

Report to the Colorado General Assembly:

LEGISLATORS' COMPENSATION IN COLORADO



GOVERNOR'S COMMITTEE ON

COMPENSATION OF LEGISLATORS

Colorado Legislative Council

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DECEMBER, 1961

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REPORT OF GOVERNOR'S COMMITTEE
TO THE
COLORADO GENERAL ASSEMBLY

LEGISLATORS' COMPENSATION IN COLORADO

Research Publication No. 53
Colorado Legislative Council
December, 1961



THE STATE OF COLORADO
EXECUTIVE CHAMBERS
DENVER

STEVE MCNICHOLS
GOVERNOR

January 3, 1962

To the Honorable
The Forty-third General Assembly
Second Regular Session
State Capitol
Denver, Colorado

Ladies and Gentlemen:

In accordance with the provisions of
Senate Joint Resolution No. 18, 1961 Regular
Session, I appointed a committee to conduct
a study of compensation and expenses of the
members of the General Assembly, and I am
transmitting their report to you for your con-
sideration.

Respectfully submitted,

A handwritten signature in cursive script, reading "Steve McNichols".

SMcN:el

THE COLORADO COLLEGE
COLORADO SPRINGS

November 20, 1961

Governor Stephen L. R. McNichols
Executive Chambers
State Capitol
Denver, Colorado

Dear Governor McNichols:

The Committee which you appointed by letter of May 11, 1961 to study compensation and expenses of the members of the General Assembly has met twice and has carried on extensive correspondence between meetings. Our report is submitted herewith.

The Committee found no trouble in establishing agreement on underlying philosophy. We believe that compensation and reimbursement should be enough to attract the services of highly competent citizens of the State. At the same time there is agreement also that Colorado is neither of a population-size nor does the amount of legislative business warrant full-time annual salaries to legislators, such as are paid by only two or three of the most populous states in the Union.

The Committee's recommendations have been limited by the provisions of our constitution which do not authorize the reimbursement of expenses for legislators, except the "actual and necessary" travel expenses for one round trip per session between one's home and Denver. Consequently, in submitting its recommendations the Committee limited itself to those changes which may be effected by the General Assembly through statutory change.

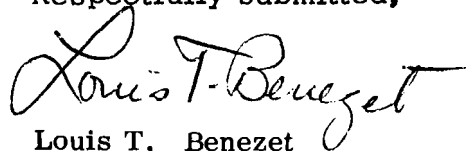
Accordingly, as may be noted in the accompanying report, your Committee recommends that the present \$100 per month salary for members of the General Assembly remain unchanged but that the per diem compensation be increased to \$25 for not to exceed 160 days each biennium. The effect of this proposal would be to increase each member's biennial compensation from \$4800 to \$6400, or from \$2400 to \$3200 on an annual basis. Also, on the basis of a 30-day month while in session, this proposal would mean that a legislator would receive a gross monthly compensation of \$850 -- \$100 monthly base salary plus \$750 resulting from \$25 per diem for 30 days.

Governor McNichols 2
November 20, 1961

In addition, the Committee believes that for a legislator to meet with his constituents to review legislative matters under consideration by the General Assembly constitutes an integral part in the conduct of the business of the entire General Assembly. Consequently, the Committee also recommends that the members of the General Assembly receive travel expenses for monthly trips to and from their homes while the General Assembly is in session.

As a final commentary on legislative compensation, your Committee is unanimous in its belief that an inequity exists for the legislator who lives beyond commuting range of the State Capitol, since a commuting legislator receives the same per diem compensation as he without having to bear the expense of two concurrent domiciles. In the event of any forthcoming constitutional revision, we urge that this situation be reviewed and if possible changed.

Respectfully submitted,



Louis T. Benezet
Chairman

LTB/vmr

/s/ Ernest Weinland

/s/ Walter W. Johnson

/s/ Raymond A. Kimball

/s/ Walter Olesky

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LEGISLATIVE COMPENSATION IN COLORADO

Historically, the members of Colorado's General Assembly have been compensated on the basis of part-time pay for part-time services. Beginning with statehood in 1876, Colorado legislators were paid \$4.00 for each day's attendance at sessions plus 15¢ for each mile necessarily traveled in going to and returning from the seat of government. The \$4.00-per-day figure was increased to \$7.00 in 1884.

Twenty-six years later, in 1910, the present constitutional provision was adopted. Under that provision members of the General Assembly were to be paid \$1,000 each biennium at the rate of \$7.00 per day while in session with the remainder, if any, to be paid at the end of the two-year period. Members were also authorized to receive "all actual and necessary traveling expenses to be paid after the same have been incurred and audited." The constitutional amendment adopted in 1910 also provided that the General Assembly could adjust legislative compensation by law.

Legislative salaries remained at the \$1,000-per-biennium level until 1948 when this amount was raised to \$2,400. This \$2,400 was made payable at the rate of \$50 for each month of the term and \$10 per day for regular and special sessions with any balance to be paid at the end of the term. An increase of from \$10 to \$20 was made in the per diem rate in 1953, thus making the biennial compensation total \$3,600.

With the most recent change in 1958, Colorado legislators now receive \$100 per month for each month of the term of office to which elected. In addition, each member receives \$20 per day for each legislative day during a biennium up to a maximum of \$2,400, or for not to exceed 120 days. The \$100-per-month salary and the \$20-per-legislative day average \$200 a month salary for a two-year period, or a total of \$4,800. By interpretation, each legislator is also entitled up to 15¢ per mile reimbursement for one round trip to Denver from his home for each session of the General Assembly.

In 1958, additional allowances were also provided for legislative work performed between sessions. Each legislator appointed to the Legislative Council or one of its subcommittees, to the Joint Budget Committee or one of its subcommittees, to the Committee on Education Beyond the High School, or to any interim committee created by joint resolution of the General Assembly is entitled to \$20 per day salary up to a maximum of \$600 (30 days) each year.

Legislative Pay in All 50 States

A comparison of the compensation authorized state legislators shows that Colorado ranks 22nd among the states, as may be noted in the following tabulation. Because of the difficulty in comparing legislative salaries among the states, this tabulation is based on the average number of days the Colorado General Assembly was in session during the past three bienniums, with this figure (139 days) being used to compute the amount of compensation a legislator in each state would receive for the same length of time. This comparison, which ranks the states from high to low, includes salary alone, any living expense allowance provided other than for travel, postage, etc., and the two figures combined, with the ranking being based on the total figure. (Details were not available in every case.)

	<u>State</u>	<u>Salary</u>	<u>Expense Allowance</u>	<u>Total</u>
1.	New York	\$20,000	\$2,000	\$22,000
2.	Pennsylvania	12,500	6,000	18,500
3.	Massachusetts	13,400	1,720	15,120
4.	California	12,000	2,641	14,641
5.	Michigan	10,000	2,500	12,500
6.	Illinois	12,000	---	12,000
7.	Hawaii	4,750	6,255	11,005
8.	Louisiana	4,800	5,250	10,050
9.	New Jersey	10,000	---	10,000
10.	Ohio	10,000	---	10,000
11.	Alaska	5,000	4,865	9,865
12.	Texas	?	?	9,600
13.	Missouri	8,000	1,390	9,390
14.	Minnesota	4,800	3,475	8,275
15.	Wisconsin	7,200	875	8,075
16.	Arizona	5,380	1,390	6,770
17.	Delaware	6,000	---	6,000
18.	Maryland	3,600	2,400	6,000
19.	Washington	2,400	3,475	5,875
20.	Mississippi	3,135	2,400	5,535
21.	Kentucky	1,950	3,475	5,425
22.	COLORADO	4,800	---	4,800
23.	Nebraska	4,800	---	4,800
24.	Nevada	2,675	2,085	4,760
25.	South Carolina	3,750	800	4,550
26.	Connecticut	4,000	500	4,500
27.	Florida	2,400	2,085	4,485
28.	Oregon	1,200	3,225	4,425
29.	Georgia	860	3,440	4,300
30.	Iowa	4,170	---	4,170

	<u>State</u>	<u>Salary</u>	<u>Expense Allowance</u>	<u>Total</u>
31.	Oklahoma	\$?	\$?	\$ 3,950
32.	Alabama	?	?	3,780
33.	Indiana	3,600	---	3,600
34.	North Dakota	330	2,780	3,110
35.	West Virginia	3,000	---	3,000
36.	North Carolina	1,470	1,251	2,721
37.	Arkansas	2,436	---	2,436
38.	Virginia	1,260	720	1,980
39.	South Dakota	1,860	---	1,860
40.	Utah	1,000	695	1,695
41.	Maine	1,660	---	1,660
42.	Tennessee	810	695	1,505
43.	Kansas	480	973	1,453
44.	Vermont	1,390	---	1,390
45.	Montana	1,320	---	1,320
46.	New Mexico	1,320	---	1,320
47.	Wyoming	552	552	1,104
48.	Idaho	660	---	660
49.	Rhode Island	300	---	300
50.	New Hampshire	218	---	218

Additional Pay for Presiding Officers

Five states pay additional amounts over the basic legislative salary to the presiding officers. Those states and the additional amounts authorized are shown below:

<u>State</u>	<u>Officer</u>	<u>Amount</u>
Arkansas	Speaker	\$300 per biennium
Kansas	Speaker	\$3.00 per legislative day
New Hampshire	Speaker and President	\$50 per term of office
Ohio	Speaker and President	\$5,000 per biennium
Pennsylvania	Speaker and President	\$18,000 per biennium

Methods Used by Other States to Pay Living Expenses of Legislators

There are only two states that pay an allowance over and above salary and per diem payments which is recognized as a reimbursement for expenses incurred because the "out of the capitol city" legislator is living away from home. Those two states are Arizona and Massachusetts. Arizona pays the "out of the capitol city" legislator \$10 per day extra and Massachusetts allows \$9.50 per day.

Three states pay a larger per diem to the "out of capitol city" legislator than is paid to the capitol city legislator. Alaska pays \$25 per day to the capitol city legislator and \$35 to the

"out of capitol city" legislator; Hawaii pays \$32.50 and \$45 per day respectively; and Minnesota pays \$8 and \$12 per day.

Many other states pay a salary plus either an expense allowance or a per diem rate. However, these states do not differentiate between the capitol resident and non-capitol resident legislator.

<u>State</u>	<u>Salary</u>		<u>Additional Allowances During Session</u>
	<u>Daily Rate</u>	<u>Biennial Rate</u>	
Alabama	\$10		\$ 20 per day
California		\$12,000	19 per day
Connecticut		2,000	500 per biennium
Florida		2,400	15 per day
Georgia	10		5 per day
Kansas	5		7 per day
Kentucky	25		10 per day
Maryland		3,600	2,400 per biennium
Michigan		8,000	2,000 per biennium
Missouri		3,000	10 per day
Nevada	25		15 per day
New York		15,000	2,000 per biennium
North Carolina	15		8 per day
North Dakota	5		20 per day
South Carolina		2,000	7.50 per day
Tennessee	10		5 per day
Utah		1,000	5 per day
Washington		2,400	25 per day
Wisconsin		7,200	175 per month
Wyoming	12		12 per day

Trips To and From Home

Twenty-three states reimburse legislators for more than one trip for expenses incurred in traveling to and from home during a session. The number of trips allowed per session ranges from two in Vermont to daily trips in several states:

<u>State</u>	<u>Number of Trips Per Session</u>	<u>Rate</u>
Arizona	no limit	10¢ per mile
Connecticut	no limit	10¢ per mile
Delaware	no limit	15¢ per mile
Florida	one trip per week	10¢ per mile
Georgia	four trips per session	10¢ per mile

<u>State</u>	<u>Number of Trips Per Session</u>	<u>Rate</u>
Illinois	one trip per week	10¢ per mile
Indiana	one trip per week	7¢ per mile
Louisiana	12 trips per biennium	10¢ per mile
Maine	one trip per week	5¢ per mile
Massachusetts	one trip per week*	7¢ per mile
Michigan	two trips per month	10¢ per mile
Mississippi	one trip per week	6¢ per mile
New Hampshire	daily	**
New Jersey	no limit	***
New York	one trip per week	actual and necessary expenses
North Carolina	one trip per week	7¢ per mile
Ohio	one trip per week	10¢ per mile
Pennsylvania	one trip per week	10¢ per mile
Rhode Island	no limit	8¢ per mile
South Carolina	one trip per week	9¢ per mile
Utah	one trip per week	10¢ per mile
Vermont	two trips per session	20¢ per mile
Wisconsin	one trip per week	7¢ per mile****

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- * If legislator lives within 40 miles of the state capitol, he is permitted a daily trip of 7¢ per mile.
 - ** First 45 miles - 20¢ per mile; next 25 miles - 8¢ per mile; next 25 miles - 6¢ per mile; in excess of 95 miles - 5¢ per mile.
 - *** Each legislator has state railway pass.
 - **** Seven cents for first 2,000 miles, then 6¢ for each additional mile.

Constitutional Problems Regarding Legislative Compensation in Colorado

At its first meeting, the committee agreed on three areas of change in regard to legislative compensation in Colorado as being worthy of further exploration, namely to increase the present 120-day biennial limitation of \$2,400; to provide a living expense allowance for non-Denver members of the General Assembly; and to authorize expenses for more than one trip each session to and from home for non-Denver legislators. In order to ascertain the limiting effect which the state's constitution might have on these three proposals, if any, Miss Clair T. Sippel of the Legislative Reference Office was instructed to prepare a report on this question. Miss Sippel reported the following:

QUESTION: 1. Adjustment of the present 120-day limitation on \$20 additional compensation; viz: payment of \$20 per day allowed during regular and special sessions is limited to \$2,400, which covers only 120 days.

ANSWER: There have been no Supreme Court cases or opinions of the Attorneys General on this provision of the present law. It would appear that the sum of \$2,400 additional compensation could be increased to cover additional days over and above 120 days.

QUESTION: 2. Allowances for living expenses during sessions of the General Assembly for members whose permanent residence is outside of the state capitol.

ANSWER: In 1947 the General Assembly passed S.B. No. 26 providing that in addition to the \$1,000 compensation allowed by the constitution, payable at the rate of \$7.00 per day during regular and special sessions, "each member shall receive \$10 per day as expenses for each day he is in attendance at the General Assembly and for each day he is excused because of illness and not otherwise, and for each regular and special session each member shall receive the actual and necessary traveling expenses incurred in making one trip from his place of residence to the state capitol and return."

The Governor, upon receipt of the bill, and before acting on it, submitted interrogatories to the Supreme Court of the state as to the constitutionality of the bill.

In re Interrogatories by the Governor as to S.B. No. 26 116 Colorado 318, the court held in part:

"Because the same allowance is made for all members and no provision made for itemizing and auditing, the ten dollars per day would appear to be compensation."

The court finally held that the entire bill was unconstitutional because of the constitutional provision that "No general assembly shall fix its own compensation." (Sec. 6, Art. V) The court said:

"Here we are confronted with the fact that this is not a general and unqualified increase of compensation. It is fixed as a per diem and cannot be paid for any day a member is not in attendance, unless he is excused by the assembly 'because of illness.' Thus the assembly becomes the sole judge of when the member is in attendance and when not, when he should be excused because of illness and when not. To that extent future general assemblies would fix the compensation of their own members, in direct violation of said section 6 of article V, being the sole judge of when those members could and when they could not draw this extra per diem."

As a result of the above opinion, the Governor vetoed the bill in question.

In 1960, the General Assembly passed Senate Joint Resolution No. 3, which provided in part:

"That the words 'actual and necessary traveling expenses' as used in section 6 of article V of the constitution shall be applied as follows to members of the General Assembly, and to future General Assemblies unless and until otherwise provided by law:

"(1) 'Traveling expenses' shall include the actual cost of transportation for each member to the state capitol from his place of residence and return, in attendance at sessions, or in necessary attendance at committee meetings in the interim between sessions. During sessions members shall be allowed traveling expenses only for necessary trips to their place of residence and return when the general assembly is not in actual session. 'Traveling expenses' shall also include the actual cost of meals and lodging incurred by each member while away from his residence in attendance at sessions or in necessary attendance at committee meetings in the interim between sessions.

"(2) Mileage and the cost of meals and lodging shall be paid only after the same have been incurred and audited, and shall not exceed those authorized for the executive departments unless special circumstances are shown to the satisfaction of the state controller."

The state controller asked the Attorney General for his opinion as to certain questions arising from the provisions of the above resolution. The attorney general gave his opinion as follows:

No. 3375 (1960) -- "The questions that you have submitted are as follows:

"(2) Would payment of the cost of meals and lodging of legislative members while away from their residence and in attendance at legislative sessions constitute an increase in salary or mileage as prohibited by Section 9 of Article V, or other compensation, perquisite or allowance as prohibited by Section 6 of Article V of the Constitution?

"CONCLUSION: 'Actual and necessary traveling expenses' does not include the cost of meals and lodging of legislative members while in attendance at legislative sessions. Any such payments would constitute an increase in compensation and be in violation of Article V, Section 9, and Article V, Section 6 of the Constitution." (Several cases are cited in support of this conclusion.)

Since the Resolution applied to members of the General Assembly which passed the Resolution, the Attorney General further held:

"The payment of expenses which are unauthorized is, in effect, an increase of compensation.* * * Article V, Section 9 of the Constitution forbids any increase of salary of a member of either house during the term for which he may have been elected." (Cases also cited in support of this conclusion)

Because the Resolution applied also to future General Assemblies, the Attorney General held the entire Resolution unconstitutional, since a General Assembly cannot do by Resolution that which can only be done by statute law.

(Note: Question (1) asked by the state controller in regard to the same Resolution, as to round trips of members during sessions, as set forth in the Resolution, is covered in Committee Suggestion (3) which follows herein.)

From the above it would appear:

- a. "Actual and necessary traveling expenses" allowed by the constitution do not cover living expenses of out-state members at the state capitol during sessions;
- b. Payment of such living expenses can be accomplished only by an increase in compensation, since payment for such expenses as such (viz: actually incurred and audited) would be a violation of the constitutional provision that "the said members of the general assembly shall receive no other compensation, perquisite or allowance whatever.";
- c. Provisions for compensation must be specified by statute, not by Resolution or Rule of the General Assembly;
- d. "Qualified payments" to members, to be determined by the General Assembly itself, would violate the constitutional provision that "No general assembly shall fix its own compensation."

QUESTION: 3. Allowance for traveling expenses during sessions of the General Assembly for out-of-Denver members, to their permanent residences and return to the state capitol.

ANSWER: Attorney General Opinions applicable:
Opinion Book 4, page 59 (1911) -- "The expenses allowed by the amendment (const.) are 'all actual and necessary traveling expenses,' and, under the rule that constitutional provisions must be understood according to the ordinary signification of the language used, we take this to mean the actual railroad fare paid by members in going from their respective homes to the seat of government and returning to their homes by the most direct route; also, the actual expenses for necessary meals and sleeping-car accommodations while making such journey."

No. 129 (1933) -- "Bearing in mind the fact that the constitution provides only for actual and necessary traveling expenses, we come to the conclusion that traveling expenses should be limited to those incurred by the member in journeying from his home to the State Capitol

and returning from the Capitol to his home. Any other traveling expenses would, in legal contemplation, be incident, not to the Special Session, but to the personal business or affairs of the member himself, and therefor, would not be a lawful charge against the State."

No. 242 (1944) -- "It is our opinion, as stated in the above quoted previous opinions, that members of the Legislature are entitled to necessary traveling expenses actually incurred by them and that therefore no rate of payment can be fixed for the reason that each member's expenses may vary. Each member should present his expense account so that the same may be audited and his actual expenses incurred and found to be necessary, may be allowed."

"It is also our opinion that traveling expenses contemplated in said constitutional provisions would not include incidental traveling between a member's home and the State Capitol during a session of the Legislature as that could not be considered traveling on official business of a member connected with the Legislature and would necessarily be classed as an expense in conducting his personal affairs.

"As the constitutional provisions require the auditing of expense accounts, the allowance of such expenses must necessarily rest finally with the determination made when the same is audited."

No. 262 (1944) -- "As stated in former opinions of this office, the Colorado Constitution allows the payment of 'all actual and necessary traveling expenses to be paid after the same have been incurred and audited.' (Underscoring ours) In our opinion this meaning is clear and can only be interpreted as necessary traveling expenses actually incurred. Whether or not such expenses were actually incurred is a question of fact to be determined and audited by the proper committee or authority provided for this purpose."

No. 3375 (1960) (Re: S.J.R. No. 3, covered in part under Committee Suggestion (2) earlier in this report)

"(1) Would payment for travel expenses of legislative members during the regular session to their places of residence and return at times other than the trip to Denver at the opening of the session and return trip at the close of the session, violate the provisions of Section 6 of Article V or Section 9 of Article V of the Constitution?

"CONCLUSION: Such travel expenses would not violate the 'actual and necessary traveling expenses' provisions of Article V, Section 6 of the Constitution, providing the necessary travel is in connection with the conduct of the business of the General Assembly.

"(1) That a member of the General Assembly is entitled to actual and necessary traveling expenses in journeying to the State Capitol at the beginning of a session and for his return home at the conclusion of a session has never been questioned. Senate Joint Resolution No. 3 authorizes a reverse situation in that it provides that 'During sessions members shall be allowed traveling expenses only for necessary trips to their place of residence and return when the general assembly is not in actual session.' Any reimbursement for traveling expenses for trips other than in connection with official business of the assembly would be a reimbursement for a personal expense and not a lawful charge against the State."

From the above it would appear that no traveling expenses for additional trips during sessions of the legislature could be allowed members living away from the state capitol unless such trips were directly connected with the business of the legislature, or unless the constitution were amended; and no specific mileage or limitation on traveling expenses could be fixed without a constitutional amendment, since the present constitution allows only for "actual and necessary traveling expenses."

Committee Findings and Recommendations

Senate Joint Resolution No. 18, 1961 regular session, directed the committee "to conduct a study on the problem of compensation and expenses of the members of the General Assembly," with a report on the results thereof to be submitted to the second regular session of the Forty-third General Assembly. As a result of its study, the committee has reached the following conclusions:

1. The work of the members of the General Assembly is not only of vital importance to the people of this state but is also becoming increasingly more complex. Furthermore, living costs and expenses have continued to rise and the members of the General Assembly should not be expected to bear the complete burden of these increased costs and expenses.
2. The theory of part-time pay for part-time services for legislators should be continued. However, when the services are provided on a full-time basis such as when the General Assembly is in session, then a comparable level of compensation should prevail.
3. Legislative compensation should be at a level which will help to attract and to retain the high caliber of public-spirited citizens needed to participate in the work of the General Assembly.
4. That function of each legislator, in consulting with and reporting to his constituents while the General Assembly is in session, constitutes a vital part of his public responsibilities in accomplishing the purposes of the entire General Assembly.
5. Some effort should be made to recognize and reimburse the special or extra expenses incurred by non-Denver legislators who, because of their legislative responsibilities, are required to live away from home while the General Assembly is in session. However, the problem of these additional expenses of these non-Denver legislators is one which can be resolved only by amendment to the constitution and should be considered in the future when general constitutional amendments are proposed involving the legislative branch of state government.

The committee's recommendations are based on these findings and conclusions. However, by way of explanation, the committee has limited its recommendations to those changes which may be made by the General Assembly itself. With this in mind, the committee makes the following two recommendations:

1. The present \$100 per month salary for members of the General Assembly should remain unchanged but the total per diem compensation should be increased to \$4,000 a biennium which would be payable at the rate of \$25 per day for not to exceed 160 days in a two-year period with any balance remaining at the close of the period to be paid to the member. The effect of this recommendation would be to increase each member's biennial compensation from \$4,800 to \$6,400, or from \$2,400 to \$3,200 on an annual basis. Also, on the basis of a 30-day month while in session, this change would mean that a legislator would receive a gross monthly compensation of \$850 -- \$100 monthly base salary plus \$750 resulting from \$25 per diem for 30 days.
2. The members of the General Assembly should be reimbursed for monthly trips to and from their homes while the General Assembly is in session in order that they and the other members of the General Assembly may benefit from the results of their counseling with their constituents on legislative issues.