



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN**

**GERALD C. MANN  
ATTORNEY GENERAL**

Honorable Lee Brady, Commissioner,  
Department of Banking  
Austin, Texas

Dear Mr. Brady:

Opinion No. O-2820

Re: Whether or not the State will pay traveling expenses for a bookkeeper and bond clerk in the Banking Department, who has been assigned by the Commissioner to aid the regularly appointed examiner or assistant examiner.

We beg to acknowledge receipt of your letter of October 8, 1940, as follows, to-wit:

"During the past fiscal year this Department was unable to make a number of examinations required of it under the law. The deficiency existed both as to banks and as to building and loan associations. The difficulty was due entirely to a shortage in personnel in the examining forces. It is apparent that the same situation will arise during the current fiscal year unless strenuous effort is made by everyone in the office.

"In order to enable us to make more examinations it is the plan of this Department that the Deputy Commissioner, Departmental Examiner and Building and Loan Supervisor will actively participate in the actual examination of banks and building and loan associations whenever their supervisory duties will permit.

"Your attention is directed to the fact that under the current appropriation bill there is a provision for the position of 'bookkeeper and bond clerk'. This position is now filled

by a man who was formerly an assistant examiner. It is our hope that by reorganizing his work he will be able, not only to perform the duties of his position, but will have some time available for other work. It has been suggested that he could best be used in assisting either the Deputy Commissioner, Departmental Examiner, or Building and Loan Supervisor, when those employees are actively engaged in examinations, by performing a part of the detail work in connection with the examination. At times it may be desirable to have this employee assist the field examiners, his use being governed by the requirements of the moment. Naturally, if this employee is to be used as above suggested it will be necessary that he travel. Before putting this plan of operation into effect I would like to submit to you the following question:

"Can the State pay the travel expenses of the bookkeeper and bond clerk of this Department when he is traveling in connection with the work as above outlined?"

A rider attached to the Departmental Appropriation Bill by the 45th Legislature (General Laws, 1937, p. 1491) provided for transfer of employees, as follows:

"It shall be the duty of the head of any department to transfer an employee of his office to any desk or place within the department when necessary to perform the duties of the department, and for the proper dispatch of business."

This rider was omitted from the Appropriation Bill passed by the 46th Legislature.

We understand from your letter, however, that you do not contemplate a transfer of an employee but rather you contemplate utilizing a part of the bookkeeper and bond clerk's time to aid the regular examiners in their work; that the salary of the bookkeeper and bond

clerk will be paid as in the Appropriation Bill contemplated, but that his traveling expenses alone are within the scope of your inquiry.

If the question of traveling expenses of the bookkeeper-bond clerk were not involved, the question propounded by you would undoubtedly be controlled by our holding in Opinion No. O-1139, wherein it was said:

"The above-quoted rider on salary payments (The 1937 Appropriation Bill) does not prohibit a service or duty, but it requires that he actually perform the duties for which he is paid. If he performs the duties for which he is being paid, and is able, in addition thereto, to assist other necessary activities of the department, we find nothing in the bill which would prevent the department head from so directing. It is common knowledge that the volume of work on various desks in the different departments fluctuates from time to time, and we do not think it was the intention of the Legislature to prohibit the head of a department from directing an employee to perform additional duties or assist with other work where the circumstances require. This is a situation to which the rule of reason must be applied."

Item 7 under the heading of Loan and Brokerage Division (improperly placed, apparently,) of the current appropriation for the State Banking Department is as follows:

"Traveling expense, Banking Department ..... \$19,000.00."

In the very nature of this item it contemplates payment of the travel expense of any person belonging to the Banking Department necessarily incurred in transacting State business connected with that department. We think the Appropriation Act itself should be liberally construed with a view to effectuating the purposes for which the Legislature thus made provision. Much is left, of course, to the sound, official discretion of the Bank-

ing Commissioner as to when such travel expense is necessary or proper. When, however, he determines in the exercise of that sound, official discretion that a given service and the incidental travel expense connected therewith are necessary in the performance of his official duties, and he is able and willing to make the necessary affidavit that the services have been performed, or more explicitly, that the expense has been incurred in the prosecution of State business by the employee of his department, the item may properly be paid from the traveling expense appropriated in Item 7 above.

The immediate case unmistakably shows a most commendable purpose on your part, as Banking Commissioner, to conserve the services of the employees now in the department, and to obtain the maximum service from each, in the most economical method available. This purpose is not only commendable but well within the spirit of the law.

Trusting that this will have answered your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By (signed)  
Ocie Speer  
Assistant

OS-MR

APPROVED NOV 1, 1940

Gerald C. Mann /s/

ATTORNEY GENERAL OF TEXAS