



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

Special Review

State-Paid Per Diems
Fiscal Year 2000



MARCH 1, 2001

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Financial Audit Division

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OFFICE OF THE LEGISLATIVE AUDITOR
State of Minnesota • James Nobles, Legislative Auditor

Representative Dan McElroy, Chair
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We have conducted a special review of per diems paid by the State of Minnesota to members of various boards, councils, and committees during fiscal year 2000. In audits of executive branch agencies during the last two years, the Office of the Legislative Auditor identified a significant number of per diem issues. Many of the issues related to per diems paid to public employees. Because of the number of common concerns, we decided to pursue the matter further and issue a special report.

In conducting this special review, we attempted to answer the following questions:

- What are the current legal requirements for payment of per diems, and what are the significant inconsistencies among the various laws?
- What administrative policy and procedural changes could boards and committees institute to ensure compliance with existing per diem laws?
- Did any state employee inappropriately receive per diems during fiscal year 2000?

Pursuant to Minn. Stat. Section 3.975, this report has been referred to the Office of the Attorney General. The Attorney General has the responsibility to ensure the recovery of state funds and, in fulfilling that role, may negotiate the propriety of individual claims.

/s/ James R. Nobles

James R. Nobles
Legislative Auditor

/s/ Claudia J. Gudvangen

Claudia J. Gudvangen, CPA
Deputy Legislative Auditor

Report Signed On: February 26, 2001

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Audit Participation

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Report Summary

Key Findings and Recommendations:

The existence of three different per diem statutes, each with unique requirements, creates confusion for many boards and committees with public employee members. Some eligibility provisions, such as the definition of what constitutes approved activities when claiming per diem, are subject to interpretation and must be defined by the individual board or committee.

We recommend that the Legislature review the statutory provisions governing per diem payments and consider whether revisions are necessary to provide for a less complex and more uniform process. In addition, the various boards and committees must put a number of administrative procedures in place to ensure compliance with applicable statutory provisions.

As a result of our review of fiscal year 2000 per diems, we identified three state employees who received unallowable per diem payments. In addition, in several cases, we recommended that agencies obtain legal advice and clarification concerning their payment of per diems. We questioned issues such as determining normal work hours, legal authority to pay per diems, and per diem computation methods. We also found that the state has not complied with statutory provisions linking per diem payments to performance of certain administrative requirements.

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Special Review: State-Paid Per Diems

Chapter 1. Introduction and Background

We have conducted a special review of per diems paid by the state to members of various boards, councils, and committees. The state paid approximately \$600,000 in per diems during fiscal year 2000. State statutes generally allow members serving on administrative boards and agencies, advisory councils and committees, and health-related and non-health-related licensing boards (henceforth referred to as “boards and committees”) to be compensated for time spent on authorized activities. This compensation, referred to as “per diem,” is a daily rate. The statutorily imposed per diem rate is currently \$55 per day. Members also can generally be reimbursed for expenses, including childcare, incurred in order for the person to serve.

In audits of executive branch agencies during the last two years, the Office of the Legislative Auditor identified a significant number of per diem issues. Many of the issues related to per diems paid to public employees. Table 1-1 lists recent audit reports with per diem issues and the types of problems we reported.

Table 1-1
Per Diem Issues Cited In
1999 and 2000 Audit Reports

Board or Committee	Report No.	Issue	Amount Questioned
Citizens Council on Voyageurs National Park	00-39 (Finding 4)	State employee received unallowable per diems pursuant to Minn. Stat. Section 15.059.	\$990
Gambling Control Board	00-31 (Finding 1)	Board inappropriately paid per diems to three board members pursuant to Minn. Stat. Section 15.0575.	\$3,245
Council on Asian Pacific Minnesotans	00-30 (Finding 3)	Council inappropriately paid per diems to three council members pursuant to Minn. Stat. Section 15.0575.	\$3,135
Chicano Latino Affairs Council	99-58 (Finding 5)	Council inappropriately paid per diems to five council members pursuant to Minn. Stat. Section 15.0575.	\$4,455
Chicano Latino Affairs Council	99-58 (Finding 8)	Council had no formal policy defining the criteria for paying per diems.	NA
Capitol Area Architectural and Planning Board	99-51 (Finding 5)	Board overpaid advisor per diems by paying multiple per diems for one day’s activities.	\$165
Capitol Area Architectural and Planning Board	99-51 (Finding 5)	Board did not require advisors to document activities when requesting per diems.	NA
Amateur Sports Commission	99-31 (Finding 7)	Commission had no formal policy defining the criteria for paying per diems.	NA

Source: Auditor prepared from Office of the Legislative Auditor published reports issued in 1999 and 2000.

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Objectives and Methodology

Because of the common concerns we identified in recent audits, we conducted a special review of executive branch agency payment of per diems. In conducting this special review, we attempted to answer the following questions:

- What are the current legal requirements for payment of per diems, and what are the significant inconsistencies among the various laws?
- What administrative policy and procedural changes could boards and committees institute to ensure compliance with existing per diem laws?
- Did any state employee inappropriately receive per diems during fiscal year 2000?

In order to conduct this review, we researched current legal requirements concerning the payment of per diems. We reviewed the various statutes governing per diem payments and looked for inconsistencies and lack of clarity in their provisions. We also reviewed recent Legislative Auditor reports and agency report responses to assess the underlying causes of the per diem problems.

We took a sample of per diems paid to state employees during fiscal year 2000. We matched agency per diem records with state payroll records and reviewed the validity of the per diem payments. We tested the reasonableness of selected large per diem amounts paid to individual board or committee members during the fiscal year. We limited our review to state employees. We did not conduct a comprehensive search for per diems paid to employees of political subdivisions of the state or the University of Minnesota. We also did not review per diems paid to legislators pursuant to legislative rules.

Our conclusions are presented in Chapters 2 and 3 of this special review report.

Chapter 2. Current Per Diem Legal Requirements

Chapter Conclusions

The existence of three different per diem statutes, each with unique requirements, creates confusion for many boards and committees with public employee members. Some eligibility provisions, such as the definition of what constitutes approved activities when claiming per diem, are subject to interpretation and must be defined by the individual board or committee.

Determining whether board and committee members can be paid per diem has become quite complex and difficult to administer, in part because of some of the eligibility provisions in statute. In addition, in some situations, the burden of per diem monitoring may shift to a public employee's employer, rather than the board or committee. Finally, some boards and committees have questioned whether public employees are treated equitably under certain statutory provisions.

We recommend that the Legislature review the statutory provisions governing per diem payments and consider whether revisions are necessary to provide for a less complex and more uniform process. In addition, the various boards and committees must put a number of administrative procedures in place to ensure compliance with applicable statutory provisions. The Office of the Attorney General and the Department of Finance should each play a role in working with the various boards and committees to understand applicable requirements and to develop appropriate procedures.

There are three main statutes that govern per diems. These statutes apply whenever specifically referenced in the authorizing legislation for a board, council, or committee. Each statute is slightly different, primarily in the provisions governing public employee membership. Table 2-1 shows a comparison of the three statutes.

These legal requirements are, in some cases, confusing. Depending on which per diem statute the board or committee's authorizing legislation refers to, public employees may or may not be eligible to receive per diems. As a result, theoretically, a public employee who serves on two different boards or committees may be subject to two different sets of per diem requirements. To add to the confusion, in recent years, the Legislature has changed the referenced per diem law for some councils. Because of this, the rules for paying per diems to some members on the same council have changed over time.

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**Table 2-1
Per Diem Compensation Citations Comparison**

Legal Citation	Minn. Stat. Section 15.0575, Subd. 3	Minn. Stat. Section 15.059, Subd. 3	Minn. Stat. Section 214.09, Subd. 3
Affected Groups	Administrative Boards and Agencies	Advisory Councils and Committees	Health-Related and Non-Health-Related Licensing Boards
General Compensation	\$55 per day, plus expenses and child care	\$55 per day, plus expenses and child care	\$55 per day, plus expenses and child care
Eligible Activities	Board activities, when authorized by the board	Council or committee activities, when authorized by the council or committee	Board activities, when authorized by the board
Special Public Employee Provisions: ⁽¹⁾	<p>1) Members who are full-time state employees or full-time employees of the political subdivisions of the state may not receive the daily payment, but they may suffer no loss in compensation or benefits from the state or a political subdivision as a result of their service on the board.</p> <p>2) Public employees may receive the expenses unless the expenses are reimbursed by another source.</p> <p>3) Public employees may be reimbursed for child care expenses only for time spent on activities that are outside their normal working hours.</p>	<p>1) If members who are state employees or employees of political subdivisions receive the daily compensation, and if the major part of their activities occur during normal working hours for which they are also compensated by the state or political subdivision, the employer shall deduct the daily compensation from the employee's compensation for the day. In no other case may a member who is an employee of the state or a political subdivision suffer a loss in compensation or benefits from the state or political subdivision as a result of service on the council or committee.</p> <p>2) Public employees may receive the expenses unless the expenses are reimbursed by another source.</p> <p>3) Public employees may be reimbursed for child care expenses only for time spent on activities that are outside their normal working hours.</p>	<p>1) If members who are full-time state employees or employees of political subdivisions of the state receive the daily compensation, and if the major part of their activities occur during normal working hours for which they are also compensated by the state or political subdivision, the employer shall deduct the daily compensation from the employee's compensation for the day. In no other case may a board member who is an employee of the state or a political subdivision suffer a loss in compensation or benefits from the state or political subdivision as a result of service on the board.</p> <p>2) Public employees may receive the expenses unless the expenses are reimbursed by another source.</p> <p>3) Public employees may be reimbursed for child care expenses only for time spent on activities that are outside their normal working hours.</p>

(1) Pursuant to an Attorney General Opinion dated April 14, 1977, an employee of the University of Minnesota is considered to be a public employee under Minn. Stat. Section 15.0575.

Source: Auditor prepared.

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Language included in all three per diem statutes discussing “time spent on board [council or committee] activities when authorized by the board” can also be problematic. Since the scope of these activities is not clearly defined in statute, it is necessary for each board or committee to determine which activities qualify for per diem payments. Currently, boards and committees have varying definitions of these activities – some formal and some informal. Some definitions are very restrictive, including only formal board or committee meetings. Others are much more liberal and include time for activities such as meeting preparation or travel time, as well as more informal discussions, meetings with subcommittees or administrative staff, or telephone calls. Obviously, the more liberal interpretations of allowable activities result in larger per diem expenditures for certain boards or committees. During our review, we noted examples of some individual board members receiving significant per diem payments. The board member receiving the largest payments was compensated for board activities on 58 days during fiscal year 2000.

Some of the provisions included in the existing per diem statutes are difficult to administer. Minn. Stat. Sections 15.059 and 214.09, for example, use a public employee’s “normal working hours” as criteria for determining whether the person is eligible to receive a per diem. Both provisions state:

If members who are state employees or employees of political subdivisions receive the daily compensation, and **if the major part of their activities occur during normal working hours** for which they are also compensated by the state or political subdivision, the employer shall deduct the daily compensation from the employee’s compensation for the day. [**Emphasis added**]

According to guidance provided by the Office of the Attorney General, the concept of normal working hours depends on an individual employee, rather than an organization. For example, a state agency employee who works in an office from 8:00 a.m. to 4:30 p.m. may not be eligible to receive per diems when serving on a licensing board which holds weekday, daytime meetings. However, another employee working at the same state agency who has a regularly scheduled day off during the week may be eligible to receive a per diem for attending the same board meeting if it is held on the person’s normal day off. Because of this disparity, boards and committees subject to either Minn. Stat. Section 15.059 or 214.09 must not only determine each member’s employer, but also must determine the member’s normal working hours, if the person is a public employee.

Both Minn. Stat. Sections 15.0575 and 214.09 only address payment of per diem to public employees who are “full-time”. Therefore, a board or committee also must monitor whether its public employee members work full-time for the state or a political subdivision, or whether they work less than full-time. Minn. Stat. Section 15.059, on the other hand, infers that any employment with the state or a political subdivision, whether full- or part-time, would impact per diem eligibility.

Public employees who take vacation to serve on a board or committee cannot ignore the per diem provisions of Minn. Stat. Sections 15.059 and 214.09. In guidance to state agencies, the Office

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of the Attorney General has said that public employees in vacation status are still “being compensated by the state or political subdivision” under Sections 15.059 and 214.09. Some boards and committees, however, argue that it is unfair for public employees to be subject to the per diem restrictions while on vacation because the same employee could legally receive compensation for other employment while on vacation from a public employment position.

Adding further confusion, all three per diem statutes include a provision that attempts to ensure that public employees are not penalized by their service on boards or committees. For example, Minn. Stat. Section 15.059 says:

In no other case may a member who is an employee of the state or political subdivision suffer a loss in compensation or benefits from the state or political subdivision as a result of service on the council or committee.

There are a variety of opinions as to what this provision means. Some argue that the “no loss in compensation” provision does, in fact, allow public employees to claim per diems if they are on vacation leave from their public employment position at the time of the meeting. Others argue that this provision allows public employees to serve on boards and committees without having to take vacation leave from their public employment position. If public employees are excused from their current work assignments to attend board and committee meetings without taking leave, the law has essentially shifted the cost of meeting attendance to the employee’s public employer, and away from the board or committee on which the person serves.

Finally, both Minn. Stat. Section 15.059 and 214.09 allow a public employee to receive per diem, but require the member’s employer to “deduct the daily compensation from the employee’s compensation for the day” in certain situations. This again shifts the burden of per diem monitoring and reporting away from the appointing board or committee and onto the employee’s public employer. Because of this provision, it appears that all state and political subdivision agencies have some responsibility to monitor their employees’ involvement on boards and committees and the payment of per diems to those employees.

In some cases, agencies are not subject to the three specific per diem statutes, but are allowed to pay per diems under unique statutory or other authority. For example, by statute, the Commissioner of the Department of Human Services sets the per diem rates for certain boards relating to the civil commitment process. The per diem rates established for these boards are substantially higher than the \$55 generally allowed under the specific per diem statutes. For example, certain members serving on the Special Review Board receive per diems of \$790.

Conclusions

The existence of three different per diem statutes, each with unique requirements, creates confusion for many boards and committees with public employee members. Some eligibility provisions, such as the definition of what constitutes approved activities when claiming per diem, are subject to interpretation and must be clearly defined by the individual board or committee.

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Determining whether board and committee members can be paid per diem has become quite complex and difficult to administer, in part because of some of the eligibility provisions in statute. In addition, in some situations, the burden of per diem monitoring may shift to a public employee's employer, rather than the board or committee. Finally, some boards and committees have questioned whether public employees are treated equitably under certain statutory provisions.

Recommendations

The Legislature should review the statutory provisions governing per diem payment and consider whether revisions are necessary to provide for a less complex and more uniform process. Under the current governing statutes for per diem payments, the various boards and committees should put a number of administrative procedures in place to ensure compliance with applicable statutory provisions. The Office of the Attorney General and the Department of Finance each play a role in working with the various boards and committees to understand applicable requirements and to develop appropriate procedures. When establishing new practices, the agencies should consider the following:

- The administrative staff of boards and committees should be well informed as to which per diem statute applies to their members. They should be aware of existing legal interpretations concerning the applicable provision and they should seek legal advice when unusual situations occur. Agencies with oversight responsibilities for smaller boards and committees should assist in this effort.
- New members must be well informed and trained when they are appointed to a board or committee. Public employee members should be aware that, in some cases, they might be unable to claim per diems for their service.
- Boards and committees should clearly define which activities qualify for per diem reimbursement and should require members to document those activities when claiming per diems.
- Boards and committees should track the employment status of their members, periodically determining whether members are employees of the state or a political subdivision, and, if applicable, their normal working hours, and whether they work full-time. Members should be made aware that any changes in their status as a public employee may affect their ability to claim per diems.

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Chapter 3. Fiscal Year 2000 Per Diem Payments

Chapter Conclusions

As a result of our review of fiscal year 2000 per diems, we identified three state employees who received unallowable per diem payments. In addition, in several cases, we recommended that agencies obtain legal advice and clarification concerning their payment of per diems. We questioned issues such as determining normal work hours, legal authority to pay per diems, and per diem computation methods. We also found that the state has not complied with statutory provisions linking per diem payments to performance of certain administrative requirements. Finally, we found some procedural issues, such as payment coding, and the need for per diem review and reauthorizations.

We tested a sample of per diems paid to state employees during fiscal year 2000 in order to determine whether the payments were appropriate and reasonable. We identified 22 state employees who received per diem payments during fiscal year 2000. We determined whether these employees were full-time or part-time employees of the State of Minnesota. In certain cases, we asked the state employee or the employing agency to provide the employee's "normal work" schedule during fiscal year 2000.

Our review included only state employees and not employees of political subdivisions of the state or the University of Minnesota. Although we did not conduct a comprehensive search for per diems paid to employees of political subdivisions, we did become aware that some of these payments were made. In some instances, certain members of boards or committees are required by statute to be public employees. Examples include the Peace Officers Standards and Training Board and the Department of Public Safety Regional Review Committee. These, and other boards and committees with members from political subdivisions, must address the same concerns as agencies with state employee board members. In addition, the administrative effort required when members are employees of political subdivisions may be more extensive because, in some cases, the state agency must ensure that the member's public employer is deducting the amount of per diem from the member's pay.

Conclusions

As a result of our review, we identified some inappropriate payments as well as questions regarding administrative practices and compliance with applicable legal provisions.

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1. Some agencies paid per diems to board or committee members who were ineligible under Minn. Stat. Section 15.0575 due to their full-time state employment.

Three agencies inappropriately paid \$1,155 in per diems to three full-time state employee members. Minn. Stat. Section 15.0575 prohibits full-time employees of the state, or a political subdivision of the state, from receiving per diem compensation. In an opinion dated April 14, 1977, the Attorney General clarified the intent and applicability of the legislation as follows:

It appears that, in enacting Laws 1976, ch. 134.1, subd. 3, the legislature intended that those persons who are compensated for full-time governmental employment from public funds under the direction of governmental entities should not be granted additional public compensation for serving on state boards. At the same time, the legislature attempted to assure that the person would not lose compensation or benefits from his principal governmental employer. Concededly, this particular statute makes no distinction between those members of the board who serve during their normal working hours for which they are already compensated and those who perform their duties on their own time. Neither is application of that section limited to public employees who are serving as representatives of governmental units. Instead, **the section operates as a blanket prohibition against state and local government employees receiving per diem.** [Emphasis added]

Table 3-1 summarizes the per diem payments to the ineligible members for fiscal year 2000, pursuant to Minn. Stat. Section 15.0575.

Agency	Employer (Full-Time Status)	Amount
Amateur Sports Commission ⁽¹⁾	Minnesota State Colleges and Universities	\$605
Board on Aging ⁽²⁾	Department of Economic Security	\$385
Council on Black Minnesotans ⁽³⁾	Minnesota State Colleges and Universities	<u>\$165</u>
	Total	<u>\$1,155</u>

(1) In July 2000, the Amateur Sports Commission member informed the commission that he was ineligible to receive per diems due to his state employment. He also offered to repay per diems received. The commission discontinued per diem payments at that time. As of February 20, 2001, the commission had received repayment from the member.

(2) The Board on Aging is a part of the Department of Human Services. It discovered the member's ineligibility and the member is currently repaying a total of \$605 (comprised of \$385 and \$220 for fiscal years 2000 and 2001, respectively) through a \$25 payroll deduction which began on January 3, 2001.

(3) In July 2000, the Council on Black Minnesotans identified the member as being ineligible to receive per diems due to the member's state employment. The council discontinued per diem payments at that time.

Source: Minnesota Accounting and Procurement System (MAPS).

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Recommendation

- *The Council on Black Minnesotans should obtain repayment for all per diem payments to members who were full-time employees of the state.*

2. Some agencies paid per diems to state employees under Minn. Stat. Sections 15.059 and 214.09 without adequately evaluating the employees' normal work hours.

Two state agencies paid per diems totaling \$1,210 to two state employees without adequately evaluating the employees' normal work hours in relation to the board or council's meeting times. Minn. Stat. Sections 15.059 and 214.09 state that, if members who are state or political subdivision employees receive the daily compensation, and if the major part of their activities occur during normal working hours for which they are also compensated by the state or political subdivision, the employer shall deduct the daily compensation from the employee's compensation for the day.

Table 3-2 summarizes the per diem payments to state employees for fiscal year 2000 where a determination of normal work hours needs to be made, pursuant to Minn. Stat. Sections 15.059 and 214.09.

Table 3-2
Questionable Per Diem Payments Under Minn. Stat. Sections 15.059 and 214.09
Contingent on Normal Work Hours
July 1, 1999, through June 30, 2000

Agency	Per Diem Authorization	Employer	Amount
Small Business Procurement Council ⁽¹⁾	Minn. Stat. Section 15.059	Minnesota State Colleges and Universities	\$ 440
Board of Nursing ⁽²⁾	Minn. Stat. Section 214.09	Minnesota State Colleges and Universities	<u>\$ 770</u>
Total			<u>\$1,210</u>

(1) The Small Business Procurement Council is a part of the Department of Administration. Each council meeting began at 11:00 a.m. with seven of the eight meetings held on Thursday and the remaining meeting on Wednesday. The council member's normal working hours are between 7:00 a.m. and 5:00 p.m., although the member occasionally works as late as 10:00 p.m. As of September 9, 2000, the member refused any further per diems for council activities.

(2) Thirteen of the fourteen board activities occurred between 8:00 a.m. and 3:30 p.m., while one was held from 5:30 p.m. to 8:00 p.m. The board activities were primarily during the summer when the professor was not teaching; however, the board member opted to receive payroll over twelve months instead of nine months. The board member information form indicated that if board meetings fell on class or lab days, the professor would reschedule the class or lab to accommodate the board activity. The board believes that it adequately evaluated the member's work schedule prior to making per diem payments.

Note: In each of these examples, the employer did not deduct the per diem from the employee's compensation for the day.

Source: Minnesota Accounting and Procurement System (MAPS) and auditor analysis.

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The question of normal work hours is especially problematic. According to guidance provided by the Office of the Attorney General, the concept of normal working hours depends on an individual employee, rather than an organization. Because of this, the Office of the Attorney General acknowledges the concept of normal working hours to be one of the most troublesome per diem provisions to administer and enforce. The question of flex-time and employees' ability to rearrange their work schedules impacts the per diem restrictions under Minn. Stat. Sections 15.059 and 214.09.

In the two examples we cited, the members were employed in state higher education. As a result, their normal working hours may be less consistent than those of other public employees. In addition, issues concerning a professor's scheduled office hours, an employee's evening hours during certain peak times, a professor's ability to cancel and reschedule classes, and twelve-month payroll payments to professors who only work during the nine-month school year could all affect the legal definition of an employee's normal working hours.

Recommendation

- *The Department of Administration and the Board of Nursing should seek legal advice concerning the allowability of per diem payments to state employees, given potential questions about normal working hours. The agencies should assess the normal working hours of the two state employees cited and pursue repayment, if warranted.*

3. Some agencies did not have specific statutory authority to pay per diems.

Certain agencies paid per diems to committee or board members in the absence of specific statutory authority. During our testing of per diems paid during fiscal year 2000, we found three agencies that could not cite a specific statutory reference authorizing payment of certain per diems. Table 3-3 lists these agencies and the total amount of per diems paid during fiscal year 2000.

Although we do not question the agencies' ability to create these committees and boards, the authority to pay per diems is unclear. In addition, the eligibility of any public employee member serving on these committees and boards to receive per diem is also questionable. Because of these complications, agencies should seek legal advice to determine their authority to pay per diems to these committee and board members.

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Table 3-3
Per Diems Paid Without Specific Statutory Authority
July 1, 1999, through June 30, 2000

Agency	Committee or Board	Creation	Amount
Health	Education Committee ⁽¹⁾	Minnesota Rules 4747.1300	\$1,705
Health	Cultural Diversity Committee ⁽¹⁾	Minnesota Rules 4747.1200	1,870
Economic Security	Juvenile Justice Advisory Committee ⁽²⁾	Minn. Stat. Section 268.29	9,515
Minnesota Technology, Inc.	Regional Boards ⁽³⁾	Unknown	<u>4,840</u>
Total			<u>\$17,930</u>

- (1) The Commissioner of Health established, by Minnesota Rule, an education committee and a cultural diversity committee to advise the Alcohol and Drug Counselors Licensing Advisory Council. Although Minn. Stat. Section 148C.02 provides that members of the Alcohol and Drug Counselors Licensing Advisory Council are to be compensated pursuant to Minn. Stat. Section 15.059, we found no specific statutory authority to compensate the education and the cultural diversity committee members.
- (2) Minn. Stat. Section 268.29 refers to Minn. Stat. Section 15.059 for the expiration of the Juvenile Justice Advisory Committee (JJAC). However, it does not specifically refer to the compensation provisions of Minn. Stat. Section 15.059. Since the JJAC is defined in Minn. Stat. Section 268.29 as a "supervisory board", Economic Security personnel assumed that Minn. Stat. Section 15.0575 governed the JJAC compensation, even though it is not specifically stated. U.S. Department of Justice funds (CFDA No. 16.540) were used to pay the JJAC member per diems. There is some question as to whether the per diem payments are an allowable cost under the federal program.
- (3) Minn. Stat. Chapter 116O establishes the MTI board of directors and provides board member compensation pursuant to Minn. Stat. Section 15.0575. Minn. Stat. Chapter 116O also establishes certain MTI advisory committees or boards. However, in these cases, the statutes are either silent as to compensation or specifically prohibit committee member compensation. Minn. Stat. Chapter 116O does not specifically provide for the regional boards. MTI is also subject to Minn. Stat. Section 302A.161, subd. 18, that provides that the corporation may elect or appoint officers, employees, and agents of the corporation and define their duties and fix their compensation. MTI has obtained legal advice that this provision allowed them to pay per diems to the regional boards. In early 2000, MTI decided to make these boards advisory and discontinued per diem payments to members.

Source: Minnesota Accounting and Procurement System (MAPS).

Recommendations

- *The departments should seek legal advice to determine their authority to pay per diem to committee members. If warranted, the departments should seek repayment of unauthorized per diem payments.*
- *The Department of Economic Security should consult with the U.S. Department of Justice to determine the allowability of per diem payments under federal guidelines.*

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4. The state has not complied with statutory provisions linking per diem payments to performance of certain administrative requirements.

In some cases, the Legislature has linked the payment of per diems to a board or committee member's performance of certain administrative requirements. Various provisions provide that per diem payments should be withheld if the administrative requirements are not fulfilled. However, it appears that the provisions have not been enforced.

For example, Minn. Stat. Section 15.0599 requires the registration of multimember agencies by the Secretary of State. Subd. 3 requires the chair of an existing board or committee to "register the agency with the secretary by July 15 of each year." Subd. 4a goes on to state:

The members of an agency that submit all the information required by this section by the prescribed deadlines are eligible to receive compensation, but no compensation, including reimbursement for expenses, may be paid to members of an agency not in compliance with this section. If an agency has not submitted all required information by its applicable deadline, the secretary shall notify the agency that it is not in compliance and that it has 30 days from the date of the notice to achieve compliance. If the agency is out of compliance at the end of the 30-day period, the secretary shall notify the commissioner of finance that members of the agency are not entitled to compensation.

This section prohibits otherwise eligible board or committee members from receiving their per diem payments. As a practical matter, the Secretary of State generally allows boards and committees up to six months to submit the information required under Minn. Stat. Section 15.0599 before referring them to the Department of Finance. Once notified, the Department of Finance has not prevented any board or committee members from receiving per diems and expense reimbursements under this section. Rather, the department has encouraged compliance with the reporting requirement by continuing to remind agencies of their responsibilities.

Likewise, Minn. Stat. Section 15.0597 requires the chairs of boards and committees to provide the Secretary of State with certain data annually, including notice of vacancies. Subd. 3 states:

The chair of an agency who does not submit data required in this section or who does not notify the secretary [of State] of a vacancy in the agency, is not eligible for a per diem or expenses in connection with agency service until December 1 of the following year.

Subd. 4 goes on to state:

The chair of an existing agency shall give written notification to the secretary of each vacancy occurring as a result of newly created agency positions and of every other vacancy occurring for any reason other than the expiration of membership terms as soon as possible upon learning of the vacancy and in any case within 15 days after the occurrence of the vacancy.

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There are two types of vacancies: scheduled and unscheduled. Scheduled vacancies are vacancies resulting from the board or committee member's term expiring. Unscheduled vacancies occur when a board or committee member is unable to serve the entire appointment term. The Secretary of State monitors scheduled vacancies and, as a result, does not require notification of those vacancies. For unscheduled vacancies, the Secretary of State requires notification under Minn. Stat. Section 15.0597. However, if members do not submit written resignations letters, it may be difficult for the board or committee chair to determine exactly when the vacancy occurred and to make the required notification. In addition, it is difficult to determine who should make the board or committee chair ineligible to receive per diems and expenses under this provision. Finally, it appears that many board and committee chairs may not even be aware of their responsibility to notify the Secretary of State of unscheduled vacancies. Because of these concerns, Minn. Stat. Section 15.0597 generally has not been used to prevent board or committee chairs from receiving per diems or expense reimbursements.

Recommendation

- *The Office of the Secretary of State and the Department of Finance should work with the Legislature to either clarify the provisions linking per diem payments to performance of administrative requirements or recommend elimination of troublesome provisions. If the provisions are retained, the agencies should implement an appropriate process to ensure compliance.*

5. The Board of Dentistry may have inappropriately computed per diem payments.

The Board of Dentistry developed a formula for calculating per diems that was inconsistent with per diem statutes. The board allowed members to accumulate time spent on board-related activities during the month. The board then paid the members \$55 or one per diem payment for every 5 hours spent on board-related activities.

We question whether the board's calculation complies with Minn. Stat. Section 214.09, Subd. 3, that states members of the board must be compensated at the rate of \$55 a day spent on board activities, when authorized by the board. The Board of Dentistry's 1999 Per Diem Payment Policy states per diems shall be calculated on the basis of one per diem granted for every five hours of actual accumulated time. This practice of accumulating time spent on board activities for the month appears to conflict with the concept of a daily compensation rate. Although the board's formula may have provided a more cost-effective means of managing per diem expenses, we question whether the formula meets the intent of the per diem statute.

Recommendation

- *The Board of Dentistry should seek legal advice concerning the allowability of its per diem calculation.*

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6. Some agencies have coded the payment of certain fees to individuals as per diems.

In two cases, we found that agencies were coding per diem payments to individuals that do not appear to meet the definition of per diems. Instead, these payments appear to be fee arrangements with individuals to provide certain professional services.

The Board of Dentistry paid per diems to clinical examiners for regional licensing examinations. The board's 1999 Per Diem Payment Policy states that the board will pay one per diem to deputy examiners who participate in Central Regional Dental Testing Service examinations and workshops, where the testing service did not pay an honorarium for those activities. We question whether this arrangement would be more appropriately classified as a purchased service rather than a per diem.

The Department of Human Services pays Peer Review Board members per diems for conducting daylong reviews of federal alcohol and drug treatment programs. The board members sign contracts with the department to provide these services. During fiscal year 2000, the department compensated the members \$150 for each peer review conducted and coded them as per diems. In fiscal year 2001, the department began coding these payments as professional services rather than per diems.

Recommendation

- *The Board of Dentistry and the Department of Human Services should consult with the Department of Finance to determine the proper classification of these expenditures.*

7. The Department of Human Services has not formally reviewed and reauthorized the per diem rates and reimbursement provisions for certain boards.

The commissioner of the Department of Human Services did not review and authorize the per diem rates and reimbursement provisions for two of its boards. Pursuant to Minnesota Statutes, the commissioner has the authority to establish the per diem and reimbursement provisions for certain boards involved in the civil commitment process. For one board, the department could not provide documentation of the commissioner's authorization of current rates. For the second board, the commissioner's authorization was 18 years old. Table 3-5 summarizes these boards and the per diem rates paid.

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Table 3-5
Board Per Diem Rates Set by the Commissioner of Human Services

Board	Statutory Authority	Per Diem and Reimbursement	Date Last Authorized
Regional Review ⁽¹⁾	253B.22	Attorneys, Physicians, Others \$125 (Reimbursement of expenses at same level as state employees)	May 20, 1983 ⁽²⁾
Special Review ⁽³⁾	253B.18	Attorney \$325 (plus \$20 in office expenses) Physicians and Others \$250 St. Peter Security Hospital hearings Attorney \$790 , Other Members \$600	Unknown ⁽⁴⁾

- (1) Minn. Stat. Section 253B.22 authorizes the Commissioner of Human Services to establish a review board of three or more persons for each regional center to review the admission and retention of its patients receiving services under the Civil Commitment law. The statute requires one member to be qualified in the diagnosis of mental illness, mental retardation, or chemical dependency, and one member to be an attorney. Minn. Stat. Section 253B.22, Subd. 5, further states "each member of the review board shall receive compensation and reimbursement as established by the commissioner."
- (2) In a memo dated May 20, 1983, the Commissioner of Public Welfare (predecessor of the Department of Human Services) set the per diem rate at \$125 per meeting. The \$125 per diem rate has not changed since 1983 and we found no evidence that subsequent administrations had reviewed or approved the per diem rate.
- (3) Minn. Stat. Section 253B.18 established the Special Review Board for persons committed as mentally ill and dangerous to the public and authorized the Commissioner of Human Services to establish the compensation rate for members. Pursuant to statute, review board membership is composed of attorneys, physicians, and lay members experienced in the field of mental illness.
- (4) On February 7, 2001, the Commissioner of Human Services provided us with a list of rates being paid to Special Review Board members.

Source: Auditor prepared based on information provided by the Department of Human Services.

Although we do not question the department's ability to establish the per diem rates, the process is not adequately documented. We found no evidence that the Commissioner periodically re-authorized the rates after a review for consistency and reasonableness. In addition, the eligibility of any public employee members to receive per diem for serving on these boards is also questionable. Department of Human Services personnel told us that, as a general practice, the department does not have state employees on these boards to avoid possible conflicts of interest. We found, however, that public employees had received per diem payments as a result of their service on the boards. In one case, the state employee took vacation time to serve on the Regional Review Board.

Recommendations

- *The Commissioner of Human Services should formally approve all required per diem and expense reimbursement rates. These rates should be periodically reviewed for consistency and reasonableness.*
- *The department should seek legal advice regarding its ability to compensate public employees for service on its review boards.*