



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Tom C. King  
State Auditor and Efficiency Expert  
Austin, Texas

*Morris Co.*

Dear Sir:

Opinion No. 0-2810

Re: Appropriations-College Board has no authority to decrease salary item for purpose of supplementing another salary item under example given.

We received your letter of October 8, 1940, in which you request our opinion with reference to itemized salaries in House Bill No. 255, Special Laws of the 46th Legislature.

You cite as an example the amounts represented in the appropriations to Texas Technological College and then proceed to ask two questions in connection with this example. The example and questions are as follows:

*Item Number	Amount Appropriated	Amounts Paid From	
		General Appropriations	Local Funds
150	\$1,620.00	\$1,800.00	-
151	1,620.00	1,800.00	-
181	720.00	530.00	30.00
	<u>\$3,960.00</u>	<u>\$3,930.00</u>	<u>\$30.00</u>

"1. Was Authority granted College Boards to decrease the amount appropriated under item 181 and utilize such amount to increase the salaries included under items 150 and 151?

"2. Is it permissible for the College Boards to pay an increased amount to one or several positions as shown by the appropriation bill and by decreasing other positions or eliminating other positions thus balancing the amounts paid with the aggregate appropriated?"

Beginning with Paragraph three, under subsection No. 2, General Provisions of H. B. No. 255, Special Laws of the 46th Legislature, we find the following language:

"The board of regents or directors within their discretion and with good reason may pay smaller salaries than those itemized herein.

"The board of regents or directors, within their discretion, are authorized to promote an individual on the staff to a higher position, vacated by the death or resignation of the previous incumbent at the salary provided for the higher position.

"When any additional employees other than those employed to fill the positions itemized herein are employed, and are to be paid out of said appropriations or any other funds, such employees shall not be paid larger amounts than those provided herein for similar positions in such institutions or agencies and in the event there are no similar positions within such institutions then such additional employees shall not be paid larger amounts than those provided for similar positions in other State institutions, departments or agencies." (Undersecoring ours)

In paragraph two, of the above quoted provision, the governing board of an institution is authorized to increase one's salary by promoting him to a higher position, but the board is specifically limited to paying that individual "the salary provided for the higher position."

The undersecored language in paragraph three clearly reveals that it was not the intention of the Legislature to permit a department head to decrease the salary item set up for one position for the purpose of increasing the funds earmarked for payment to the holder of another position. To permit this procedure would defeat the evident intention of the Legislature in itemizing and fixing the amount of such salaries.

It is therefore the opinion of this department that your first question should be answered in the negative as to the illustration cited by you and others like it.

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Our answer to your first question renders an answer to your second question unnecessary.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Hirschle Johnson*  
Hirschle Johnson  
Assistant

HJ:EP

APPROVED NOV 20, 1940

*Gertrude Mann*

ATTORNEY GENERAL OF TEXAS



*AK  
4/28*