STATE OF NEBRASKA
# Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

**DOUGLAS J. PETERSON**
**ATTORNEY GENERAL**

15-015
NO.
STATE OF NEBRASKA
OFFICIAL
OCT 27 2015
DEPT. OF JUSTICE

REQUESTED BY: Jeffrey Pursley, Executive Director
Nebraska Public Service Commission

WRITTEN BY: Douglas J. Peterson, Attorney General
L. Jay Bartel, Assistant Attorney General

SUBJECT: Reimbursement of Daily Parking Expenses of Public Service Commissioners While Working at the Commission's Lincoln Office.

On behalf of the Nebraska Public Service Commission ["Commission"], you have requested our opinion on the question of whether members of the Nebraska Public Service Commission ["Commissioners"] are eligible to receive reimbursement for daily parking expenses incurred while working at the Commission's office in Lincoln, Nebraska. For the reasons set forth below, we conclude that, under current statutes, Commissioners may not be reimbursed for expenses incurred for parking while working at the Commission's office.

On two occasions, this office has addressed the issue of reimbursement of expenses incurred by Commissioners in traveling to and from their residences to work at the Commission. *1977-78 Rep. Att'y Gen. No. 443* (Opinion No. 282, dated September 15, 1978); *Op. Att'y Gen. No. 94005* (January 21, 1994). In our 1978 opinion, we concluded that expenses incurred by Commissioners in traveling to and from work were personal expenses not subject to reimbursement. *1977-78 Rep. Att'y Gen. No. 443* at 444-45. We reached the same conclusion in our 1994 opinion. *Op. Att'y Gen. No. 94055* at 3, 5. In that opinion, we noted that "'[t]he right of an officer to compensation for expenses incurred by him [or her] in the performance of an official duty must be found in a provision of the constitution or statute conferring it either directly

or by necessary implication,...'", and that "[a] public officer is not entitled to reimbursement for expenses incurred in traveling from his or her residence to his or her 'workplace and returning unless such subsidy has been specifically authorized by the legislature.'" *Id.* at 2 (citations omitted). While noting that Neb. Rev. Stat. § 75-104 (1990) provided that Commissioners were "'entitled to receive from the state their actual necessary traveling expenses, which shall include the cost of transportation while traveling on the business of the commission...'", we concluded that "[t]he cost of travel to and from work is a personal expense, and does not constitute 'transportation while traveling on the business of the commission' within the intent and meaning of § 75-104." *Id.* at 2-3.

Shortly after issuance of our 1994 opinion, the Legislature amended § 75-104 to specifically authorize each Commissioner to receive reimbursement of "mileage expenses incurred while traveling in the line of duty to and from his or her residence to the office of the Public Service Commission in Lincoln." 1994 Neb. Laws L.B. 872, § 16 (*currently codified at* Neb. Rev. Stat. § 75-104 (2009)). Reimbursement is subject to these conditions:

> (1) The Public Service Commission has adopted and promulgated rules and regulations establishing guidelines for allowable reimbursement of such mileage expenses, except that such mileage rate shall not exceed the mileage rate established by the Department of Administrative Services pursuant to section 81-1176;
>
> (2) The request for such reimbursement falls within such guidelines; and
>
> (3) The total amounts authorized for such reimbursement of mileage expenses in any fiscal year does not cause the total expenses to exceed the total funds appropriated to the program established for commissioners' expenses.

Neb. Rev. Stat. § 75-104 (2009).

"In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning. . .", and a "court will not resort to interpretation to ascertain the meaning of statutory words that are plain, direct, and unambiguous." *Japp v. Papio-Missouri River Natural Resources Dist.,* 271 Neb. 968, 973, 716 N.W.2d 707, 711 (2006). The plain and ordinary meaning of "mileage" as used in § 75-104 is "an allowance for traveling expenses at a fixed rate per mile...." http://dictionary.reference.com/browse/mileage (accessed October 2, 2015). *See also Steenson v. Wallace,* 144 Kan. 730, __, 62 P.2d 907, 909 (1936) ("Generally, 'mileage' is a travel allowance at a fixed rate per mile."); *Reed v. Gallet,* 50 Idaho 638, ___, 299 P. 337, 338 (1931) (Noting "Webster's New International Dictionary defines mileage as an allowance for traveling expenses at a certain rate per mile."). Section 75-104 permits a Commissioner to receive reimbursement for "mileage expenses" for travel to and from his or her residence to the Commission's Lincoln office, under guidelines adopted by Commission rule which set a rate that does not exceed the mileage rate

established in Neb. Rev. Stat. § 81-1176 (2014).[1] Thus, § 75-104 plainly authorizes only reimbursement for mileage expenses calculated at a fixed rate per mile for a Commissioner's travel to and from his or her residence to the Commission's office in Lincoln. No authorization for payment of other expenses incidental to such travel, including parking, is provided in § 75-104.[2]

Apart from the mileage expense reimbursement provision in § 75-104, your request letter suggests that parking expenses of Commissioners may be reimbursable under Neb. Rev. Stat. §§ 81-1174 and 81-1176 (2014). Section 81-1174 is a general provision allowing state officers, state employees, "or member[s] of any commission..." to seek "reimbursement for actual expenses incurred by him or her in the line of duty..." by presenting a request for reimbursement to the Director of the Department of Administrative Services. The statute further provides, however, that "[n]o personal maintenance expenses shall be allowed to any state officer, state employee, or member of any commission...when such expenses are incurred in the city or town in which the residence or primary work location of such individual is located...." *Id.* An exception is allowed for "individuals required to attend official functions, conferences, or hearings within such location, not to include normal day-to-day operations of the department, agency, commission, council, committee, or board...." In that case, expenses "may be

---

[1] As required by § 75-104(2)(a), the Commission has adopted rules governing reimbursement of mileage expenses of Commissioners for travel to and from their residences to the Commission's office. 291 Neb. Admin. Code chap. 2. The rules provide Commissioners may receive mileage expenses incurred for travel "in the line of duty" to and from their residences to the Commission Office. 291 Neb. Admin. Code chap. 2 §§ 002.01 and 002.02A. "In the Line of Duty" is defined as "[a]ttendance at meetings and hearings which relates to the business of the Commission." 291 Neb. Admin. Code chap. 2 § 001.01B. The rules thus appear to limit reimbursement to travel in connection with attendance only at Commission meetings and hearings. The statute, however, is broad enough to encompass travel by a Commissioner to and from his or her residence to the Commission's office for any work purpose, as "in the line of duty" need not be interpreted to mean only Commission meetings and hearings.

[2] As the plain language of the 1994 amendment to § 75-104 allows only reimbursement of mileage expenses calculated at a fixed rate for miles traveled by Commissioners to and from their residences to the Commission's office, examination of legislative history is inappropriate. *See State ex rel. City of Elkhorn v. Haney,* 252 Neb. 788, 793, 566 N.W.2d 771, 774 (1997) (Inquiry into legislative history is proper only where a statute is "open for construction," meaning "when the language used requires interpretation or may reasonably be considered ambiguous."). In any event, the history of L.B. 872 demonstrates a legislative intent to permit reimbursement only for mileage expenses. Floor Debate on L.B. 872, 93rd Leg., 2nd Sess. 13594 (April 13, 1994) ("The first part of the amendment deals with allowing commissioners to be reimbursed for mileage while traveling to and from their residence to the PSC office in Lincoln.") (Statement of Sen. Moore). No mention was made of Commissioners receiving reimbursement for parking expenses in addition to mileage.

paid or reimbursed in accordance with policies established by the Director of Administrative Services" if approval has been obtained from the director of the department, agency, or commission prior to attendance. *Id.* Section 81-1176 is a general statute providing for reimbursement of mileage expenses submitted under §§ 81-1174 and 81-1175 for trips made by personal automobile, which "shall be computed based on the rate established by the Department of Administrative Services." Section 81-1176 further provides that "[f]unds expended for parking may be requested in addition to mileage."

Section 81-1174 provides no basis for reimbursement of parking expenses incurred by Commissioners while working at the Commission's office in Lincoln, as it specifically precludes allowance of "personal maintenance expenses" of state officers, employees, or commission members incurred where their "primary work location" is located. Parking would be considered a "personal maintenance expense" to the extent it relates to the expense incurred in parking a vehicle for daily attendance at work. Indeed, even the exception for expenses for attendance at official functions, conferences, or hearings excludes from reimbursement expenses related to "normal day-to-day operations" of the department, agency, or commission. Parking expenses incurred by Commissioners would, as it is for other employees, be a personal expense resulting from attendance at their place of work, and not a reimbursable expense under § 81-1174.

Section 81-1176 does include specific language providing that, in addition to the mileage expense allowed for a state officer's or employee's use of their personal automobile, "[f]unds expended for parking may be requested." "It is well established that where general and special provisions of statutes are in conflict, the general law yields to the special." *J.M. v. Hobbs,* 281 Neb. 539, 546, 797 N.W.2d 227, 231 (2011). Section 81-1176 is a general statute addressing reimbursement of mileage expenses incurred by state officers or employees for travel in the line of duty under §§ 81-1174 and 81-1175. Expenses incurred by state officers or employees in connection with normal day-to-day duties, including parking expenses resulting from attendance at their place of work, are personal expenses and not reimbursable under §§ 81-1174 and 81-1175. The mileage reimbursement allowed under § 81-1176(1) is limited to mileage expense incurred by state officers or employees using their personal vehicle for travel eligible for reimbursement under §§ 81-1174 and 81-1175, which would not include travel to and from the usual place of work of an officer or employee. Only in this situation may state officers or employees request reimbursement for parking expenses incurred in addition to mileage.[3]

---

[3] The language allowing reimbursement for parking expenses in addition to mileage was added in 1971. 1971 Neb. Laws L.B. 859, § 1. At the committee hearing on the bill, examples of the need for the amendment included parking expenses incurred by various state employees in connection with travel away from work on state business. Committee Records on L.B. 859, 82nd Leg., 1st Sess. 22-23 (March 31, 1971) (Testimony of Allen Beerman). This history confirms the intent of the amendment was

Section 75-104, in turn, is a special statute which creates an exception to the general statute on reimbursement for mileage expenses by providing that a Commissioner, under rules and regulations adopted by the Commission, is entitled to receive reimbursement for "mileage expenses incurred while traveling in the line of duty to and from his or her residence" to the Commission's office in Lincoln. The statute expressly authorizes Commissioners to receive reimbursement for what would otherwise be a personal expense, mileage expense incurred in traveling from their residences to their place of work. This special statute, however, authorizes reimbursement solely for mileage expense, computed at a rate not to exceed the rate established by the Department of Administrative Services under § 81-1176. By limiting reimbursement solely to mileage expense, § 75-104 provides no authorization for reimbursement of other expenses incurred by Commissioners in traveling from their residences to the Commission's office in Lincoln, including any incidental expenses such as parking. This specific statute controls over any general provision for reimbursement of parking expenses for a state officer or employee permitted in connection with the mileage reimbursement authorized in § 81-1176, which, in any event, would not apply to normal travel to and from their home and work.

Finally, you note a 1993 opinion in which we addressed the constitutionality of the provision of free parking for State Senators. *Op. Att'y Gen. No. 93022* (April 1, 1993). The opinion addressed the authority of the Director of the Department of Administrative Services to provide free parking space to State Senators at the Capitol Building. The issue presented was whether providing a parking space without charge to Senators constituted a permissible expense or an improper "perquisite" prohibited by Neb. Const. art. III, § 7. This constitutional provision currently states, in part, that "[i]n addition to his or her salary, each member [of the Legislature] shall receive an amount equal to his or her actual expenses in traveling by the most usual route once to and returning from each regular or special session of the Legislature," and that "[m]embers of the Legislature shall receive no pay or perquisites other than his or her salary and expenses." In *State ex rel. Douglas v. Beermann,* 216 Neb. 849, 347 N.W.2d 297 (1984), the Nebraska Supreme Court, construing similar language in a prior version of art. III, § 7, "held that legislators may receive reimbursement for expenses incurred in connection with the performance of their duties in addition to the salary and actual expenses in traveling by the most usual route once to and returning from each regular or special session." *Jaksha v. Thomas,* 243 Neb. 794, 798, 502 N.W.2d 826, 830 (1993). Our 1993 opinion concluded that, if State Senators were required to pay for parking their vehicles while attending legislative sessions, those payments would be reimbursable expenses, and not impermissible "perquisites" of office. More specifically, we stated:

---

to permit state officers and employees to receive parking expenses in addition to mileage when traveling on state business while away from their usual workplace, and not in connection with their travel to and from work.

> The Nebraska Supreme Court has said that a Senator may be reimbursed for transportation expense. Part of transportation expense is parking the vehicle upon arrival. If a Senator parked his or her automobile at a commercial garage near the Capitol Building, § 50-202, which has specifically been held constitutional by the Nebraska Supreme Court, would appear to allow the Senator to claim and receive reimbursement for that expense.
>
> Therefore, since the Nebraska Constitution allows a State Senator to pay for parking and receive reimbursement for that expense, we see no constitutional difficulty in the Director of Administrative Services eliminating the paperwork of refunding parking fees by simply providing parking for free in the first instance. While some argument might be made that Lincoln Senators are not away from home and hence, might not qualify for reimbursement, we do not see a constitutional significance because whether you drive from Scottsbluff or 70th & A Streets in Lincoln, a Senator still needs a parking place in a reasonable vicinity of the Capitol in order to be in attendance at the Capitol. Moreover, § 50-202, which provides for reimbursement of expenses to State Senators, does not contain the various restrictions (such as being away from home) that apply to other State employees under § 81-1174.

*Op. Att'y Gen. No. 93022* at 3.

We further explained the rationale for providing State Senators parking without charge while other State employees must pay for parking:

> Does this mean that every State employee is entitled to free parking at State expense? No. A State employee is only entitled to such reimbursement of expense as the law provides for. In this case, authority has been delegated to the Department of Administrative Services to develop a system of equitable billing for parking. The Department has determined that other State constitutional officers, Supreme Court judges, and other State employees who, generally speaking, are paid more (often several times more) than State Senators, should pay for their parking while State Senators should not. We cannot say as a matter of law that the Department of Administrative Services has abused its discretion in making such a determination.

*Id.* at 4.

Under the Nebraska Constitution, as construed by our Supreme Court, State Senators are entitled to receive expenses incurred in connection with the performance of their duties, including travel expenses. Our 1993 opinion merely recognized that part of the expenses associated with travel incurred by Senators is the cost of parking. As parking is a reimbursable expense, we determined the Director of the Department of Administrative Services had statutory authority to provide Senators parking without charge rather than requiring Senators to claim reimbursement for that expense. Unlike State Senators, other State employees are not entitled to reimbursement for costs of travel to and from work absent a specific statute authorizing payment of such expenses.

Section 75-104 provides an exception to this general rule for Commissioners, allowing them to receive mileage expenses for travel to and from their residences to the Commission's Lincoln office. The statute, however, only permits reimbursement for mileage at a specified rate, and provides no authority for reimbursement of other incidental expenses of travel such as parking.

In conclusion, it is our opinion that, under current statutes, Commissioners may not be reimbursed for expenses incurred for parking while working at the Commission's Lincoln office. Section 75-104 authorizes a Commissioner to receive reimbursement only for mileage expenses incurred in traveling in the line of duty to and from his or her residence to the Commission office in Lincoln, at a rate established by Commission rule. Reimbursement for parking expenses in connection with such travel is not specifically authorized. The Legislature could amend the statute to specifically authorize reimbursement of parking expenses incurred by Commissioners in connection with such travel, or could provide for reimbursement of all expenses associated with a Commissioner's travel to and from his or her residence to the Commission's office. Absent statutory language permitting reimbursement of Commissioner parking expenses, we conclude that Commissioners currently may not receive reimbursement for their parking costs.

Very truly yours,

DOUGLAS J. PETERSON
Attorney General

L. Jay Bartel
Assistant Attorney General

Approved by:

Douglas J. Peterson, Attorney General

07-988-29