



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Board of Regents  
State Teachers Colleges of Texas  
Box 756  
Austin, Texas

Dear Sir: Attention: Mr. H. A. Turner

Opinion No. 0-6135  
Re: Approval of expense account  
of member of the Board of  
Regents of the State Teachers  
Colleges.

Your opinion request of July 28, 1944, reads as follows:

"Referring to the account of Hon. S. A. Kerr hereto attached, and which has been in your office for ruling for some little bit, and on which I am informed you wish additional information; I return the account to you herewith with the following explanation and data:

Mr. Kerr, whose home is Jacksonville, Texas, was duly appointed a member of the Board of Regents for the Texas State Teachers Colleges, and duly qualified; later he was called into the service, viz. the U. S. Navy, and is stationed in Washington, D. C.

The annual meeting of the Board of Regents was held in Austin May 15, 16, 1944, and Mr. Kerr was urged to be present if at all possible, it being the occasion of the annual meeting at which matters of great importance covering the coming year and biennium are disposed of. He came and incurred the expenses as shown in the attached account.

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"The question our board wishes answered is whether said account can be paid in full, and if not, what portion of same may be paid legally.

"We will appreciate your findings in the matter."

Mr. Kerr's expense account contains an item for transportation expenses from Washington to Austin and return, together with additional items for meals, hotel and per diem.

Under the decisions of our Supreme Court in the cases of Carpenter vs. Sheppard, 145 S. W. (2d) 562, and Cramer vs. Sheppard, 167 S. W. (2d) 147, a civil officer of this State does not vacate or forfeit his civil office by joining any branch of our armed forces other than the regular army, navy or marine corps. We understand that Mr. Kerr is in the naval reserve rather than in the regular navy; consequently, the fact that he is in service does not prevent the payment of such expenses as he may actually and necessarily incur in discharging the duties of his civil office.

With respect to such expenses, Section 6 of Article 2647, V. A. C. S., provides:

"The board shall meet each year at 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. Each and every member of said board shall receive five dollars per day for the time spent attending the meetings provided for in this law, and in addition thereto the amount of their traveling expenses, said compensation to be paid to the several members of the board out of the appropriation for the support and maintenance of the said State Teachers' Colleges as the board may direct."

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Section 14 of Article 16 of the Texas Constitution reads as follows:

"All civil officers shall reside within the State; and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held."

Opinion No. O-3456 by this department reads; in part, as follows:

"In our opinion, however, the expenses incurred by Mr. Martin in coming to his district from Brownwood, where his military office requires him to be stationed, in order to perform the duties of his civil office, and the expenses incident to the return trip to Brownwood may not be paid. The expenses of these trips are not such as are necessarily incurred in discharging the duties of the civil office of District Attorney. On the contrary, the necessity for these expenditures arises out of the holding of the military office. The situation, to our mind, is much the same as if the District Attorney were compelled, for personal reasons, to make a trip outside of his district, in which event we think it clear that, though it would be necessary for him to return to his district in order to discharge the duties of his civil office, he could not have his expenses incurred in making the return trip paid by the State any more than he would be entitled to have the expenses of the going trip paid by the State. In other words, in neither instance, has the presence of the district attorney at the point outside of his district been occasioned by the necessity of discharging a duty incident to his civil office as District Attorney, and it is only such traveling expenses as are necessarily incurred in discharging the duties of the civil office of District Attorney which may be paid to the officer as District Attorney."

In view of the foregoing authorities, it is the opinion of this department that Mr. Kerr is only entitled to receive

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five dollars per day for the time spent attending the meetings of the Board of Regents of the State Teachers Colleges, and in addition thereto, the amount of his traveling expenses from Jacksonville, Texas, his legal residence, to Austin, Texas, and the return trip from Austin to Jacksonville.

Very truly yours

ATTORNEY GENERAL OF TEXAS

DECEMBER 22 1944

*Shorn Sellers*

ATTORNEY GENERAL OF TEXAS

By

*J. C. Davis, Jr.*

J. C. Davis, Jr.  
Assistant

JCD:rt

