

SCHOOLS:
COUNTY SUPERINTENDENT:)

meals and lodging are a part
of county superintendent's
traveling expenses, and
mileage shall be allowed
for travel outside his county.

February 19, 1948

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Honorable James T. Riley
Prosecuting Attorney
Jefferson City, Missouri

Dear Mr. Riley:

We have your letter of recent date which reads
as follows:

"I have been requested to secure your opinion
and interpretation regarding the travelling
expenses allowed county superintendents of
schools, under Section R.S. Mo. 10618.2 as
amended by Laws of Missouri, 1945, page 1709.

The above section provides that the county
superintendent shall receive 4¢ per mile
for each mile travelled. In addition to
the mileage payment, is the superintendent
entitled to be paid for meals and lodging?

Is the superintendent entitled to claim
mileage for travel outside of his county,
while attending meetings and conventions?

Your opinion on the above, respectfully
requested."

The section of the statutes to which you refer
in your letter (Laws 1945 p. 1709, Section 2) reads
in part as follows:

"The county superintendent of public schools
shall be allowed out of the county treasury
not to exceed twenty-five per cent of his
annual salary for actual and necessary
traveling expenses. * * * The county court
shall, upon presentation of his bill properly
setting forth his actual and necessary
expenditures for traveling expenses draw
a warrant upon the county treasury for the
payment of same. * * * Provided, when the
county superintendent shall furnish his own

conveyance, the rate allowed for mileage shall be four cents per mile for each mile actually and necessarily traveled. * * * *

By the above section, the county superintendent is entitled to be reimbursed for his "actual and necessary traveling expenses." To answer the first question submitted in your letter, it is, therefore, necessary to determine whether amounts expended by the County Superintendent for meals and lodging constitute actual and necessary traveling expenses. We must first determine whether they are a part of traveling expenses.

We do not find any cases in Missouri where the courts have ruled upon this precise question. However, we have found cases from other states in which this exact question has been before the courts. In *Van Veen v. Graham County*, 108 Pac. 252 (Ariz.), the Court was considering a statute which provided that the Court Reporter should be allowed his "actual traveling expenses in attending the district court away from his official residence." The reporter was claiming his board and lodging expenses as part of his actual traveling expenses, and the county was refusing to pay for these items, contending that they were not traveling expenses. In disposing of the case, the Supreme Court of Arizona said, l. c. 252:

"Our attention has not been called to any case in which the expressions 'actual traveling expenses' or 'traveling expenses' have been defined. The statutory provision above quoted is substantially the same as that contained in paragraph 1488, c. 19, of the Revised Statutes of 1901, which provides that he shall receive 'his actual traveling expenses in attending any district court.' Ever since the enactment of the 1901 provision, we are advised that it has been the uniform practice of district attorneys and boards of supervisors throughout the territory to construe the words 'actual traveling expenses' as including the board and lodging of the reporter during his attendance upon terms of court away from his home. In the absence of judicial construction of this or any similar statutory provision, the long-continued practical construction given to it by these officers is entitled to great,

if not controlling, weight. Avery v. Pima County, 7 Ariz. 26, 60 Pac. 702; Copper Queen, etc., Mining Co. v. Territorial Board, 9 Ariz. 383, 84 Pac. 511; U. S. v. Johnston, 124 U. S. 236, 8 Sup. Ct. 446, 31 L. Ed. 389; U. S. v. Finnell, 185 U. S. 236, 22 Sup. Ct. 633, 46 L. Ed. 890. Presumptively the Legislature which enacted the statute of 1907 was aware of the construction theretofore uniformly given the statute of 1901, and was satisfied therewith, or it would have changed it in the enactment of 1907, and the use by it of the words 'actual traveling expenses' may fairly be deemed an adoption of such construction. Copper Queen, etc., Mining Co. v. Territory, supra; U. S. v. Finnell, supra. We think the demurrer should have been overruled, and judgment rendered for the amount prayed upon the stipulated facts."

Likewise, in the case of State ex rel. v. McClure, 143 Pac. 477 (N. Mex.) the Court was considering a statute which provided "that the actual traveling expenses of district attorneys, incurred while in the discharge of their duties, shall be paid by the county in behalf of which same are incurred." The district attorney was claiming board and lodging as part of his actual traveling expenses, and the county was refusing to pay these items. In deciding the case, the court said, l.c. 478:

"* * * It was apparently the intention of the Legislature to reimburse district attorneys for actual traveling expenses, by which we understand that the Legislature intended to reimburse such officials for all actual expenses incurred by them while away from their usual abode, resulting from the necessity of their absence while engaged in the public business. While this opinion is limited to the question of whether or not items for board and lodging are to be included within the actual traveling expenses, and is not to be given a broader construction, we are clearly of the opinion that such items are proper charges against the several counties, when the same arise by reason of necessity of the district attorney's traveling upon public business of the counties against whom the charge is made. We therefore hold that the provisions of section 1, c. 54, Laws of 1913, allowing district

attorneys their 'actual traveling expenses' incurred while in the discharge of their duties, authorize the allowance to such district attorneys for board and lodging in the place where the district attorney contracts such expenses other than at his usual place of abode, provided such expense be incurred while such district attorney is in the discharge of official duties, to be paid by the county in behalf of which such expense is incurred, upon order of the court, to be supported by sworn statement of such items of expense."

The above cases are the only ones we have found which are directly in point except the case of State ex rel. v. Lagrave 42 Pac. 797 (Nev.). In the latter case the court held that board and lodging of the superintendent of public instruction were not a part of actual traveling expenses of that office. The Court reasoned that after an officer arrived at a place he was not "traveling". This was indeed a narrow view, and it is not in harmony with the other cases cited above. Evidently the Legislature of Nevada did not concur in the reasoning of the court in that case because it subsequently passed a statute expressly including "the cost of living, while absent from their places of residence" as part of the traveling expenses of each deputy superintendent of public instruction (L. Nev. 1911, c. 133).

We think there is no question but what the reasoning of the courts in the Arizona and New Mexico cases, above cited, is the correct reasoning. Public officials in Missouri have over a long period of time considered board and lodging as a part of the traveling expenses of public officials and employees, and such interpretation is entitled to great weight in deciding the question which you raise. It is hard to see how it could be contended that a man's board and lodging while away from home was not a part of his expenses of travel. One cannot travel without eating, and it is often necessary to secure lodging before a trip is completed. If, therefore, an officer is entitled under the law to his traveling expenses, he is certainly entitled to his food and lodging while on his trips.

Before traveling expenses could be said to be "necessary", the county superintendent would have to be traveling in the performance of duties enjoined upon him by law. He is required to travel in the performance of many of his duties. For instance, under

Section 10612, R.S. Mo. 1939, he is required to visit schools. Under Section 10613, L. 1945, p. 1675, the county superintendent is required to hold public meetings at different points in the county each year, and under Section 10617, L. 1945, p. 1676, the county superintendent is required to attend annual conventions called by the State Board of Education. The foregoing illustrations are examples of the necessity of the county superintendent traveling in the performance of his duties.

Your second question is whether or not the county superintendent is entitled to claim mileage for traveling outside of his county while attending meetings and conventions.

As pointed out above, the county superintendent is required to attend annual conventions called by the State Board of Education. These would likely be in counties other than his own. It would, therefore, be necessary for him to travel in order to get to these conventions. Section 2, Laws 1945, p. 1709, above cited, provides that the county superintendent shall be allowed his actual and necessary traveling expenses and provides that when he furnishes his own conveyance the rate allowed for mileage shall be 4¢ per mile. Said section does not limit the mileage allowance to travel within the county. The only limitation on the expense account of the county superintendent is that it shall not exceed for the year 25% of his annual salary. This office has heretofore ruled that in calculating the annual salary for the purpose of determining the maximum expense account of the county superintendent, the total compensation of the county superintendent, including stipulated salary, his allowance as supervisor of school transportation and his allowance for preparing budgets for the school districts shall be considered as his annual salary.

Conclusion

It is, therefore, the opinion of this office that a county superintendent is entitled to amounts expended by him for meals and lodging while traveling away from his home in the performance of duties enjoined upon him by law and that where he furnishes his own transportation he is entitled to an allowance of 4¢ per mile for each

mile actually and necessarily traveled even though
a part of such travel is outside of his own county.

Yours very truly,

HARRY H. KAY,
Assistant Attorney General

APPROVED:

J. E. TAYLOR, *T.E.*
Attorney General