



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-015

March 26, 2015

Bishop Woosley, Director
Arkansas Lottery Commission
Post Office Box 3238
Little Rock, Arkansas 72203-3238

Dear Mr. Woosley:

You asked my opinion whether the Arkansas Lottery Commission is exempt from a state travel regulation and, if not, whether it should seek the return of money it paid its employees over what the regulation permits.¹

The regulation provides that state employees may be reimbursed \$0.42 a mile for using their own cars for state business travel.² After January 15, 2014, the Commission reimbursed its employees \$0.56 a mile.

RESPONSE

In my opinion, the Commission was subject to the regulation. I respectfully decline to state an opinion on your second question.

¹ The Commission has been abolished. *See* Act 218 of 2015 (including emergency clause) (transferring Commission's powers and duties to the Office of the Arkansas Lottery within the Management Services Division of the Department of Finance and Administration). This opinion addresses only the Commission, not the Office.

² State of Arkansas Travel Regulations, Rule 2, "Standard Reimbursements for State Employees and Officials" (Oct. 9, 2014).

DISCUSSION

A statute requires the state’s Chief Fiscal Officer³ to “promulgate . . . regulations with respect to travel and travel allowances . . . for all officers and employees of the state government”⁴ The law generally exempts constitutional and elective officials, their employees, and official state guests,⁵ but does not expressly exempt anyone else.

The CFO’s regulations apply on their face to “all officers and employees of state government” except those – mentioned above – who are exempt by law.⁶

It is not clear precisely how the Commission might have been exempt. It is true that a statute exempted the Commission from certain laws, including several that make state agencies subject in certain respects to the authority of the Department of Finance and Administration.⁷ But the law relating to travel regulations was not among those; and express Commission exemption from some laws giving DF&A authority over state agencies does not, in my view, imply the Commission was exempt from similar laws notwithstanding the absence of express exemption.

At least two aspects of law suggest that the Commission was indeed subject to the regulation.

First, Commission *members* were authorized⁸ to receive expense reimbursement under a separate law applying generally to members of state boards and commissions.⁹ The latter provides that expense reimbursement to state board

³ The Director of the Department of Finance and Administration is the state’s CFO. *See* A.C.A. § 19-1-201 (Repl. 2007).

⁴ A.C.A. § 19-4-901 (Repl. 2007). *See also* A.C.A. § 19-4-903(c) (Supp. 2013) (CFO to promulgate regulations to implement subchapter on travel regulations).

⁵ *See* A.C.A. 19-4-904(a)(1) (Supp. 2013).

⁶ State of Arkansas Travel Regulations, “Authority, Chief Fiscal Officer, Rules and Regulations - Rules and Regulations Generally” (Oct. 9, 2014).

⁷ A.C.A. § 23-115-211 (Repl. 2014).

⁸ *See* A.C.A. § 23-115-202(f) (Repl. 2014).

⁹ A.C.A. §§ 25-16-901 to -908 (Repl. 2014).

members “shall not exceed the rate established for state employees by state travel regulations.”¹⁰ It seems unlikely that the General Assembly intended only Commission employees – not Commission members – to be exempt from the reimbursement limit.

Second, both a law¹¹ from which the Commission was expressly exempt¹² and the law providing for travel regulations originated in the same legislative act.¹³ That the General Assembly expressly exempted the Commission from one provision of Act 876 but not another suggests it did not intend such an exemption from the other.

There is nothing at all in the travel regulations themselves implying that the CFO intended to exempt the Commission.

I conclude that the Commission was subject to the travel regulation at issue.

The second question you have raised – whether the Commission should seek return of money it paid – requires the giving of legal advice based on particular factual circumstances, and as such falls outside the ordinary scope of an official opinion from this office. Even were the Commission still in existence,¹⁴ deciding whether to make any particular claim may involve factors other than simply the claim’s legal validity. Prospective defendants’ circumstances will differ, as may their potential defenses. The opinions process is ill-suited to giving advice on such matters.¹⁵ I consequently must respectfully decline to opine on your second question.

¹⁰ A.C.A. § 25-16-902(b).

¹¹ A.C.A. § 19-4-1802 (Repl. 2007).

¹² *See supra* text accompanying note 7.

¹³ Act 876 of 1973, the General Accounting and Budgetary Procedures Law.

¹⁴ As noted above, the Commission was abolished by Act 218 of 2015. *See supra* note 1.

¹⁵ *See, e.g.*, Op. Att’y Gen. 2003-194 (“It is not the province of the Attorney General, in the formal opinions process, to provide [legal] advice”) and 96-014 (“Because answering your second question would involve the giving of general legal advice, rather than a specific opinion, with respect to a set of facts of which I may not be fully apprised, I must decline to render any opinion. The Board may wish to seek the advice of its regular counsel”).

Assistant Attorney General J.M. Barker prepared this opinion, which I approve.

Sincerely,



LESLIE RUTLEDGE
Attorney General

LR/JMB:cyh