



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Honorable T. J. Crowe, M. D.
Secretary
Texas State Board of Medical Examiners
Dallas, Texas

Opinion No. 0-4222
Re: Fees to witnesses for at-
tending misdemeanor cases
under the facts set forth

Dear Sir:

Your letter of November 19, 1941, requesting the opinion of this department on the questions stated therein reads in part as follows:

"I am writing you to ascertain just how far the State Board of Medical Examiners may go in payment of witness fees for attending misdemeanor cases.

"You of course know that we can not force the attendance of a witness who is out of the county in which the trial is being held. You are also aware that the State does not allow witness fees in misdemeanor cases. In many cases in order to get a conviction it is necessary to bring witnesses from other counties and sometimes from long distances in order to get satisfactory evidence before the court to secure conviction.

"You are aware of course that the State Board deposits with the State Treasury a special fund known as the Annual Registration Fund for the purpose of prosecuting violations of the Medical Practice Act. It is said in the Registration Act that the Board may spend such moneys as are available in the State Treasury in the Special Registration Fund which as you know is collected from the doctors of the State and deposited to the credit of the Secretary of the Department of the Board for the prosecutions.

"It is further stated in the Act that such funds may be spent for the purpose of prosecuting violations of the Act up to the point of depletion of said fund but that no burden shall be placed upon the State or General Fund of the State for such prosecutions.

"What I desire to know particularly is just how far we are authorized to go in the payment of witness fees for attendants as witnesses on our cases. In other words, are we authorized to pay railroad fare, hotel bills and compensate them for the revenues lost by absence from their regular occupation?

"In a recent case witness fees along the lines mentioned amounted to anywhere from \$20 to \$40 per witness. These fees have been allowed by the Comptroller out of the contingent provisions of our budget. We have our budget divided into quarters of the year and so much money is allowed for each quarter. We are not authorized to overdraw for said quarter without a transfer through the Comptroller's department for funds with which to pay such expenses."

Article 4498a, Vernon's Annotated Civil Statutes, reads in part as follows:

"Sec. 1. It shall be the duty of all persons now lawfully qualified and engaged in the practice of medicine in this State as defined in Article 4510, Revised Statutes of 1925, or who shall hereafter be licensed for such practice by the Texas State Board of Medical Examiners, to be registered as such practitioners with the Texas State Board of Medical Examiners on or before the 1st day of January, A. D. 1932, and thereafter to register in like manner annually, on or before the 1st day of January of each succeeding year. Each person so registering with the Texas State Board of Medical Examiners shall pay, in connection with each annual registration and for the receipt hereinafter provided for, a fee of Two (\$2.00) Dollars, which fee shall accompany the application of every such person for such registration. Such payment shall be made to the Texas State Board of Medical Examiners. Every person so registering shall file with the Texas State Board of Medical Examiners a written application for annual registration, setting forth his full name, his age, his Post Office address, his place of residence, the county or counties in which his certificate entitling him to practice medicine has been registered, and the place or places where he is engaged in the practice of medicine, as well as the school of medicine to which he professes to belong and the number and date of his license certificate.

". . .

"Sec. 3. All annual registration fees collected by the Texas State Board of Medical Examiners under this Act shall be placed in the State Treasury, to the credit of a special fund to be known as the 'Medical Registration Fund,' and all of the current revenues to be derived and placed to the credit of said fund during the two years ending August 31, 1933, are hereby appropriated and shall be used by the Texas State Board of Medical Examiners, and under its direction, in the enforcement of the laws of this State prohibiting the unlawful practice of medicine, and in the dissemination of information to prevent the violation of such laws and to aid in the prosecution of those who violate such laws. The Texas State Board of Medical Examiners shall be authorized to employ

and to compensate from such special fund employees and such other persons as may be found necessary to assist the local prosecuting officers of any county in the enforcement of all the laws of the State prohibiting the unlawful practice of medicine, and to carry out the other purposes for which said fund is hereby appropriated. Provided that all such prosecutions shall be subject to the direction and control of the regularly and duly constituted prosecuting officers, and nothing in this Act shall be construed as depriving them of any authority vested in them by law.

"In performing the duties devolved by this Act upon the Board of Medical Examiners, said Board shall act through the Secretary-Treasurer of the Board of Medical Examiners. The Secretary-Treasurer shall receive a salary to be fixed by the Legislature in its General Appropriation Bill for the performance of such duties under this Act, and shall make and file a surety bond in favor of the Texas State Board of Medical Examiners in the sum of not less than Ten Thousand (\$10,000.00) Dollars, conditioned that he will faithfully discharge the duties of his office. Such salary shall be paid out of said 'Medical Registration Fund' and shall not be, in any way, a charge upon the general revenue of the State. The Texas State Board of Medical Examiners shall employ and provide such clerks and employees as may be necessary to assist the Secretary-Treasurer in performing his duties and in carrying out the purpose of this Act; provided, that the compensation of all persons authorized to be employed under this chapter, shall be paid only out of said 'Medical Registration Fund'. All disbursements from said fund shall be made only upon written approval of the President and Secretary-Treasurer of the State Board of Medical Examiners and upon warrants drawn by the Comptroller to be paid out of said fund."

We quote from Senate Bill No. 423, Acts of the 47th Legislature, 1941, Regular Session (which is the general appropriation bill for the executive and administrative departments of the State government), as follows:

"TEXAS STATE BOARD OF MEDICAL EXAMINERS

"SALARIES:

1. Secretary-treasurer	\$ 3,300.00	\$ 3,300.00
2. Secretary	1,200.00	1,200.00
3. Investigator	2,100.00	2,100.00
4. Investigator	2,100.00	2,100.00
5. Traveling expenses, secretary and two Investigators	3,600.00	3,600.00
6. Bonds for employees	100.00	100.00
7. Seasonal labor	<u>300.00</u>	<u>300.00</u>
TOTAL - Salaries	\$12,700.00	\$12,700.00

MAINTENANCE AND MISCELLANEOUS

8. Rent, Directory, Printing, Stationery, Telephone, Telegraph, Typewriters, Filing Cabinets, Addresso- graph, Dictaphone, Sup- plies, Mimeograph Supplies, etc.	<u>\$ 2,550.00</u>	<u>\$ 2,550.00</u>
TOTAL - Maintenance and Miscellaneous	<u>\$ 2,550.00</u>	<u>\$ 2,550.00</u>
GRAND TOTAL - Texas State Board of Medical Examiners	\$15,250.00	\$15,250.00"

This appropriation is for the years ending August 31, 1942, and August 31, 1943, respectively.

It is our opinion that the Texas State Board of Medical Examiners can legally make expenditures from and out of the "Medical Registration Fund" as is provided by the above mentioned appropriation bill. There is no appropriation made for the payment of witnesses or other expenditures mentioned in your letter by the Legislature. Therefore, it is our opinion that the Texas State Medical Board is not authorized to pay witness fees, railroad fares, hotel bills, or compensation to witnesses for the revenues lost by absence from their regular occupation or business.

We are enclosing herewith a copy of our opinion No. O-3633 with reference to the right of the State or a defendant to subpoena and attach out of county witnesses in a misdemeanor case.

Trusting that the foregoing fully answers your inquiry, we are

APPROVED DEC 3, 1941

/s/ Grover Sellers

FIRST ASSISTANT
ATTORNEY GENERAL

AW:GO:IM

ENCLOSURE

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Ardell Williams
Ardell Williams
Assistant

APPROVED
OPINION
COMMITTEE
BY /s/ BWB
CHAIRMAN