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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Richard F. Allen
Commissioner, Department of Corrections
301 South Ripley Street
Post Office Box 301501
Montgomery, Alabama 36130-1501

Correctional Officers - Corrections
Department - Travel Expenses - Per Diem
- Subsistence Allowance

In addition to the subsistence allowance provided for in section 36-21-2 of the Code of Alabama, correctional officers assigned to various posts that require the officers to be away from their home base for more than 6 hours are entitled to receive the allowances set out in section 36-7-20 of the Code of Alabama. Moreover, correctional officers that travel out of state are also entitled to be reimbursed for any out-of-pocket expenses incurred pursuant to section 36-7-21 of the Code of Alabama.

Dear Commissioner Allen:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Is there any statutory obligation that would require the Alabama Department of Corrections ("ADOC" or "Department") to pay correctional officers who receive a subsistence allowance, in accordance with section 36-21-2 of the Code of Alabama, the additional compensation for travel allowances, as specified in section 36-7-20 of the Code, when they are assigned

“hospital duty” or medical transports from their “house base?”

Is there any statutory obligation that would require the ADOC to pay correctional officers who receive a subsistence allowance, in accordance with section 36-21-2 of the Code, the additional compensation for travel allowances, as specified in section 36-7-20 of the Code, when they are assigned to the Transfer Division and travel in state?

Is there any statutory obligation that would require the ADOC to pay correctional officers who receive a subsistence allowance, in accordance with section 36-21-2 of the Code, the additional compensation for travel allowances, as specified in section 36-7-20, when they are assigned to the Transfer Division and travel out of state, but not overnight?

FACTS AND ANALYSIS

In your letter of request, you inquire as to whether the Department of Corrections is statutorily required to pay travel expenses allowance set forth in section 36-7-20 of the Code of Alabama, in addition to the subsistence allowance received by its correctional officers. More specifically, your three questions ask whether the Department must pay the correctional officers that are assigned to the following: the Transfer Division and travel within the state, the Transfer Division and travel out of state, the medical transports, or hospital duty. In your letter, you described these various assignments as follows:

Correctional officers are considered “law enforcement” and receive subsistence (meal allowance) at the rate of twelve dollars (\$12) per day worked in accordance with section 36-21-2 of the Code of Alabama. Correctional officers assigned to a specific correctional facility are given an array of tasks. Mostly, they are performed within the correction facility itself and consist of checking inmates in and out of institutions, searching inmates, driving transfer vehicles, inspecting and keeping screens and other safety equipment in perfect condition, and keeping

transfer vehicles in good condition. Occasionally, correctional officers are assigned to provide security for inmates admitted to a hospital within the community, commonly called "hospital duty," or provide security by transporting an inmate to a medical appointment at the office of a medical provider outside the confines of the prison.

There are also "Transfer Agents." These correctional officers are not assigned to work inside a specific prison but instead are assigned a "home base" and provide the regular transfer of inmates among the various prisons throughout the State of Alabama. Those correctional officers are assigned to the Transfer Division, are not assigned a specialized personnel classification, and are in the Correctional Officer I classification. These officers are responsible for transferring inmates from institution-to-institution or institution-to-court. Their primary duty is to ride the highways with these inmates. Either of these correctional officers, the officers assigned to a specific prison or "Transfer Agents", may work between eight (8) and sixteen (16) hours per day.

Section 36-21-2 entitles law enforcement officers to receive subsistence compensation in addition to all other compensation, expenses, and allowances provided these officers. Specifically, this section states, in pertinent part, as follows:

(a) Any law enforcement officer of the State of Alabama who is employed by the Department of Public Safety, Department of Industrial Relations, Department of Conservation and Natural Resources, Alabama Alcoholic Beverage Control Board, Department of Agriculture and Industries, Alabama Department of Forensic Sciences, the Transportation Enforcement Division of the Alabama Public Service Commission, Alabama Liquefied Petroleum Gas Board, the Alabama Criminal Justice Information Center, the Alabama Peace Officers' Standards and Training Commission, the Alabama Securities Commission, the State Port Authority, probation and parole officers of the Alabama Board of

Pardons and Paroles, fire marshals of the Department of Insurance, revenue enforcement officers of the Department of Revenue, law enforcement officers of the State Capitol Police, any investigator employed by the Alabama Ethics Commission, any investigator employed by a district attorney on a full-time basis, the marshal or any deputy marshal of the state appellate court, or correctional officers of the Department of Corrections shall receive a subsistence allowance of twelve dollars (\$12) for each working day of a pay period while engaged in the performance of the duties as a law enforcement officer. ***This allowance shall be in addition to all other compensation, expenses, and allowances provided those officers.***

ALA. CODE § 36-21-2 (2001) (emphasis added).

Section 36-7-20 of the Code of Alabama, which sets out the expense allowances to which state employees are entitled, states, in pertinent part, as follows:

(a) Except as otherwise provided in Section 36-7-21, the amount allowable to a person traveling inside the State of Alabama in the service of the state or any of its departments, institutions, boards, bureaus, commissions, councils, committees, or other like agencies for expenses other than transportation may be fixed by the Governor at not less than seventy-five dollars (\$75) per day, and this amount shall be uniform in operation as to all persons traveling within the state on official business.

(b) No travel allowance shall be paid for a trip of less than six hours' duration. For travel which does not require an overnight stay, the traveler shall be paid a meal allowance of 15 percent of the regular per diem rate for a trip of from six to 12 hours' duration, and for travel in excess of 12 hours' duration, the traveler shall be paid one meal allowance and one-fourth of the per diem allowance.

ALA. CODE § 36-7-20 (2001).

Section 36-7-21 of the Code provides as follows:

(a) *Persons traveling in the service of the state* or any of its departments, institutions, boards, bureaus, commissions, councils, committees, or other agencies, *outside the State of Alabama* or within the State of Alabama for purposes of attending or assisting in hosting a convention, conference, seminar, or other meeting of a national organization of which the state is a dues-paying member that is held within the state *shall be allowed all of their actual and necessary expenses in addition to the actual expenses for transportation.* In-state travel authorized under this section is subject to the same documentation requirements as out-of-state travel. Except as provided in subsections (b), (c), (d), and (e), the travel shall first be fully authorized in writing by the Governor.

ALA. CODE § 36-7-21 (2001) (emphasis added).

Section 36-21-2 provides correctional officers with daily subsistence pay in the amount of \$12. ALA. CODE § 36-21-2 (2001). This allowance is in addition to all other compensation, expenses, and allowances provided to the officers. *Id.* The allowances provided in sections 36-7-20 and 36-7-21 are available to persons in state service. Therefore, it is the opinion of this Office that correctional officers are entitled to receive the allowances offered in section 36-7-20 and 36-7-21.

Section 36-7-20 entitles a state employee to receive a meal allowance when the employee takes a trip outside of the city where the employee's base is located and that trip lasts for more than 6 hours. Opinions to the Honorable Morris L. Thigpen, Commissioner, Alabama Department of Corrections, dated October 29, 1987, A.G. No. 88-00039; Honorable George Perdue, House of Representatives, dated July 22, 1993, A.G. No. 93-00278. This Office has stated that the purpose of the expense allowance is to reimburse employees for expenses incurred in traveling and not to provide extra compensation for state employees. *Perdue* at 3. In like fashion, correctional officers that must travel out of state are entitled to be reimbursed for all of their actual and necessary expenses. ALA. CODE § 36-7-21 (2001).

CONCLUSION

In addition to the subsistence allowance provided for in section 36-21-2 of the Code of Alabama, correctional officers assigned to various posts that require the officers to be away from their home base for more than 6 hours are entitled to receive the allowances set out in section 36-7-20 of the Code of Alabama. Moreover, correctional officers that travel out of state are also entitled to be reimbursed for any out-of-pocket expenses incurred pursuant to section 36-7-21 of the Code of Alabama.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division