entitled to such reimbursement. Thus, if a legislator were to seek reimbursement for overnight accommodations the night before a legislative session, the President and the Speaker are authorized to require documentation of such overnight accommodation, but once such documentation has been provided, they have no discretion to alter the legislatively-mandated payment of \$38 housing allowance and \$32 meal allowance.

That being the case, the Speaker and the President were without authority to impose the provisions of the February 17, 1995 policy not only with regard to the amount of the meal allowance for legislators staying overnight the night before a legislative session, but also with regard to the distance which a member of the Legislature must travel in order to be entitled to a housing and meal allowance for that day. Consequently, if the President and the Speaker wish to achieve the financial savings to the State which their policy would realize, they should seek to amend 3 M.R.S.A. § 2, either to amend the specific provision relating to the meal and housing allowances in order to make it consistent with their policy, or to amend the provision relating to their authority to give them the discretion to vary the terms of the statute in the interest of saving money.

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



ANDREW KETTERER
Attorney General

AK:sw

cc: President Jeffrey H. Butland
Speaker Dan A. Gwadosky
Representative Kyle W. Jones



117th Maine Legislature

Jeffrey H. Bullard
President of the Senate

Jan A. Gwadosky
Speaker of the House

February 17, 1995

TO: Members of the 117th Legislature

FROM: Jeffrey H. Butland, President of the Senate
Dan A. Gwadosky, Speaker, of the House

SUBJECT: Rules Regarding Payment of Expenses During the Regular Session

As those members who served in the 116th Legislature know, we have made a concerted effort in recent years to reduce our overall level of spending. One of the most effective measures in this regard has been the adoption of rules to govern the reimbursement of weekly expenses.

We have both now had an opportunity to review the rules that have been used in previous years, as well as some of the unique situations that arise from week to week. At this point, we have agreed to employ the following rules related to the reimbursement of expenses for the balance of the session, pursuant to the authority granted to us by law.

The "Night Before" the First Legislative Day

- "Legislative Day" applies to legislative sessions and authorized committee meetings.
- Only those legislators whose round trip is 150 miles or more may claim the "night before." This rule will be applied even though legislators whose round trip is less than 150 miles check "rental."

The rationale for this rule is that legislators who live within 75 miles of Augusta can leave their home at a reasonable hour in the morning in order to reach the State House for a 9 a.m. committee meeting or work session.

- We will authorize reimbursement of \$58 to those legislators who claim the "night before" (\$38 lodging allowance and \$20 for dinner).
 - Please note that you will be reimbursed for the "night before" only if you check the appropriate box on the expense form.
- If a member who lives within 75 miles of Augusta feels that he or she deserves special consideration, the legislator may request an exception to the rule from the presiding officer.

Payment for the Days Between Session Days

- All legislators who are in Augusta for authorized business on non-session days will be reimbursed the full \$70 allowance.
- "Authorized business" includes the following:
 - Public hearings, work sessions and other scheduled meetings of the committee(s) to which a legislator has been appointed;
 - Public hearings on bills on which a member is a prime sponsor or lead co-sponsor;
 - Work sessions of the Appropriations Committee on the budget that deal with departments and/or policy issues within the jurisdiction of a legislator's assigned committee(s);
 - Legislative Council meetings, if a member is the sponsor of a pending after deadline request or the initiator of any other item on the Council agenda;
 - Meetings in Augusta which involve both constituents and members of a state agency that are designed to resolve constituent issues and/or problems;
- Members who have any other business on non-session days need to seek the approval of their presiding officer in order to receive expenses for the day.

We have instructed the Executive Director's Office to apply these rules in processing your weekly expense vouchers. Again, our objective in establishing these rules is to endeavor to reduce the Legislature's expenditures. We have tried to develop standards for reimbursement that are both reasonable and equitable.

We sincerely appreciate your cooperation and would be happy to answer any questions you may have.