



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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FILE NO. S-1223

LEGISLATIVE BRANCH:
Travel Expenses

Honorable William A. Redmond
Speaker of the House
of Representatives
State of Illinois
Springfield, Illinois 62706

Dear Speaker Redmond:

I have your letter wherein you ask whether members of the Illinois General Assembly may be compensated for mileage incurred when traveling to the seat of government for the convening of a session of the General Assembly when the General Assembly has previously convened and adjourned during the same week.

Section 1 of "AN ACT in relation to the compensation and emoluments of members of the General Assembly" (Ill.

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Rev. Stat. 1976 Supp., ch. 63, par. 14) provides, in pertinent part, as follows:

" * * *

Mileage shall be paid at the rate of 15 cents per mile for the number of actual highway miles necessarily and conveniently traveled by the most feasible route to be present upon convening of the sessions of the General Assembly by such member in each and every trip during each session in going to and returning from the seat of government, to be computed by the Comptroller. A member traveling by public transportation for such purposes, however, shall be paid his actual cost of that transportation instead of on the mileage rate if his cost of public transportation exceeds the amount to which he would be entitled on a mileage basis. No member may be paid, whether on a mileage basis or for actual costs of public transportation, for more than one such trip for each week the General Assembly is actually in session. * * *"

You state in your letter that the Comptroller has refused to pay travel expenses for the second session which occurred in the same week. It is your contention that expenses for the second trip may be paid because the General Assembly was not in continuous session for the whole week, reconvening on Saturday after having been in recess for two days.

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The primary responsibility for the interpretation of this provision is with the Comptroller and assuming that the statute is ambiguous, my responsibility is limited to determining whether his interpretation is reasonable.

The crux of the problem is the interpretation of the proviso:

"* * * No member may be paid, whether on a mileage basis or for actual costs of public transportation, for more than one such trip for each week the General Assembly is actually in session. * * *"

This proviso was added in 1921 and read then as follows:

"* * * Provided, that the number of such trips shall not exceed one for each week the General Assembly is actually in session; * * *"

It assumed the present form in 1967.

The general rule with regard to interpreting provisos has been stated in Stafford v. Wesse (1943), 321 Ill. App. 183, 185 as follows:

" * * *

It was the conclusion of Lord Coke that no real distinction existed between a saving clause and a proviso. He considered each of them something engrafted on a preceding enactment. And today, it is generally considered that each is a limitation or exception to a grant made or

authority conferred. The office of each is to except some particular case or situation from a general principle or enactment. Their effect is to qualify, restrain, or otherwise modify the general language and enacting clause.

The purpose and function of a proviso are those of limiting the language of the enactment, and its effect is to restrict the general language used, to the prescribed and defined limits. Its effect upon the limitation or exception to a statute is general in application, and its purpose is simply to qualify the language of the enactment in the manner indicated. The sound interpretation and meaning of a statute which contains a proviso, are that the enactment and the proviso shall be taken and construed together. Thus it is clear that its effect must reach and control the construction of the general language of the enactment, so far as the applicability of the proviso extends. Since its office and function are to restrict the general language used, it is to be limited to the objects fairly within its terms and should be considered in relation to the enactment to which it relates in such a manner as to give effect to the legislative intent.

* * *

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Although the first sentence of section 1 of the Act appears to provide payment for expenses for an unlimited number of trips to the State capital to attend meetings of the General Assembly, the proviso clearly limits the payment to no more than "one such trip for each week the General Assembly is actually in session". While it can be argued

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that the intent of the statute was to prohibit reimbursed trips from home to the seat of the Government when the General Assembly was in continuous session each day during a week in which there were no intervening days, I do not see that such an interpretation is required.

I am of the opinion that the Comptroller's interpretation is reasonable.

Very truly yours,

A T T O R N E Y G E N E R A L