



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-3998
Re: Expense accounts of
members of Public Safety
Commission

We have received your letter of September 17,
1941, which we quote in part as follows:

"A member of the Commission filed with
this department his expense account for a flat
\$10.00 per day, with no itemization of the
amount expended.

"Since the issuance of warrant in payment
of expenses is based upon the idea of reim-
bursement or a refund of the amount actually
spent, is this department authorized to recog-
nize and pay the expense account of a member of
the Commission that is submitted on a flat \$10.00
per diem basis?

"The appropriation for the payment of this ex-
pense, or wage, is in the General Appropriation Bill
for the Department of Public Safety. Does the rider
limiting the expenses of State employees to \$4.00
a day control in this instance?"

Article 4413 (2), Vernon's Annotated Civil Statutes
(Acts 1935, 44th Leg., R.S., p. 444, ch. 181 § 3), creates
the Public Service Commission. Said article reads in part
as follows:

Honorable George H. Sheppard - Page 2

"Art. 4413 (2). Creation of the Public Safety Commission

". . . In the appointment of the members of the Commission, the following qualifications among others shall be observed: Knowledge of laws; experience in the enforcement of law; honesty, integrity; education, training and executive ability. They shall serve without compensation, but shall be entitled to receive Ten (\$10.00) Dollars per day as an expense account and necessary mileage in the performance of their duties, such expense allowance shall not exceed Five Hundred (\$500.00) Dollars annually for each member."

The question now presents itself whether the Commissioners are entitled under the statute to the flat sum of \$10.00 for each day spent in the discharge of their official duties whether that amount is entirely expended or not. That is not the interpretation which we place on the Act.

If a Commissioner spent less than \$10.00 per day and was paid the full sum of \$10.00, then that amount over what was actually spent would not be an expense. It would be either a form of compensation or a gratuity. The Act specifically provides that the Commissioners shall serve without compensation, and a holding that it is a gratuity would be in direct violation of Section 51 of Article III, Constitution of Texas, which prohibits the granting of public moneys.

Thus, we think it clear that it was the legislative intent that a Commissioner is entitled to reimbursement for his actual expenses only, with the limitation that he cannot spend more than \$10.00 for any one day or \$500.00 for any one year and claim reimbursement for the excess.

You ask whether under subsection 12(g) of Section 2 of the current departmental appropriation bill

Honorable George H. Sheppard - Page 3

(Acts 1941, 47th Leg., R. S., S. B. 423) the limitation of \$4.00 applies in this instance. Subsection 12(g) of Section 2 provides as follows:

"All employees traveling at the expense of the State are hereby limited to the amount of Four (\$4.00) Dollars per day expenses for meals and lodging; it being specifically provided that the employees shall obtain receipt for all amounts expended for all items of lodging and other expense except meals, and shall file said receipts with their expense accounts, which expense accounts must be duly itemized and sworn to; and the State Comptroller is hereby expressly prohibited from paying any expense accounts which are not itemized and sworn to and accompanied by receipts as herein provided."

Subsection 13 (f) of the same section reads in part as follows:

"It is expressly provided that the provisions of Subsection 12g of this Act with reference to limitation of amount of traveling expense shall not apply to the Governor, the Lieutenant-Governor, and the members of the commissions who receive no salary or per diem, when traveling in or out of the State. . . ."
(Emphasis supplied)

As the members of the Public Safety Commission receive no salary or per diem, they are excepted from the operation of Subsection 12(g), as to the limitation of \$4.00 per day for meals and lodging.

Article 4413 (2) also authorizes the reimbursement of the Commissioners for necessary mileage.

It is elementary that before public moneys may be withdrawn from the Treasury, the Legislature must make

Honorable George H. Sheppard - Page 4

an appropriation therefor. It is clearly within the province of the Legislature in appropriating funds for certain purposes to provide the manner of payment and to attach conditions to their expenditures. See Opinion No. 0-1426.

Subsection 12(f) of Section 2 of the appropriation act authorizes reimbursement for mileage traveled and provides the method for computing the same. Subsection 13 of Section 2 requires certain information in rendering expense accounts "before any expense account shall be paid from appropriations herein made." Although Subsection 13(f) excepts the persons named from the provisions of Subsection 12(g) with reference to the limitation of amount, it does not except them from that part of the subsection which requires itemization of expense accounts.

We believe that "state employee" as used in the appropriation bill covers all officers, representatives, and agents of the State. If this were not clearly the legislative intent, then the inclusion of Subsection 13(f) in the bill would be a foolish act.

It is our opinion that these provisions are binding upon the members of the Public Safety Commission. Therefore, the expense accounts of the Commissioners must be itemized before the Comptroller is authorized to pay the same.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED SEP 30, 1941

James W. ...
FIRST ASSISTANT
ATTORNEY GENERAL

By *Glenn R. Lewis*
Glenn R. Lewis
Assistant

By *George W. Sparks*
George W. Sparks

GWS:WFS

