



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. C-5789

Re: Issuance of warrants in pay-
ment of traveling expense
accounts of members of the
Board of Regents and the
presidents of the various
teachers colleges when such
expenses are to be incurred
in connection with a meeting
in Mexico.

Your letter of December 15, 1942, reads in part as follows:

"I have a letter from the President of the Board of Regents of the seven Teachers Colleges stating that the Board of Regents and Presidents of such colleges passed a resolution at their last meeting to hold their spring meeting at Victoria, Mexico, for a joint meeting with educators and executives of Mexico. It is contemplated that a meeting with the prominent educators and officials of Mexico will be one of the most constructive things to be undertaken by our teachers colleges.

"He has requested of this department information as to whether warrants would issue in payment of traveling expense accounts to the members of the Board of Regents and the Presidents of the various teachers colleges to the proposed meeting in Victoria, Mexico.

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"I will thank you to advise me the correct answer to make to this letter."

We are informed that at a regular meeting, the Board of Regents of the State Teachers Colleges adopted the following resolution:

"RESOLVED, That due to the fact that (1) the San Houston State Teachers College is engaged in making plans for the continuation of a Field School in Puebla, Mexico; (2) the Southwest Texas State Teachers College is planning to open a Field School in Guadalajara, Mexico, this summer; (3) the Sul Ross State Teachers College is planning to open a Field School in Chihuahua, Mexico, this summer; and (4) all the Texas State Teachers Colleges are directly interested in the exchange of students with Mexico:

"THEREFORE, BE IT RESOLVED, That the Board of Regents of the Texas State Teachers Colleges and the Presidents of these institutions shall hold a meeting during the Easter holidays, 1944, at Victoria, Mexico, or some suitable place in Mexico to confer with the officials of the Teacher Training Institutions of Mexico relative to the problems indicated."

We are also informed that plans are now in progress for the opening of a Field School by the North Texas State Teachers College at Morelia, Mexico, and by the Stephen F. Austin State Teachers College at San Luis Potosi, Mexico. The operation of these Field Schools has been described by Mr. Harmon Lowman, President of the San Houston State Teachers College, as follows:

"The college students interested in the field school register and pay the fees on our campus prior to going to Mexico just as our regular students matriculate. Our instructors accompany them to Mexico. The Mexican officials

furnish us classrooms free of charge. This summer we plan to offer Spanish language, Mexican music, and Latin American history . . . the students receive regular college credit just as in the case of resident students . . . our institutions conduct these schools independently of the Mexican colleges. We are granted the free use of their facilities. The proposed trip is to arrange for the free use of these Mexican facilities and enter into discussions relative to living quarters for students and the like . . ."

Art. 2647 (6) V.A.C.S., provides in part as follows:

"The board shall meet each year in Austin, on the first Monday in May, or as soon thereafter as practicable, for the transaction of business pertaining to the affairs of the State normal schools, and at such other times and places as a majority of the members of the board deem necessary for the welfare of said colleges. . ."

If the meeting in Mexico were to be a "business meeting" of the type covered by the above Article, we seriously doubt whether such meeting could legally be held, since clauses such as "and at such other times and places as a majority of the board shall deem necessary" have generally been limited as if they read "at such other places within the State." See McCullough vs. Scott, 182 N. C. 565, 109 S. E. 789. However, it appears that the proposed "meeting" is not in fact a business meeting of the type contemplated in Article 2647 (6), but rather that it is in the nature of a joint conference between the board and the presidents on the one hand and the Mexican officials on the other. The fact that the presidents are included in this "meeting" strengthens our belief that the gathering is not a business meeting of the board of the type comprehended by Article 2647 (6).

Subsection (6) of the General Provisions of the Educational Appropriation Bill, S. B. 33, Acts of the 48th Legislature, R. S., 149, provides in part as follows:

" . . . No traveling expenses shall be incurred by board members, heads of institutions, or by any employee of any of the schools, or other agencies named herein, inside or outside of the boundaries of the State of Texas, except for State business"

The legislatures of Texas have never undertaken to define "state business" as that term has been employed in contexts similar to that above. In general the government of the various educational institutions has been entrusted to the respective boards of regents, and to such boards have been delegated broad and comprehensive powers. It is manifest that the boards are in a superior position to know and understand, and to accomplish, the successful management and government of their institutions. The presumption is always in favor of the reasonableness and legality of that which they do. As was said by the Commission of Appeals in the case of *Foley vs. Benedict*, 55 S. W. (2d) 805, "the courts will not interfere therewith in the absence of a clear showing that they have acted arbitrarily or have abused the authority vested in them." This department has always considered itself restrained, as are the courts, in overturning the deliberate and considered acts of those entrusted with, and peculiarly equipped for, the administration of the various State educational institutions. In our opinion No. 0-1195 we stated:

"'State's business', as relates to the authority of a department to incur traveling expenses to be paid by the State, seems to embody at least the following elements:

"1. A reasonable, substantial, and direct relation between the business to be transacted on the trip and the accomplishment of the functions of government entrusted to the particular department.

"2. A reasonable, substantial, and direct relationship between the method by which the particular business is intended to accomplish the function of government entrusted to 'the

department, and the powers granted the department by law for the accomplishment of such functions.

"

"Of course, as between the two extremes, there must necessarily be some zone of doubt, where the judgment of the department heads, under the sanction of their official oaths, becomes the only practicable criterion by which the question whether the State's business is involved in the particular trip may be determined."

Acting on these principles, this department has ruled that the head of a state educational institution was on State's business while attending a meeting in Atlanta, Georgia, of the Southern Association of Colleges and Secondary Schools (Opinion No. O-2084), that the head of a State school of engineering was on State's business while attending a meeting in New York City of the American Society of Mechanical Engineers (Opinion No. O-4267), that the head of the husbandry department of a State School was on State's business while attending in Toronto, Canada, an Inter-American conference for the dairy industry (Opinion No. C-4756), that a professor of animal husbandry in a State school was on State's business while attending the American Royal Livestock Show (Opinion No. O-1195), and that a professor in the State University was on State's business while attending in San Francisco a meeting of the Adult Education Section of the National Education Association. (Opinion No. O-4387).

The proposed conference is for the purposes of discussing the problems of the exchange of students with Mexico and of the establishment and continuance of summer Field Schools. Art. 2654 (e) specifically authorizes the governing boards of the various educational institutions to exempt certain students from other nations of the American continents from the payment of tuition fees. The emergency clause of this legislation (Acts 1941, 47th Leg., P.S., p. 32, ch. 25, (2) expresses a legislative belief that "by extending the facilities of the

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higher educational institutions of this country to students of other nations, a mutual respect and understanding of the people of this country and of the other nations of the continent will be fostered." Insofar as the proposed conference relates to a discussion of an exchange of students with Mexico, we feel that it clearly is State business.

In view of the broad powers possessed by the Board of Regents over the curricula of the State Teachers Colleges and the latitude with which the courts have interpreted these powers, we are unable to say that traveling expenses incurred in connection with the establishing or maintaining of the summer Field Schools are not incurred in connection with State business.

Consequently, you are respectfully advised that warrants may be issued in payment of traveling expenses incurred in connection with the conference above discussed.

Trusting that the foregoing answers your inquiry,
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ R. Dean Moorhead
Assistant

RDM:ff:Eb

APPROVED MAR. 11, 1944
/s/ G. P. Elskburn
ACTING ATTORNEY GENERAL OF TEXAS

THIS OPINION CONSIDERED AND APPROVED IN LIMITED CONFERENCE.