



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable J. C. Blair, President  
State Board of Education  
Kerens, Texas

Dear Sir:

Opinion No. 0-1301

Re: Authority of board set up by  
General Appropriation Bill  
to authorize use of estimated  
surplus in per diem appropria-  
tion for State Board of Educa-  
tion, for traveling expenses.

We have your letter of August 17, 1939, presenting your request to the Attorney General, as a member of the board set up by the General Appropriation Bill, composed of the Governor, the Treasurer, and the Attorney General, wherein you ask the permission of the board to use the "estimated surplus" in the appropriation provided by the legislature for the payment of per diem of the board members, to pay the traveling expenses of members of the board.

It is not necessary, for the purposes of this opinion, to determine at this time whether the "estimated surplus", to which you refer, is of that character with which the board is authorized to deal. Your inquiry may be resolved into this question:

"Assuming the 'estimated surplus' to be one with which the board is authorized to deal, may the board lawfully permit such surplus, or any portion of it, to be used to defray traveling expenses?"

We direct your attention to that portion of the general rider to the General Appropriation Bill which reads as follows:

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"Traveling Expenses. (a) It is provided that no expenditure shall be made for traveling expenses by any department of this state in excess of the amount of money itemized herein for said purpose. This provision shall be applicable whether the item for traveling expenses is to be paid out of the appropriation from the General Fund, from fees, receipts or special funds collected by virtue of certain laws of this state, or from other funds (exclusive of Federal Funds) available for use by a department."

As your appropriation appears after the veto of the Governor, no amount of money is itemized and available therein for "traveling expense". By the plain language of the provisions of the rider above quoted, where no amount is provided for traveling expense, no money may be expended for that purpose. And this prohibition extends to the board as well as to the department heads. It would be a futile gesture for the board to authorize the use of moneys for a purpose for which the legislature has provided no moneys shall be spent. Under the terms of the rider, the board is not at liberty to authorize expenditure of a surplus for "traveling expense", but is denied that power by necessary implication from the language quoted.

Your application states, and you contend, that your board cannot function efficiently without traveling expenses. That is a matter which necessarily must have been determined adversely to your contention by the Governor when he vetoed the item provided by the Legislature for traveling expenses. The hardship, if any, thus imposed on your department, affords no basis for the assumption by this department of the legislative or executive prerogative, nor does it afford any basis for the construction of the appropriation bill contrary to its plain intent and meaning.

It may be true, as you point out, that the legislature meant to appropriate the \$6,000 per annum for "per diem and traveling expenses", and that the omission of the words "and traveling expenses" was inadvertent, (though this theory is weakened by the fact that the legislature had provided a specific item of \$500.00 per annum for "traveling expenses" which was vetoed by the Governor).

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However, manifestation of legislative intent by non-action is not sufficient to satisfy the requirement of our constitution that the intent of our legislature be evidenced by overt action, that money be withdrawn from the Treasury only in pursuance of specific appropriations made by law.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Richard W. Fairchild*  
Richard W. Fairchild  
Assistant

RWF:FL

APPROVED SEP 5, 1939

*Gen. G. B. Mann*  
ATTORNEY GENERAL OF TEXAS

