



REBECCA OTTO  
STATE AUDITOR

# STATE OF MINNESOTA OFFICE OF THE STATE AUDITOR

SUITE 500  
525 PARK STREET  
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)  
(651) 296-4755 (Fax)  
state.auditor@osa.state.mn.us (E-mail)  
1-800-627-3529 (Relay Service)

## Statement of Position County Commissioner Per Diem Payments

In addition to an annual salary, a county commissioner may be paid a per diem, for performing the duties of the office.<sup>1</sup> Commissioners may receive a per diem “for each day necessarily occupied in the discharge of their official duties while acting on any committee under the direction of the board.”<sup>2</sup> The availability of a per diem for county commissioners is subject to certain requirements and limitations.

### County Board Action

The county board must take a number of actions in order for county commissioners to be able to collect per diems. Additionally, the board has discretion to take some actions which may aid in handling per diem claims in an efficient and clear manner.

First, county commissioners’ per diems must be set by resolution of the county board. The board may accomplish this by establishing a schedule of per diem payments for service by individual county commissioners on any board, committee, or commission of county government or for performance of services required by law.<sup>3</sup> The establishment of a per diem schedule provides clarity and transparency regarding per diem practices.

Second, when a claim for a per diem payment is presented, it should be reviewed by the county board for approval, unless the county board has properly delegated its authority to pay these claims to a county administrative official.<sup>4</sup> In such cases, the county board must adopt a resolution authorizing the specific county administrative official to pay the claim in accordance with control procedures established to ensure proper disbursement of public funds. The controls must include regular and frequent review by the board of the administrative official’s actions, and the board’s review (for informational purposes) of payments made by the official, at the next board meeting after payment is made.<sup>5</sup>

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<sup>1</sup> Minn. Stat. § 375.055, subd. 1 (does not apply to Hennepin and Ramsey Counties); *see also* Op. Atty. Gen. 124a (April 28, 1994) (The Minnesota Attorney General concluded that commissioners are authorized to be paid a “per diem” for performing the duties of office, in addition to an annual salary, including work on committees.).

<sup>2</sup> Minn. Stat. § 375.06, subd. 1 (does not apply to Hennepin, Ramsey and St. Louis Counties).

<sup>3</sup> Minn. Stat. § 375.055, subd. 1.

<sup>4</sup> *See* Minn. Stat. §§ 384.13 and 375.18, subd. 1b.

<sup>5</sup> Minn. Stat. § 375.18, subd. 1b.

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This Statement of Position is not legal advice and is subject to revision.

## **No Per Diem with High Salary**

Minnesota law contains an important exception to a county commissioner's ability to collect a per diem: If a county commissioner is paid a salary that is more than 50 percent of the salary of the governor, the commissioner may not be paid any additional amount, by per diem or otherwise, except as reimbursement for expenses, for attendance at meetings related to the business of any local government unit.<sup>6</sup>

## **Documentation Needed**

County officials are responsible for making and preserving all records "necessary to a full and accurate knowledge of their official duties."<sup>7</sup> Payment of public funds by a county requires supporting documentation.<sup>8</sup> When a per diem is claimed for a commissioner's committee work or service required by law, the county must make and preserve the records necessary to support payment.

Committee work may include information-gathering activities and liaison activities. Board or committee minutes can serve as documentation to support a per diem payment. To serve these purposes, minutes should confirm that the activity has been authorized by the board or committee and that the commissioner has reported to the board or the committee on the results of the activity. In addition, there may be instances where a description or explanation provided with the submitted per diem claim will be sufficient to document committee work.

## **Social Events**

Attendance at parties, employee appreciation events, county fairs, festivals and parades are viewed as primarily social in nature. Mere attendance at social events does not constitute committee work. Absent documentation of legitimate committee or board work and specific authorization by the board or committee, the OSA does not consider social activities as committee work qualifying for per diem payments.

## **Attendance at Meetings with Groups or Individuals**

Commissioners cannot claim a per diem payment whenever they meet with a constituent or group. However, commissioners often act as agents for the board or committees of the board in gathering information or acting as a liaison. As discussed above, the commissioners' role in performing these activities for the board or a committee should be documented in the committee minutes. When the board or a committee authorizes a commissioner to meet with a group or a single person to obtain information for a matter under consideration before the committee, a per diem payment may be appropriate.

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<sup>6</sup> Minn. Stat. § 375.065.

<sup>7</sup> Minn. Stat. § 15.17.

<sup>8</sup> Minn. Stat. § 471.38.

## **Joint Powers Boards**

Minnesota Statutes authorize the joint exercise of powers by government units: “Two or more governmental units, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise any power common to the contracting parties or any similar powers . . . .”<sup>9</sup> A joint powers entity may establish a board that includes members from the governing bodies of the member governmental units. When a county is one of the governmental units entering into the joint powers agreements, a county commissioner will often serve on the board of the joint powers entity.

The joint powers board may set a per diem amount available to its board members who attend joint powers board meetings. When the joint powers board acts, it generally is exercising the common power of the participating government entities. Commissioners generally may not receive a per diem payment from both the county and the joint powers board for the same day.

## **No More than One Per Diem Per Day**

Generally, a county commissioner may only collect one per diem for each calendar day spent performing official duties.<sup>10</sup> More than one per diem for a given day is only permitted if the county commissioner performs commissioner duties and also separately performs duties for another body with independent statutory authority to compensate its members.<sup>11</sup>

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<sup>9</sup> Minn. Stat. § 471.59, subd. 1.

<sup>10</sup> See Op. Atty. Gen. 124a (April 28, 1994), Question Four.

<sup>11</sup> *Id.* The Minnesota Attorney General noted that, in 1975, the Legislature eliminated, for the most part, such separate authority. *Id.*