

OFFICIAL OPINION NO. 72-56, Board of Finance Regulations as to reimbursement promulgated in pursuance to SDCL 3-9-2 do not apply to personnel in the judicial branch of state government.

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

October 22, 1972

Miss Alice Kundert
State Auditor
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 72-56

Board of Finance Regulations as to reimbursement promulgated in pursuance to SDCL 3-9-2 do not apply to personnel in the judicial branch of state government.

Dear Miss Kundert:

You have requested my official opinion in answer to the following question:

May the Board of Finance, a branch of the executive department of state government, determine reimbursement for the expenses for meals and lodgings for members of the judicial branch of state government and its agents?

In many instances statutes provide that certain persons connected with the judicial department of state government shall be reimbursed or receive the actual or necessary expenses for food and lodging when acting in their official capacities outside the county of their residence. Among such statutes are SDCL 16-1-8, 16-6-6, 16-6-28 and 16-16-4.

In pursuance to SDCL 3-9-2 the State Board of Finance, clearly an agency of the executive department of state government, has fixed reimbursement for expenses for meals and lodgings incurred by state officers and employees in the performance of the duties of such office when absent from his headquarters. I believe that even the members of the State Board of Finance will admit that such expenses as so fixed in many cases bear no semblance to the actual costs of meals and lodgings. Rather, such "reimbursement" has been arbitrarily fixed with an appreciation of the public funds available for travel and lodging, and the extent of such travel by state officers and employees.

The propriety of the rates as fixed is not herein in question. Rather, the question is, do these regulations, fixing an arbitrary amount of "reimbursement," apply to the reimbursement or payment of food and lodging for members of the judicial department of government.

It is my opinion that such rules and regulations as promulgated by the Board of Finance are not applicable to the judicial branch of government as to those necessary expenses incurred when acting in their official capacity. Your specific question is answered, NO.

I have reached this conclusion from a consideration of the case material which recognizes that the executive cannot infringe upon the functions and responsibilities of the judiciary or members of the judicial branch of government in the performance of their official duties. There is little argument: that can be made that when the legislative branch has authorized a person in the judicial branch of government to be paid or be reimbursed his actual or necessary costs for food and lodging, that person expects such reimbursement or payment to be in the amount exactly expended therefor. To say that such payment or reimbursement: is only going to be at an arbitrary amount as determined by a person or persons in the executive branch of government, may amount to an encroachment upon judicial functions. Certainly this difference between "actual costs" and "arbitrarily determined" costs can only lead to conflict between two great departments of government- the judicial and the executive.

The cardinal rule of statutory interpretation is to ascertain the legislative intent in enacting any particular statute. When such legislative intent is determined then the statute is to be interpreted according to this intent. It is also well established that if any statute is susceptible of two interpretations, one interpretation which raises grave constitutional doubts, and the other free of all constitutional doubts, that interpretation which is free of all constitutional doubts will be accepted as the proper interpretation.

The whole scheme of our government is based upon the separation of the three great branches of government. Many eminent writers have said that this is the genius of the American political system. The separation of powers is recognized both in the South Dakota Constitution and by our courts. In *Bandy v. Mickelson*, 73 S.D. 485, 44 N.W. 2d 341, 22 ALR (2) 1129, and *Dunker v. Brown County Board of Education*, 80 S.D. 193, 121 N.W. 2d 10, our court has stated that broad as the powers of the Legislature may be, the separation of powers as provided by the Constitution cannot be destroyed by a legislative act.

In view of this constitutional inhibition, and the fundamentals of statutory construction heretofore alluded to, there seems little question that SDCL 3-9-2 does not apply to setting reimbursements or compensation in the judicial branch of government.

It should be recognized that while I have determined that SDCL 3-9-2 does not apply to the judicial branch of state government, I am not thereby implying that the members of the judicial branch and their agents are granted carte blanche to misuse state funds. The use of state funds by the judiciary must be within reasonable limits. The Supreme Court of South Dakota by the Constitution is granted superintending control over all inferior courts. It has the authority to supervise the expenditures by members or agents of the judicial branch of government for those necessary expenses incurred when acting in an official capacity for which the individual may seek reimbursement. All claims for such reimbursement should be kept within the limits thereon as provided by the Supreme Court, and all such claims should be submitted to such court, or its designated agent, for approval before being presented to the State Treasurer for payment from public funds.

Respectfully submitted,

Gordon Mydland
Attorney General