



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

0-4702

Honorable Geo. M. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard: Opinion No. 0-4702

Re: Whether or not House Bill No. 717, 48th Legislature, Regular Session, authorizes the Comptroller of Public Accounts to issue warrant in payment of monthly expense account to a Special District Judge, where such expenses accrued prior to the effective date of the Act.

You submit the following request for an opinion by this Department, to-wit:

"Does H. B. No. 717, Acts of the Regular Session of the Forty-eighth Legislature, authorize the Comptroller to issue warrant in payment of monthly expense account to a Special District Judge where such expenses accrued prior to the effective date of the Act; for example, as far back as January 12, 1942? The regular District Judge in this instance has made and filed proper waiver."

H. B. No. 717 passed at the late regular session of the 48th Legislature, insofar as pertinent to your inquiry, is as follows:

"Section 1. That any person holding a State or District office in the State of Texas, whether as a member of the executive, legislative or judicial departments, when called into the military service of either the State or National Governments, is hereby

authorized to file with the Comptroller of Public Accounts of the State, a statement or certificate in writing, to the effect that he waives the payment of his salary or pay or the emoluments of his said office during the period of his military service and authorizing the payment of such salary, pay or emoluments of his office to any other person, who, under the provisions of any law of this State is appointed or elected to temporarily fill such civil office during the absence of such officer, such waiver or assignment to terminate immediately upon the release or discharge of said officer from such military service.

"Sec. 2. Such waiver or assignment shall be sufficient authority for the Comptroller of Public Accounts of the State of Texas to issue State warrants and to pay such person so holding such officer's position during his absence in military service out of appropriations made by the Legislature for such office.

"Sec. 3. The filing with the Comptroller of Public Accounts of the State of Texas of such waiver or assignment provided for in this Act shall never be construed by any Court of this State to be a resignation from his office by the person entering the military service of the State or National Governments or that his office is vacant by reason thereof.

"Sec. 4. The importance of this legislation and the fact that many State and District officers of the State of Texas are entering the military service of this State and of the United States, whose offices are filled by substitutes, commissioners and special judges and others, and that special appropriation to pay such persons so filling the offices of those in the military service is insufficient and inadequate and, further, it is impossible to accurately determine or anticipate the amounts of such appropriations, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the said Rule is hereby suspended, and that this Act take effect from and after its passage, and it is so enacted."

The bill became effective May 17, 1943.

Obviously, this Act contemplates that the warrant to a Special District Judge, whether for salary or expenses, is to be paid from the appropriation for District Judges.

Your inquiry is limited to the matter of warrants in payment of monthly expense accounts.

The expenses allowed to a District Judge are provided for in Article 6920, of the Revised Civil Statutes, as follows:

"All District Judges * * * when engaged in the discharge of their official duties in any county of this State other than the county of their residence, shall be allowed their actual and necessary expenses while actually engaged in the discharge of such duties, not to exceed \$4.00 per day for hotel bills, and not to exceed 4¢ a mile when traveling by railroad and not to exceed 20¢ a mile when traveling by private conveyance, in going to and returning from the place where such duties are discharged, traveling by the nearest practical route. Such officers shall also receive the actual and necessary postage, telegraph and telephone expenses incurred by them in the actual discharge of their duties."

Now, under the provisions of Section 1 of H. B. No. 717, above quoted, the waiver by the absent District Judge, and therefore the authority to pay the Special District Judge, is limited to "the payment of his salary or pay or the emolument" of his said office. It does not contemplate expenses whatsoever by the absent District Judge, for he of course will have incurred none.

In our Opinion No. 0-4544 addressed to you, under date of April 29, 1942, we advised as follows:

* * * . We find no law nor provision or item of appropriation bill providing for payment by the State of traveling expenses to

Special District Judges. In the absence of a law so providing, you are not authorized to issue warrants for the payment of traveling expenses of Special District Judges."

Article 6821 of the Revised Civil Statutes covers the subject of salaries of special judges, but it contains no provision for expenses of any kind.

Item 14 of the current biennial appropriation for the Judiciary Section -- Comptroller's Department -- is as follows:

"Special District Judges' salaries and regular District Judges' expenses when holding court out of their district," \$7500.00 for each fiscal year.

This appropriation, whatever may be the meaning thereof with respect to expenses, can not change the situation, for it is thoroughly settled that an appropriation may not constitutionally withdraw money from the treasury in the absence of a previously existing law authorizing the same. (Const., Art. III, Sec. 44)

Incidentally, we call your attention to the fact that the corresponding appropriation for the forthcoming biennium in Item 6 is precisely the same as in the current appropriation.

From what we have said it follows that neither H. B. No. 717, nor any other statute which we have been able to find, authorizes the issuance of a warrant by you to pay expenses of a Special District Judge.

Trusting that what we have said satisfactorily answers your inquiry, we are

APPROVED JUL 26, 1943

Very truly yours

Samuel R. Williams
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

By

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