



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable T. N. Whitehurst, Member
Texas Prison Board
P. O. Box No. 1768
Beaumont, Texas

Opinion No. 0-7164

- Re: (1) Construction of the term "prison produced food products" contained in appropriation items for various positions for the Texas Prison System.
- (2) Whether one person employed by the Texas Prison System may hold and draw salary for two positions.

Dear Sir:

We are in receipt of your letters of recent date requesting the opinion of this department on the above stated matters. We quote from your letters as follows:

"Under the salary budget of the Texas Prison System certain employees in the higher brackets are to get in addition to their salaries 'House, Water, Lights, Fuel, and all Prison Produced Food Products'.

"My question is, 'Are these employees entitled to all food products handled through the commissary?' That is, are they entitled to items such as flour, coffee, spices, condiments, etc. which are bought from the outside to supply the Prison System. The question is, 'Are these employees entitled to get such merchandise free of charge?'

.....

"Under the budget of the Texas Prison System detailed amounts are voted for individual jobs. In other words, instead of having an over-all total figure to be divided up as the management might desire each employee is voted a specific amount. I have a question which I will thank you to answer for me. Can one individual occupy two positions and draw two salaries at the same time?

"In other words, could one man be:

Assistant General Manager
&
Cotton Classifier

"Can one man be: Executive Secretary
&
Purchasing Clerk

"Can one man be: Pharmacist
&
Medical Supervisor

"Can one man be: Superintendent of Building Construction
&
Superintendent of License Plant

"Can one man be: Mechanic
&
Livestock Supervisor

"Can one man be: Assistant General Manager
&
Livestock Supervisor"

With reference to your question as to whether certain employees are entitled to receive "all food products handled through the Commissary", we refer you to the following appropriation items contained in S.B. 317, Ch. 378, pp. 904-907, Acts of the 49th Leg., 1945:

"TEXAS PRISON SYSTEM

Salaries	For the Years Ending	
	August 31, 1946	August 31, 1947
"1. General manager, with house, water, fuel and lights and <u>prison produced food products</u>	\$6,000.00	\$6,000.00
"2. Assistant general manager, with house, water, fuel and lights, with <u>prison produced food products</u>	2,835.00	2,835.00
"		
"35. Warden, with house, water, lights, fuel and <u>prison produced food products</u> 3,300.00	3,300.00	3,300.00
"		
"45. Print shop superintendent with house, water, lights, fuel and <u>prison produced food products</u>	2,475.00	2,475.00
"		

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"Salaries	For the Years Ending	
	August 31, 1946	August 31, 1947
"52. Superintendent of State Farm Industries and Central State Farm, with house, lights, water and fuel and <u>prison produced food products</u>	\$ 3,150.00	\$ 3,150.00
"53. Ten (10) Unit managers, with house, water, lights, fuel and <u>prison produced food products</u> , none to exceed \$2,400.00 per year.	18,844.00	18,844.00
"		
"57. 17 Assistant Unit managers, with house, water, fuel, lights, and <u>prison produced food products</u> . (none to exceed \$1,725.00 per year)	25,461.00	25,461.00
"		
"64. Dog sergeants, none to exceed \$1,300.00 per year, with house, water, lights, fuel, and <u>prison produced food products</u>	19,872.00	19,872.00
"		
"66. Farm stewards, with house, water, fuel, lights and <u>prison produced food products</u> none to exceed \$1,380.00 per year. (underscoring ours)	22,045.00	22,045.00"

In view of the plain meaning of the language "prison produced food products" as used in the above quoted items in the Appropriation Act, it is our opinion that the persons holding the positions above mentioned would be entitled to receive, as part of their compensation, only such food products that have been actually produced by the State Prison System. You are therefore advised that the term, "prison produced food products" as used in the above mentioned appropriation items would not include such products that have been purchased from the outside to supply the State Prison System.

With reference to your questions as to whether one individual may occupy two positions and draw two salaries at the same time, we call to your attention the following language contained in Sec. 33 of Art. XVI of the Constitution of Texas:

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"The accounting officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution."

In Opinion No. O-2607, a copy of which we enclose herewith, this department considered the above quoted constitutional provision as it applies to the holding of two positions under this State. In that opinion it was held that a state employee could not receive any salary or compensation from the state while holding two positions. We call your attention to the following language contained in the above mentioned opinion:

"Considering the broad general purpose intended to be served by this section of the Constitution, we are of the opinion that the construction of the term 'appointee' as meaning and embracing 'employee' is required. The reasons prompting the adoption of the policy are just as compelling, and the evil to be averted the same in the case of the employee of the State who contracts to render service for salary or compensation, as in the case of the officer or agent.

"You are therefore advised that if a physician employed part time by one institution of the state accepts and holds a similar place in another institution at the same time, he can not receive a salary or compensation for either position during the period of time that both are held."

We note that each of the positions inquired about are listed in the 1945 Appropriation Act (S.B. 317, Acts 49th Leg.) as separate positions with a stipulated compensation for each position. In view of the above mentioned opinion which has been consistently followed by this department, you are advised that when one individual holds two positions he cannot receive a salary or compensation for either position during the period of time that both positions are held. This holding is applicable to each of the "combinations" of positions listed in your request with reference to one person holding two positions and receiving compensation for both positions.

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We trust that the above and foregoing will satisfactorily answer your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED MAR 22, 1946

W. Ross Sellers
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