

EL DORADO LOCAL AGENCY FORMATION COMMISSION

2850 FAIRLANE COURT
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STAFF REPORT

AGENDA ITEM 7: LAFCO COMMISSIONERS STIPENDS

DATE: AGENDA OF SEPTEMBER 16, 1999
(Continued from August 5, 1999)

BACKGROUND

The Cortese Knox Act states that Commission members and alternates shall be reimbursed for reasonable and necessary expenses and the Board of Supervisors may authorize payment of a per diem (\$56334). The Board of Supervisors approved LAFCO stipends beginning in 1968. Supervisor Commissioners do not receive a stipend. Since at least 1987 Commissioners have received \$40.00 per diem, although there is no record of the action to increase the stipend to this amount. The history of stipend increases appears below.

DATES	ACTION
09/16/68	BOS approves LAFCO system of uniform reimbursement of expenses for members; \$10.00 per mtg/Western Slope - \$20.00 per mtg/Eastern Slope
09/04/73	BOS approves Resolution No. 391-73 authorizing LAFCO stipends to \$10.00 per mtg/Western Slope - \$20.00 per mtg/Eastern Slope
08/02/77	BOS approves Resolution No. 169-77 approving LAFCO stipends to \$25.00 for all commissioners.
10/10/78	BOS approves Resolution No. 214-78 approving LAFCO stipends to \$25.00 for all commissioners.
02/01/96	Legal Counsel reports that the stipend was raised from \$25.00 to \$40.00 for all commissioners in 1987. No documentation available for 1987

DATES	STIPEND
1968 - 1972	\$10.00 / \$20.00
1973 - 1976	\$10.00 / \$20.00
1977 - 1987	\$25.00
1987 - Present	\$40.00

COMMISSIONERS.- Kenneth Bush, Aldon Manard, Penny Humphreys, Sam Bradley, Bill Crawford, Robert Salazar, Robert Flynn
ALTERNATE COMMISSIONERS.- Kathi Lishman, Raymond J. Nutting, Janice Platz, Harriett Segel
STAFF.- Roseanne Chamberlain, Executive Officer, Susan Stahmann- Commission Clerk. Tom Parker. LAFCO Counsel

DISCUSSION

Counsel advises that the Commission may authorize an increase in reimbursement within the scope of the budget. In a comparison of other LAFCOs with similar budgets, staff found that, Placer, San Joaquin, Santa Barbara and Marin Commissioners receive \$100/ meeting, Sonoma receives \$75, and Napa, Ventura and Santa Clara receive \$50/meeting. Nevada commissioners receive \$40 and Fresno \$25. There is sufficient funding to increase the stipend to \$50 for Commissioners and Alternates within the 1999-2000 budget.


RECOMMENDATION

1. Retroactively approve the \$40.00 stipend back to 1987.
2. Increase the LAFCO Commissioner/Alternate reimbursement from \$40.00/per meeting plus mileage to \$50.00/per meeting plus mileage.

OFFICE OF THE COUNTY COUNSEL
EL DORADO COUNTY
INTER-OFFICE MEMO



TO: Roseanne Chamberlain, Executive Officer
El Dorado County Local Agency Formation Commission (LAFCo)

FROM: Thomas R. Parker
Deputy County Counsel 

RE: Authority of LAFCo to Modify Current Commissioner Meeting Stipend

DATE: July 20, 1999

You have asked the following legal question for purposes of an agenda item to be heard by LAFCo on August 5, 1999.

ISSUE: May the Commission increase or change the rate or amount of the stipend paid to commissioners for attendance at meetings?

CONCLUSION: LAFCo may increase or otherwise modify the amount of the stipend paid to commissioners for attendance at meetings pursuant to Government Code section 56334 as an approximation of reasonable and necessary expenses incurred by those commissioners.

BACKGROUND: The El Dorado County Board of Supervisors (hereinafter "Board"), on September 16, 1968 (see staff report on August 5, 1999 agenda, Item 11) approved a "LAFCo system of uniform reimbursement of expenses for members" at a rate of \$10 per meeting for West Slope members and \$20 per meeting for East Slope members. The Board, on September 4, 1973, increased the West Slope member reimbursement rate to \$20 per meeting (Resolution No. 391-73). The rate for all commissioners was increased to \$25 per meeting by the Board on August 2, 1977 (Resolution No. 169-77), an action repeated for an unknown reason on October 10, 1978 (Resolution No. 214-78). The stipend was raised in 1987 to \$40 per meeting. Staff cannot tell whether the Board or LAFCo took this action due to the lack of written documents raising the stipend. Commissioners have paid \$40 stipends since 1987. Item 11 on the LAFCo agenda for August 5, 1999 proposes to reexamine the existing stipend amount.

ANALYSIS: Government Code section 56334 states the following in its last paragraph:

"Commission members and alternates shall be reimbursed for

the amount of their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office. The board of supervisors may authorize payment of a per diem to commission members and alternates for each day while they are in attendance at meetings of the commission."

Before answering the question presented, it is necessary to answer the question of LAFCo's authority, independent of the Board, to set an expense stipend or per diem rate under this statute. We have previously opined that LAFCo has independent budget management and budget proposal authority under Government Code sections 56380 and 56381, the county bearing the responsibility of funding LAFCo per section 56381. LAFCo may also independently set its fee schedule for processing petitions presented to it. (Government Code section 56383) LAFCo may hire its own executive officer and counsel. (Government Code section 56384) LAFCo may also contract for retirement benefits for its executive officer and other staff as well as provide for health and medical benefits for those employees. (Government Code section 56385) Is there sufficiently clear statutory authority for adopting commissioner meeting attendance payments?

The Board may clearly set a "per diem" rate for LAFCo commissioners, a set payment that may or may not reimburse commissioners for the actual amount of reasonable and necessary expenses. The clear reference to the Board only in the last sentence arguably suggests that only the Board may set per diem payment schedules for the commissioners under the principle that an explicit reference to one entity only in a statute is intended to exclude others from the same exercise of power. The sentence preceding, however, suggests that LAFCo may approve the reimbursement of actual amounts of reasonable and necessary expenses incurred in attending meetings. The statutory wording, while ambiguous, is sufficiently clear to this office to conclude that LAFCo may authorize and modify a system of reimbursement for reasonable and necessary meeting attendance expenses but not a "per diem" rate. Such an actual reimbursement system, not a "per diem" system, was the intent of the Board in 1968 as evidenced by the wording found in Board records by staff and continued since 1968. The only changes since 1968 have been changes in amounts, not the purpose of the reimbursement. Implicit in the conclusion of this office is the understanding that the \$40 payment per meeting is not paid in addition to the actual expenses of the commissioners. Any actual meeting expenses covered in addition to the \$40 per meeting makes the \$40 payment a "per diem" payment that only the Board can authorize.

We recommend that LAFCo formally adopt the \$40 stipend payment amount retroactively to 1987 on the basis that it was the intent of LAFCo to increase the \$25 rate to \$40 in 1987 as shown by the practice of the Commission since then. Any action taken in August 1999 simply recognizes this as a factual and legislative matter. Any further amendments of the \$40 rate would have prospective effect only.

Please contact this office if you have any questions regarding this matter.

TRP
Stipendmem