



**THE ATTORNEY GENERAL  
OF TEXAS**

GERALD C. MANN  
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

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

Dear Mr. Sheppard:

Opinion No. 0-5044

Re: Payment of "pre-session" em-  
ployees of 48th Legislature.

Your letter of January 20, 1943, is quoted below:

"There has been presented to this depart-  
ment for payment a pay roll for pre-session em-  
ployees of the Forty-eighth Legislature. Ser-  
vices for this pay roll were incurred prior to  
the time the Forty-eighth Legislature convened.

"Am I authorized to issue warrant in pay-  
ment of such pay roll against funds appropriated  
for contingent expenses of the Forty-eighth Leg-  
islature?

"The Forty-seventh Legislature, by resolu-  
tion, provided for a certain number of days in  
which employees of the Forty-seventh Legislature  
were to complete certain post-session work, but  
apparently the number of days provided for in  
the resolution were insufficient for the employees  
to complete the work.

"Am I authorized to issue warrant for payment  
of a pay roll providing for compensation for a  
number of days in excess of the number allowed  
by resolution by the Forty-seventh Legislature?

"Can the Forty-eighth Legislature, by reso-  
lution, authorize the payment of this excess ser-  
vice out of the contingent expense account of  
the Forty-eighth Legislature?

Article 3, Section 44, of the Texas Constitution pro-  
vides:

"The Legislature shall provide by law for

the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law."

Under this section of the Constitution, the Legislature can not pay claims incurred without pre-existing authority of law. Therefore, unless the services for which compensation is proposed to be made were rendered pursuant to a law authorizing the employment of persons to render them, Section 44 of Article 3 interposes an insuperable bar to payment therefor. Nichols v. State, (Civ. App.) 32 S.W. 452; State v. Halerman, (Civ. App.) 163 S.W. 1020; State v. Wilson, (Sup. Ct.), 9 S.W. 155; State v. Perlstein, (Civ. App.), 79 S.W. (2) 143; Corsicana Cotton Mills v. Sheppard, (Sup. Ct.), 71 S.W. (2) 247; Fort Worth Cavalry Club v. Sheppard, (Sup. Ct.), 83 S.W. (2) 660; State v. Ragland Clinic-Hospital, (Sup. Ct.), 159 S.W. (2) 105.

We find no authorization for the employment of such persons to render the services for which the payroll is submitted, antedating the rendition thereof. The services all appear to have been rendered prior to the session of the 48th Legislature. The 47th Legislature made the usual appropriations for contingent expenses of its session. The Senate, on July 3, 1941, passed a resolution (S.R. No. 185) which provided in part:

"Be it resolved by the Senate, that the following named employees be retained for the number of days, and at the per diem salary, specified in each case to perform such duties as may be required of them in connection with the business of the State, viz:"

There followed a detailed list of the employees to be retained, the number of days for which they were to be retained, and the per diem salary to be paid each employee. Payment therefor was directed to be made out of the contingent expense fund of the 47th Legislature.

The listing of employees to be retained excludes the idea that others than those listed might be retained. The listing of the number of days for which the specified employees might be employed excludes the idea that such employees might be hired for a longer period of time. And the specification of the amount of salary to be paid each listed employee excludes the idea of authority to contract to pay a greater amount. "The expression of the one operates to exclude the other." To define the authority to employ is to limit the power to employ to the limits prescribed by its definition.

You have informed us that the authority conferred by this resolution was exercised in full, and payment has already been made to the full extent of the authority given by the Resolution. The present payroll is for services rendered for days in excess of the number of days for which the Resolution authorized such employees to be engaged. Employment of such persons for periods in excess of those authorized by the Resolution was without authority and imposed no legal obligation upon the State. Hence, Article 3, Section 44, prohibits the Legislature from paying for such services by appropriation or otherwise.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/R. W. Fairchild  
R. W. Fairchild  
Assistant

RWF-MR-wc

APPROVED JAN 29, 1943  
s/Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman