STATE SUPERINTENDENT OF PUBLIC INSTRUCTION:

Traveling expense of county superintendent of public instruction who is also ex-officio attendance officer, in excess of $300.00 not allowable.

November 23, 1943.

Hon. Clement T. Malan,
Superintendent of Public Instruction,
State House,
Indianapolis, Indiana.

Dear Dr. Malan:

This will acknowledge receipt of your letter dated October 26th, 1943, requesting my opinion on the following question:

"May a county superintendent who is an ex-officio attendance officer receive traveling expenses for attendance duties beyond the $300.00 allowed the superintendent for his traveling expenses as county superintendent?"

It is generally a well recognized rule of law that the right of any officer to an allowance for traveling expenses incurred by him in the performance of official duties must be based upon some provision of a statute and in the absence of a statute authorizing such an allowance the officer is not entitled to receive such reimbursement. This rule is well stated in 46 Corpus Juris, page 1018, in the following language, to-wit:

"The right of an officer to compensation for expenses incurred by him in the performance of an official duty must be found in a provision of the constitution or a statute conferring it either directly or by necessary implication, and the officer cannot recover compensation additional to the compensation fixed by statute for such expenses."

Burns' R. S. 1933, Section 28-501, which is Section 1 of Chapter 29, Acts 1921, reads in part as follows:

"Every county and every city having a school enumeration of two thousand (2,000) or more children of school age, shall constitute a separate attendance
The county superintendent of schools shall nominate and the county board of education may appoint an attendance officer who shall be qualified as required by this act and by the state board of attendance and who shall act as attendance officer for every school corporation of the county not organized as a separate attendance district. If the county board of education is of the opinion that it is not necessary in the proper enforcement of this act to appoint an attendance officer, no attendance officer shall be appointed. If no attendance officer be appointed, the county superintendent of schools shall be ex officio the attendance officer for all of the schools of his county which are under his immediate jurisdiction and the school superintendent of any school city or school town which is not organized as a separate attendance district shall be ex officio the attendance officer of such school city or school town. The superintendent of schools of the county, city or town who is ex officio the attendance officer of such county, city or town, may designate one (1), or more teachers of such county, city or town to act as assistant attendance officers, under the direction of the superintendent, and to perform such duties in connection therewith as such superintendent may assign, and such teachers for their services as assistant attendance officers shall receive no additional compensation. * * *

Burns' R. S. 1933, Section 28-502, being Section 2 of Chapter 132, Acts 1921, and which fixes the compensation of attendance officers, reads in part as follows:

"* * * Appointive attendance officers, unless otherwise provided in this act, shall have their salaries fixed by the appointing board and shall receive from the county treasurer not less than three dollars ($3.00) nor more than five dollars ($5.00) per day for each day of actual service and shall further receive actual expenses necessary to the proper performance of their duties, said salaries and expenses to be paid by the county treasurer upon a warrant signed by the county
auditor, and the county council shall appropriate, and the board of county commissioners shall allow, the funds necessary to make such payments. **Ex officio attendance officers shall serve without compensation.**

Burns' R. S. Pocket Supplement 1943, Section 28-708, which is Section 2, Chapter 258, Acts 1935, reads as follows:

"The county superintendent of schools may be entitled to receive as actual traveling expenses in discharging the duties of his office the sum of not to exceed three hundred dollars ($300) per year, and a sufficient amount to pay such expenses so incurred may be appropriated annually by the county council and shall be allowed by the board of county commissioners."

The above quoted sections of the statute are the only applicable statutes which I have been able to find authorizing the allowance of traveling expenses to attendance officers.

Directing your attention to the language quoted from Section 28-501, supra, it will be noted that the Legislature provided that in certain instances the county superintendent of schools should be an ex officio attendance officer and he is expressly authorized to designate one or more teachers of the county, city or town as the case may be, to act as assistant attendance officer under the direction of the superintendent and to perform such duties in connection therewith as such superintendent may assign, and that such teachers so designated as assistant attendance officers shall receive no additional compensation. The Legislature has thus provided a method whereby the county superintendent acting ex officio as attendance officer may discharge the duties as such attendance officer through an assistant, without incurring any traveling expenses.

In Section 28-502 we find that the Legislature provides that appointive attendance officers shall receive as salary or compensation for their services the sum of not less than $3.00 nor more than $5.00 per day, and shall further receive actual expenses necessary to the proper performance of their duties.
The last sentence of this section then states:

"* * * Ex officio attendance officers shall serve without compensation."

It is highly significant that in providing an allowance for actual expenses to an attendance officer, the Legislature classified attendance officers and provided that an appointive attendance officer shall receive a salary and also his actual expenses, whereas, an ex officio attendance officer must serve without compensation and nothing is said about actual expenses as in the case of an appointive attendance officer.

If the Legislature had intended that the ex officio attendance officer should be entitled to receive his actual expenses, the same as an appointive attendance officer, it could easily have expressed such intention by stating that "an attendance officer shall receive his actual expenses necessary to the proper performance of his duties and in addition thereto an appointive attendance officer shall receive as salary from the county treasurer not less than three dollars ($3.00) nor more than five dollars ($5.00) per day for each day of actual service; provided, an ex officio attendance officer shall serve without compensation."

It is a firmly established rule of statutory construction that when the language, words and phrases contained in a statute are free from ambiguity and are clear and definite, it is the duty of the court in construing the statute to follow the language employed by the Legislature and to give full force and effect to the intention of the Legislature as expressed in the statute.

Werber v. Hughes, 196 Ind. 542;
Lutz v. Arnold, 208 Ind. 480.

Applying the rules of construction heretofore stated to the language of the statutes heretofore set forth, it is my opinion that the question submitted in your letter must be answered in the negative.