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FILE NO. S-780

**PENSIONS:**

Whether the Per Diem Expense Allowance Paid to Members of the General Assembly is Included Within the Definition of "Compensation" for Pension Purposes.

Honorable Paul J. Randolph  
Illinois State Representative  
Chairman, Committee on Revenue  
State House  
Springfield, Illinois 62706

Dear Mr. Randolph:

This responds to your request for an opinion as to whether the \$32 per diem expense allowance paid to each member of the General Assembly should be included in the definition of "salary" or "total compensation" for pension purposes. Section 2-108 of the Illinois Pension Code (Ill. Rev. Stat. 1973, ch. 108 1/2, par. 2-108) provides as follows:

"§2-108. Salary. 'Salary': The total compensation paid to a member by the State for one year of service as a member, including the additional amounts paid to the officers of the

Honorable Paul J. Randolph - 2.

General Assembly pursuant to Section 1 of 'An Act to provide for and fix the compensation of the members of the General Assembly of the State of Illinois', approved December 6, 1907, as now or hereafter amended, if the member was elected to serve as such an officer for 4 or more years during the period of his service."

The term "salary" is defined as "total compensation". Thus, whether the per diem expense allowance is included within these terms for pension purposes depends upon the meaning of the term "compensation". The term itself is not defined in article 2 of the Illinois Pension Code (Ill. Rev. Stat. 1973, ch. 108 1/2, pars. 2-101 through 2-158), which pertains to the General Assembly Retirement System. The term in general usage has no precise meaning. As stated by Justice Holmes in Towne v. Eisner, 245 U.S. 418, 425 in regard to the word "income" as used in the United States Constitution and a statute:

"A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."

"Compensation" has been interpreted in some court cases to include not only the salary but also other fees and expenses. For instance, in Fergus v. Russel, 270 Ill. 626, the court interpreted the term "compensation" as used in section 21 of article IV of the Constitution of 1870 to include not only the salary of legislators, but also expenses for the payment of

Honorable Paul J. Randolph - 3.

railroad fares. See also, Board of Education v. Clark, 51 Ill. 2d 323, where at page 324 the court held that the term "compensation" as used in section 10 of article X of the Constitution of 1870, includes not only the salary of the officer for the performance of his duties, but also includes the basic expenses of operating his office.

However, in other cases the court has interpreted the word "compensation" to be interchangeable with the word "salary", thus to exclude allowance paid to cover additional expenses of the office holder. See Cook County v. Healy, 222 Ill. 310, wherein the court stated at page 316:

"\* \* \* Counsel for appellee make much of some supposed distinction between the words 'salary' and 'compensation,' as used in that section, but we see no difference in meaning between the two, and are unable to understand what the distinction amounts to as applied to this case, if there is any. The words are used interchangeably, and the section provides that the State's attorney is to receive for the performance of his duties, money to be paid by the State and the county of Cook. \* \* \*"

See also Bardens v. Board of Trustees of Judges Retirement System, 22 Ill. 2d 56.

Since there is no definite meaning to the term "compensation", I must determine the specific meaning of the term as used by the legislature in article 2 of the Pension Code, supra. It is a well settled rule of statutory construction

Honorable Paul J. Randolph - 4.

that other statutes dealing with the same subject as the one being construed (commonly referred to as statutes in pari materia), are relevant as a source from which conclusions as to how a statute must be interpreted and applied, can be drawn. (2A Sutherland, Statutes and Statutory Construction, §51.01, (4th ed., C. D. Sands 1973).) This rule is well recognized in Illinois and has been taken even further to include statutes that are not strictly in pari materia. The Supreme Court in Bergin v. Board of Trustees, 31 Ill. 2d 566 at 573, stated as follows:

"\* \* \* It is always proper to consider the course of legislation upon a particular statute in arriving at the legislative intent, (People ex rel. Ward v. Chicago and Eastern Illinois Railway Co., 365 Ill. 202,) and where, as here, the language of a statute is not entirely clear or certain, it is proper not only to compare statutes relating to the same subject matter but to consider statutes upon related subjects though not strictly in pari materia. (Spofford v. Board of Education, 411 Ill. 11; Anderson v. City of Park Ridge, 396 Ill. 235.)

Section 1 of "AN ACT in relation to the compensation and emoluments of members of the General Assembly" (Ill. Rev. Stat. 1973, ch. 63, par. 14) provides in pertinent part as follows:

"§1. Each member of the General Assembly shall receive for the 2 year period for which members of the House of Representatives of the General Assembly are elected, the sum of \$17,500

Honorable Paul J. Randolph - 5.

per year. \* \* \* The first year's compensation shall be paid during the first regular session of the General Assembly held after the general election for members of the House of Representatives, and the second year's compensation during the month of January of the year next following such regular session. If any member files a request, oral or written, with the State Comptroller before July 1 of the session year, however, such request, when endorsed by the Comptroller as evidenced by the drawing of a warrant, entitles the member to receive immediately the compensation payable for the second year.

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.

\* \* \* Each member shall also receive an allowance of \$32 per day, for lodging, meals, and all other incidental expenses while in attendance at sessions of the General Assembly.

If a member dies having received only 1/2 of the amount payable as compensation, the unpaid balance shall be paid to the surviving spouse of such member, or if there be none, to the estate of such member." (emphasis added)

It is quite clear from reading this statute that the term "compensation" is limited to the salary of the sum of \$17,500 per year as currently provided. It includes neither the allowance for mileage or the per diem expenses.

Since the term "compensation" is used in both this statute and in the Illinois Pension Code and relates to the same

Honorable Paul J. Randolph - 6.

subject, I am of the opinion the term "compensation" should have the same meaning. Therefore, the \$32 per diem expense allowance should not be included within the definition of "salary" or "compensation" for pension purposes.

In addition, I can discern no distinction between the per diem expense allowance and the allowance for mileage. They are both designed to cover the expenses of a legislator fulfilling his duties as a member of the legislature. The mileage allowance has never been considered part of a legislator's compensation for pension purposes. It is a well established rule of statutory construction that such administrative interpretation is entitled to great weight in construing a statute. This is particularly so when the statute has been amended subsequent to such interpretation, since the legislature is presumably aware of the administrative interpretation. (Fresnan Coal Mining Corp. v. Ruff, 85 Ill. App. 2d 145.) Section 2-108 of the Illinois Pension Code, supra, has been amended as recently as August 23, 1968, and August 15, 1972, and in neither case was the administrative practice concerning the mileage allowance dealt with.

I am aware, as stated in your letter, that the Internal Revenue Service considers a \$32 per diem expense

Honorable Paul J. Randolph - 7.

allowance as income for Federal income tax purposes, and that the Comptroller has determined that he must furnish each member an additional W-2 withholding statement for the said expense allowance as additional income. However, such interpretation of the term "income" as used in a Federal statute has no bearing on an interpretation of the term "compensation" as used in a statute passed by the Illinois General Assembly. "Income" for tax purposes and "compensation" for pension purposes are entirely different matters. I again refer you to the quotation by Justice Holmes.

Therefore, for the aforestated reasons, I am of the opinion that the \$32 per diem expense allowance is not included within the definition of "salary" or "total compensation" for pension purposes.

Very truly yours,

A T T O R N E Y   G E N E R A L