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Statement of Position County Commissioner Per Diem Payments

In addition to an annual salary, a county commissioner may collect a per diem, provided that the requirements and limitations relating to per diems have been met.

County Board Action Required

The County Board must take some action if county commissioners are to be able to collect per diems. County commissioners may be paid a per diem in addition to their salary “for each day necessarily occupied in the discharge of their official duties while acting on any committee under the direction of the board.”¹ The county board must identify by resolution the duties that qualify for per diem payments. The board may then establish a schedule of per diem payments for service by individual county commissioners on any board, committee, or commission of county government.²

No Per Diem with High Salary

Minnesota law contains an important exception to a county commissioner’s ability to collect a per diem: If a county commissioner is paid a salary that is more than 50 percent of the salary of the governor, the commissioner may not be paid any amount, by per diem or otherwise, except as reimbursement for expenses, for attendance at meetings related to the business of any local government unit.³

Documentation Needed

County officials are responsible for making and preserving all records “necessary to a full and accurate knowledge of their official duties.”⁴ Payment of public funds by a county requires written documentation.⁵ When a per diem is claimed for a commissioner’s

¹ Minn. Stat. § 375.06, subd. 1 (does not apply to Hennepin, Ramsey and St. Louis Counties).

² Minn. Stat. § 375.055, subd. 11 (does not apply to Hennepin and Ramsey Counties); *see also* Op. Atty. Gen. 124a (April 28, 1994) (The Minnesota Attorney General concluded that commissioners are authorized to be paid a “per diem” for performing the duties of office, in addition to an annual salary, including work on committees.).

³ Minn. Stat. § 375.065.

⁴ Minn. Stat. § 15.17.

⁵ Minn. Stat. § 471.38.

Reviewed: February 2014
Revised: February 2014

2007-1021

This Statement of Position is not legal advice and is subject to revision.

committee work or service required by law, the county must make and preserve the records necessary to support payment.

Thus, any claim for a per diem payment must be based on documented activities by a commissioner that constitutes:

1. The duties of office, including work on committees (under direction of the board); or
2. Individual service required by law.

Committee work may include information gathering activities and liaison activities. For those counties that do not use committees, such activities will be part of an individual commissioner's board activities. In both instances, board or committee minutes serve as documentation to support the per diem payment. Board or committee minutes should confirm three aspects of the activity as committee work: First, that a matter is before the board or committee that necessitates the activity; second, that the activity has been authorized by the board or committee; and, third, that the commissioner has reported to the board or the committee on the results of the information gathering or liaison activities. Absent authorization in the minutes and a report to the board or committee (which should also be in the minutes), these per diem payments are questionable and, potentially, unauthorized by law.⁶ If counties have made such payments, repayment of the per diem payment may be requested.

Social Events

Attendance at parties, employee appreciation events, county fairs, festivals and parades are viewed as primarily social in nature. Mere attendance at social events does not constitute committee work. Absent documentation of legitimate committee or board work and specific authorization by the board or committee, the OSA does not consider social activities as qualifying committee work. The authorized activity that constitutes committee work must be identified in the per diem claim and documented in the minutes of the committee or board.

Attendance at Meetings with Groups or Individuals

Commissioners cannot claim a per diem payment whenever they meet with a constituent or group. However, commissioners often act as agents for the board or committees of the board in gathering information or acting as a liaison. As discussed above, the commissioners' role in performing these activities for the board or a committee must be documented in the committee minutes. The minutes should note the authorization of the meeting by the board or committee and should later reference the commissioner's report regarding the results of the meeting. When the board or a committee authorizes a

⁶ There may be instances where an explanation provided with the submitted per diem claim will be sufficient to document committee work.

commissioner to meet with a group or a single person to obtain information for a matter under consideration before the committee, a per diem payment is appropriate.

Joint Powers Boards

Many county commissioners serve on the boards of joint powers entities. Minnesota Statutes authorizes the joint exercise of powers by government units: “Two or more governmental units, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise any power common to the contracting parties or any similar powers”⁷

The joint powers board may set a per diem amount available to the board members who attend joint powers board meetings. When the joint powers board acts, it is exercising the common power of the participating government entities. When the joint powers board sets a per diem, no other per diem amount is applicable for this joint powers board activity. Commissioners may not receive a per diem payment from the joint powers board and, if this amount is less than their regular county per diem payment, submit a claim for the difference to their own county.

No More than One Per Diem Per Day

Generally, a county commissioner may only collect one per diem for each calendar day spent performing official duties.⁸ More than one per diem for a given day is only permitted if the county commissioner performs commissioner duties and also performs duties for a statutorily-separate body with independent statutory authority to compensate its members.⁹

⁷ Minn. Stat. § 471.59, subd. 1.

⁸ See Op. Atty. Gen. 124a (April 28, 1994), Question Four.

⁹ *Id.* The Minnesota Attorney General noted that, in 1975, the Legislature eliminated, for the most part, such separate authority. *Id.*