

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

455 Golden Gate Avenue, Room 3166
San Francisco, CA 94102
(415) 703-4150H. THOMAS CADELL, JR., *Chief Counsel*

August 14, 1994

Steven W. Brennan
Wallace, Brennan & Folan
21515 Hawthorne Blvd., Suite 840
Torrance, CA 90503-6542

Re: Your Letter Of August 11, 1994

Dear Mr. Brennan:

This will acknowledge our telephone conversation of August 9th and my understanding of that conversation.

I stated, I am sure, that the DLSE has long recognized the IRS rate for automobile reimbursement as a presumptively reasonable rate. I did not state (nor did I discuss) that "many employers reimburse their employees at a rate less than the current IRS figure of 29 cents per mile without running afoul of § 2902." You may have been confused by my musing that I did not know that the IRS rate had increased. I have no information on what rates are being used by employers. The policy of the DLSE continues to be that the IRS rate is presumptively reasonable for purposes of reimbursement of automobile expenses.

Which, I believe, leads me to the second point. You are talking about trucks in your letter; not automobiles. I don't see how the IRS rate regarding automobiles is even relevant. I might add that the IRS rate of reimbursement is not even mentioned in my letter of August 30, 1991, to which you refer.

The rate of reimbursement for a truck which is required by the employer would have to be based on the reasonable cost to the employee of owning, maintaining and operating the truck. This is, obviously, a fact-driven consideration. I have no opinion on the subject as to what would be considered "reasonable" nor, I might mention, did I opine in my letter of August 30, 1991, on that subject.

I pointed out in my August 30, 1991, letter that the lease agreement did not contain an objective measure of the costs of operating the equipment but was based on "lease payments" which fluctuated from week to week.

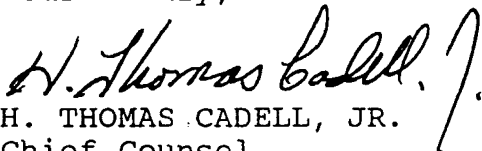
1994.08.14

Steven W. Brennan
August 14, 1994
Page 2

The advice contained in my August 30, 1991, letter continues to be the policy of the DLSE. This office is in no position to give you an opinion as to the "reasonableness" of the program you allude to because, as pointed out above, the question is fact-intensive.

You do not mention in your letter whether the issue you raise is currently before the Labor Commissioner. So that there will be no question of the issues we discussed and my response to the questions you raised in our telephone conversation, I am taking this opportunity to provide copies of this letter to all District offices of the DLSE, statewide.

Yours truly,


H. THOMAS CADELL, JR.
Chief Counsel

c.c. Senior Deputies, Statewide

1994.08.14