



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL  
ATTORNEY GENERAL**

**May 5, 1947**

Hon. Homer Garrison, Jr., Director,  
Texas Department of Public Safety,  
Austin, Texas                      Opinion No. V-186

Re: Legality of reimbursement  
of actual travel expenses  
of an agent commissioned  
by the Governor to return  
from a foreign county a  
fugitive from justice.

Dear Sir:

Your request for an opinion by this department  
upon the above subject matter is as follows:

"On February 14, 1947, the Hon. Beauford Jester, Governor of the State of Texas, appointed Texas Ranger R. L. Badgett and Mr. J. L. Jameson, Sheriff of Montague County, Texas, as Agents of the Governor and of the State of Texas to proceed from the State of Texas to Santos, Brazil, S.A., for the purpose of returning one Irvin Goodspeed, a fugitive from justice from this State who stood charged with the offense of murder in Montague County, Texas.

"Upon receiving notification from the Governor of Texas that R. L. Badgett, Texas Ranger, a member of this Department, had been appointed as Agent for the Governor and for the State for the purposes above enumerated, I instructed him to proceed in his capacity as an Agent of the State to Santos, Brazil, to perform the mission as directed by the Governor.

"We would appreciate it if you would answer the following questions, as Texas Ranger Badgett desires to present his expense account for payment to the State for reimbursement of monies expended, on authority of the Governor's Commission:

- "1. Would Texas Ranger Budget be limited to the Five Dollar (\$5.00) per diem limitation for State employees, or could he be reimbursed for the actual expenses incurred even though these expenses exceeded Five Dollars (\$5.00) per day?
- "2. Due to the fact that Ranger Badgett was in a foreign country where English was not generally understood, it was impossible for him to receive receipts for such items as taxi fares, etc. Under the circumstances, therefore, could the State of Texas reimburse him for the expenditures that he made in executing the directive of the Governor?"

Your questions cannot be answered categorically. The matter is controlled by Article 1006 of the Code of Criminal Procedure of Texas, the pertinent portion of which is as follows:

"Pay of agent. -- The officer or person so commissioned shall receive as compensation the actual and necessary traveling expenses upon requisition of the Governor to be allowed by such Governor and to be paid out of the State Treasury upon a certificate of the Governor reciting the services rendered and the allowance therefor.

In *Brightman vs. Sheppard*, 122 Tex. 318, 59 S. W. (2d) 112, it is said:

"Article 1006 in plain and specific terms stipulates that 'the officer or person so commissioned shall receive such compensation only as the Governor shall allow for such service.' The services referred to in this article are not the limited services covered by the proviso of the act heretofore referred to; that is, while traveling beyond the state line. It has reference to the entire services of the agent in performing the delegated task. In language too clear to admit of doubt it is provided that for 'such services' the only compensation which may be determined by the Governor.

"The act of the codifiers of 1925 in eliminating the proviso contained in the act of 1923 and substituting in lieu thereof article 1006, with the change heretofore referred to, when adopted by the Legislature, manifested an unmistakable intention upon the part of the lawmaking body to require an officer or other person performing the services of returning a fugitive from justice from another state, under commission from the governor of this state, to look alone for compensation to the provisions of article 1006."

This Department, in Opinion No. 0-4444, following the Brightman case, said:

"We, therefore, hold that the actual and necessary traveling expenses of the employee of the Department of Public Safety, if he traveled to California under the commission of the Governor as the Governor's agent to return to this State such fugitive from justice, are to be paid from the appropriation provided the Governor for returning fugitives from justice, and upon the certificate of the Governor reciting the services rendered and the allowance therefor."

We adhere to the ruling there made in accordance with the Supreme Court's decision above quoted.

SUMMARY

The actual and necessary traveling expenses of a person commissioned by the Governor as agent to return to this State a fugitive from justice, are to be paid from the appropriation provided the Governor for returning fugitives from justice, and upon the certificate of the Governor reciting the services rendered and the allowance made therefor. Art. 1006 V.C.C.P.

Yours very truly

APPROVED MAY 5, 1947

ATTORNEY GENERAL OF TEXAS

*Price Daniel*  
ATTORNEY GENERAL OF TEXAS

By *Ocie Spear*  
Ocie Spear  
Assistant

OS:wb:jrb