



2010-001

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

October 15, 2009

500 DEXTER AVENUE  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable Ronald L. Jones  
Chief Examiner  
Department of Examiners of Public Accounts  
Post Office Box 302251  
Montgomery, Alabama 36130-2251

Colleges and Universities – Travel  
Expenses – Per Diem Expense Allowance –  
State Employees

Institutions of higher education are authorized to pay actual expenses to persons traveling outside the State of Alabama and to pay actual expenses of persons traveling within the State of Alabama for the purpose 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. Institutions of higher education may prepay these expenses.

Institutions of higher education are authorized to pay a per diem allowance to persons traveling within the State of Alabama with the one exception for persons attending or assisting in hosting a convention, conference, seminar, or other meeting of a national organization as stated above. Institutions of higher education are not authorized to prepay the per diem allowance.

Dear Mr. Jones:

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

### QUESTION

Does the language in section 36-7-21(d) of the Code of Alabama authorize institutions of higher education in the State of Alabama to prepay travel for persons traveling inside Alabama for purposes other than the exemption contained in section 36-7-21(a), which allows prepay travel for 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?

### FACTS AND ANALYSIS

Section 36-7-20 of the Code of Alabama authorizes a per diem expense allowance for persons traveling within the state and provides, 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.

ALA. CODE § 36-7-20(a) (Supp. 2009) (emphasis added).

Section 36-7-21 authorizes actual expenses for persons traveling in the service of the state outside the state and authorizes one exception to the per diem expenses allowed under section 36-7-20 for persons traveling within the state. This section states 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.

(b) With respect to the Legislative Department, members of the Legislature, subordinate officers and employees of the Legislature, the directors and employees of the Legislature, the directors and employees of the Legislative Reference Service, Legislative Fiscal Office, and Examiners of Public Accounts, travel shall be authorized in writing by the Lieutenant Governor, for the Lieutenant Governor and members of the Senate, by the Speaker of the House, for the Speaker of the House and members of the House of Representatives, by the Secretary of the Senate or the Clerk of the House for subordinate officers and employees of the Legislature, and by the directors for the directors and employees of the legislative departments.

(c) With respect to the Judicial Department and the officers and employees thereof, travel shall be authorized in writing by the Chief Justice.

(d) *Persons representing institutions of higher learning shall receive authority for such travel from the presidents of the institution. Institutions of higher education may elect to prepay travel expenses for persons traveling in the service of the state.*

(e) Persons representing the state Department of Agriculture and Industries shall receive authorization for such travel from the Commissioner of Agriculture and Industries.

(f) This section shall not apply to examiners or other persons designated by the Commissioner of Insurance to examine or cause to be examined

insurance corporations qualified or attempting to qualify in this state when the expense incurred by the examiner shall be paid by or collected or received from insurers or persons examined under Section 27-2-25.

ALA. CODE § 36-7-21 (Supp. 2009) (emphasis added).

Section 36-7-21 allows persons traveling in the service of the state, when traveling outside the state, to receive actual expenses as opposed to per diem allowances authorized in section 36-7-20 when traveling within the state. Act 2005-251 amended sections 36-7-20 and 36-7-21 of the Code to provide one exception to the general rule that a person traveling within the state is entitled to per diem only. This exception allows persons traveling 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 to be paid all of their actual and necessary expenses, in addition to the actual expenses for transportation. See 2005 Ala. Acts No. 2005-251, 462.

In most cases, the authority for travel under section 36-7-21 must be approved in writing by the Governor. For persons representing institutions of higher learning, subsection (d) of section 36-7-21 states that the president of the university must approve the travel. This subsection also provides that the university may elect to prepay travel expenses. This provision was added by Act 2000-678, which allowed institutions of higher education to pay actual expenses for out-of-state travel and allowed the institutions to prepay the expenses for travel outside the state. 2000 Ala. Acts No. 2000-678, 1381.

Because this provision is found in section 36-7-21 of the Code, it authorizes the university to prepay travel expenses for travel outside the State of Alabama and for travel within the state 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. A university is not authorized to pay both actual expenses and per diem for travel within the state 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. Furthermore, a university is not authorized to prepay travel expenses for other travel within the state in which per diem allowances are provided as set forth in section 36-7-20. If the Legislature intended for a university to prepay per diem allowances for all travel within the state, it could have added this language to section 36-7-20 of the Code.

CONCLUSION

Institutions of higher education are authorized to pay actual expenses to persons traveling outside the State of Alabama and to pay actual expenses of persons traveling within the State of Alabama for the purpose 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. Institutions of higher education may prepay these expenses.

Institutions of higher education are authorized to pay a per diem allowance to persons traveling within the State of Alabama with the one exception for persons attending or assisting in hosting a convention, conference, seminar, or other meeting of a national organization as stated above. Institutions of higher education are not authorized to prepay the per diem allowance.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division