



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Frank D. Quinn
Executive Director
Texas State Parks Board
Austin 11, Texas

Dear Sir:

Opinion No. O-6898

Re: Validity of a certain payroll item in the amount of \$937.50, alleged by the State Parks Board to be for "seasonal labor" and submitted to the State Comptroller for payment.

We have your recent request for an opinion on the above question, said request reading as follows:

"Enclosed is a copy of a letter dated October 19 from George H. Sheppard, Comptroller of Public Accounts, to Mr. Frank D. Quinn, Executive Director of the Texas State Parks Board, in regard to our payroll drawn against 'appropriation' No. W-500 in the amount of \$937.50, with reference to its alleged violation of General Rider, 14b of the Departmental Appropriation Bill.

"We agree that insofar as a specific legislative appropriation for a salaried position is concerned, the quoted portion of Section 14b would be applicable.

"However, the payroll in question is based on salaries set up by the Legislative Audit Committee for seasonal labor, not on 'any position provided for in this act.' The so-called 'appropriation' No. W-500 is not a salaried position set up by the Legislature--it is merely an 'account' set up by the State Comptroller's Department, based on a 'budget' set up by the Legislative Audit Committee.

Hon. Frank D. Quinn, page 2

"Furthermore, the items on the payroll in question are for seasonal labor, and the employees who are on said payroll are employed only as needed, based on the seasonal variations of the amount of work involved by this department. In submitting our budget to the Legislative Audit Committee, it was specifically understood that said items were seasonal in nature, and to be used as and when needed and in the manner needed. For example, the \$75 and \$100 items for clerical work were understood to be for part time work, and it was understood that they could further be broken down as needed.

"We are of the opinion that the salaries in question, which are payable out of Special Park Fund, and approved by the Legislative Audit Committee through the 'budget system' are not governed by the quoted portion of Section 14b of the Departmental Appropriation Bill. To hold otherwise would be holding contrary to legislative intent, for it is obvious that the intention of the legislature was that such a limitation on salaries applied only to specific salary appropriations, and not to possible variable wage payments out of special funds, nor to specific salary accounts set up by Committees, Boards or Commissions out of Special Funds.

"Therefore, we respectfully request an opinion from you, directing the State Comptroller to issue warrants on said payroll."

The copy of letter to you from the Comptroller accompanying your request and referred to therein reads as follows:

"Your payroll drawn against Appropriation No. #500 in the amount of \$937.50 has been presented to me for payment.

"General Rider, 14b of the Departmental Appropriation Bill provides in part: 'Nothing herein shall prevent any department head from paying less than the maximum amount set forth herein for any salaried position.' Section 14a provides in part: 'The head of any department of State Government or any Board or Commission of State Government may use part time employees to fill any position provided for in this

Hon. Frank D. Quinn, page 3

act at a salary not to exceed more than one-half the amount appropriated for such position.'

"Please advise as to why the rate of pay of the part time employees listed in this payroll, whose rate of compensation exceeds more than one-half of the amount set aside for that position, is not in violation of Section 14a, quoted above.

After receiving said request, we asked you for additional information relative to the facts and, in reply to our request, you submitted to us the following:

"PAYROLL SALARY APPROPRIATIONS FOR
STATE PARKS BOARD
SPECIAL PARK FUND 64
DEPARTMENT 801
FISCAL YEAR ENDING AUGUST 31, 1946

"REFERENCES: S. B. 317 - R.S. 49th Legis. and Legislative Audit Committee
6 months Budget Approved August 27, 1945

"APPR. NO.	ITEM NO.	TITLE	AMOUNT	MO. RATE
W-500	(PAYROLL SALARIES REGULAR BASIS)			
	1	Consulting Architect	600.00	100.00
	2	Receptionist - Part Time	450.00	75.00
	3	Receptionist - Part Time	450.00	75.00
	4	Stenographer	750.00	125.00
	5	File Clerk	600.00	100.00
	6	Draftsman	600.00	100.00
	7	Typist and File Clerk	600.00	100.00
	8	West Texas Representative	1,200.00	200.00
	9	Painter	750.00	125.00
		TOTAL SALARIES	6,000.00	1,000.00"

The above payroll salary appropriation was approved by the Legislative Auditing Committee.

Hon. Frank D. Quinn, page 4

A copy of the payroll in question, Items 3 and 7 of which are in dispute, said payroll being as follows:

**"TEXAS STATE PARKS BOARD
PAYROLL DETAIL**

"Supplementary Monthly Payroll Ending October 31st, 1945

"Appr. No.	Item No.	Name and Payroll Title	Gross Amt.	Tax	Net Amt.	War. Nos.
"W-500	1	B. B. Giesecke Consulting Architect	100.00	--	100.00	
	2	Mary Lucille O'Brien Receptionist-Part Time	75.00	0.70	74.30	
	3	W. O. Stewart (2/3 mo.) Fay Deglandon (1/3 mo.) Receptionist - Part Time	50.00 25.00	0.80 4.50	49.20 20.50	
	4	Betty Conn Stenographer	125.00	16.50	108.50	
	5	Elizabeth Allen File Clerk	100.00	3.20	96.80	
	6	Mary Burr Draftsman	100.00	19.90	80.10	
	7	M. W. Hunter (1/4 mo.) Barbara Raisch (3/4 mo.) Typist and File Clerk	25.00 75.00	-- 5.70	25.00 69.30	
	8	Fred McNeil West Texas Representa- tive	200.00	7.20	192.80	
	9	John Fay (1/2 mo.) Painter	62.50	8.30	54.20	
			<u>937.50</u>	<u>66.80</u>	<u>870.70</u>	
		Collector of Internal Revenue		66.80"		

Hon. Frank D. Quinn, page 5

The list of Comptroller's Numbers containing the number of this particular item, which reads as follows:

"LIST OF COMPTROLLER'S NUMBERS
ASSIGNED TO
APPROPRIATIONS FOR FISCAL YEAR ENDING AUGUST 31, 1946

"DEPARTMENT: STATE PARK BOARD No. 801
 FUND : SPECIAL PARK FUND No. 64
 APPROPRIATED: S.B. 317 - R.S. 49th Leg. & LEGISLATIVE AUDIT
 COMMITTEE
 6 MONTH BUDGET APPROVED AUGUST 27, 1945

<u>APPRO. NO.</u>	<u>TITLE OF ACCOUNT</u>	<u>APPROPRIATED AMOUNT</u>
W-500	PAYROLL SALARIES REGULAR BASIS	\$ 6,000.00

** * **

The appropriation for the Texas State Parks Board (Vernon's Texas Session Law Service, pages 898-904) contains the following:

"All of the previous annual balance in the Special Park Fund and all Future receipts deposited in the Special Park Fund are hereby appropriated and re-appropriated for each year of the biennium for maintenance and improvement of the State Parks. Provided, however, the State Parks Board shall not have the authority to employ any additional help out of said receipts except seasonal help. All maintenance items may be supplemented with Federal Funds.

"All the above appropriation shall be subject to the approval of the State Auditing Committee and none of the funds herein provided shall be spent until such approval shall have been had."

As we understand the situation, the salaries here under consideration were not provided to fill any position referred to in the Appropriation Bill itself. They are part time positions created by the State Parks Board for seasonal help, the budget for which was set up by the Legislative Auditing Committee, and employees in question are such employees as are authorized under the above quoted provisions from the appropriation for the State Parks Board. It is our opinion that the State Parks Board would

Hon. Frank D. Quinn, page 6

not be authorized to employ any additional help other than such as would be seasonal help. Accordingly, it is our opinion that such payroll is not in violation of Section 14a set out in the Comptroller's letter, and that it should be paid as submitted by the State Parks Board.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *Jas. W. Bassett*
Jas. W. Bassett
Assistant

JWB:LJ

Carl P. Kelly 1945

