



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

September 18, 1947

Hon. George H. Sheppard
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. V-383

Re: The mileage reimbursement to be paid a district attorney for those miles driven in his own car on official State business in excess of the first one thousand miles in one calendar month.

Dear Sir:

Your request for the opinion of this Department is, in part, as follows:

"A District Attorney has submitted to this department his expense account covering 1213 miles for the month of June at five cents per mile. This department is uncertain as to whether the Attorney is allowed five cents a mile for the entire 1213 miles or whether he is entitled to receive five cents for the first 1,000 miles and four cents for the remaining 213 miles.

"We shall, therefore, thank you to advise us whether the District Attorney may receive five cents a mile for his entire mileage or whether he is governed by the rider on the Appropriation Bill and can only receive five cents a mile for the first 1,000 miles and four cents for that mileage above 1,000 traveled in any one calendar month."

". . . .

"The sole question here is whether the District Attorneys and District Judges shall receive a straight five cents a mile for the entire mileage traveled in any one calendar

month or whether they shall receive five cents a mile for the first 1,000 miles traveled and four cents, etc., for the mileage traveled in excess of 1,000 miles in any one calendar month."

The pertinent statutes are as follows, all emphasis being added:

Article 6823, R. C. S. 1925, as amended, is as follows:

"The traveling and other necessary expenses incurred by the various officers, assistants, deputies, clerks and other employees in the various departments, institutions, boards, commissions or other subdivisions of the State Government, in the active discharge of their duties shall be such as are specifically fixed and appropriated by the Legislature in the general appropriation bills providing for the expenses of the State Government from year to year. When appropriations for traveling expenses are made any allowances or payments to officials or employees for the use of privately owned automobiles shall be on a basis of actual mileage traveled for each trip or all trips covered by the expense accounts submitted for payment or allowance from such appropriations, and such payment or allowance shall be made at a rate not to exceed five (5¢) cents for each mile actually traveled, and no additional expense incident to the operation of such automobile shall be allowed. /As amended Acts 1931, 42nd Leg., p. 372, ch. 218, § 1./"

The general provisions of the Judiciary Appropriation Bill (Chap. 379, Acts 49th Leg., R. S. (1945)) contain the following proviso in Section 4 thereof:

"Traveling expenses paid to all officers and employees under the terms of this bill shall be the same amount and paid under the same conditions as provided for in the General Departmental Bill."

The general provisions of the General Departmental Appropriation Bill, (Chap. 378, Acts 49th Leg. R. S. (1945) p. 810) referred to in the preceding paragraph are as follows:

Subsection (11) f, Section 2, (in part):

"f. Unless otherwise specifically provided by the statutes, it is provided that any officer or employee who travels on official State business and who uses his own car while so doing shall be reimbursed for the use of said car on the basis of the total mileage traveled during any calendar month at the following rate: Five cents (5¢) per mile for the first thousand miles traveled and four cents (4¢) per mile for each mile traveled in excess of one thousand miles."

Article 6820, R. C. S. 1925, is as follows:

"All district judges and district attorneys when engaged in the discharge of their official duties in any county in this State other than the county of their residence, shall be allowed their actual and necessary expenses while actually engaged in the discharge of such duties, not to exceed four dollars per day for hotel bills, and not to exceed four cents a mile when traveling by railroad, and not to exceed twenty cents a mile when traveling by private conveyance, in going to and returning from the place where such duties are discharged, traveling by the nearest practical route. Such officers shall also receive the actual and necessary postage, telegraph and telephone expenses incurred by them in the actual discharge of their duties. Such expenses shall be paid by the State upon the sworn and itemized account of each district judge or attorney entitled thereto, showing such expenses. In districts containing more than one county, such expenses shall never exceed in any one year \$100.00 for each county in the district; provided that no district judge or attorney shall receive more than \$600.00 in any one year under the provisions of this article. The account for said services shall be recorded in the official minutes of the district court of the county in which such judge or attorney resides, respectively. [Acts 1923, p. 50.]"

When Article 6823, supra, was amended by Chap. 218, Acts 42nd Leg., 1931, p. 372, the emphasized portion thereof was added and the verbiage of the original act of 1917 remained unchanged except for the addition of the following emphasized words, "in the various departments, institutions, boards, commissions, or other sub-

divisions of the State government.

The emergency clause of the amending act reads in part as follows:

"Sec. 2. The fact that officials and employees of the State government are receiving allowances for the use of privately owned automobiles based on various rates, some of which appear to be excessive, and, that no uniform rate of allowance is specified in the statutes creates an emergency . . . "

The enactment by the 42nd Legislature of the amendment to Article 6823 constituted an implied repeal of that portion of Article 6820, supra, which provides that "all district judges and district attorneys . . . shall be allowed their actual and necessary expenses . . . not to exceed twenty cents a mile when traveling by private conveyance . . . "

You are therefore advised that it is the opinion of this Department that District Judges and District Attorneys using their own cars while traveling on official State business shall be reimbursed for such use at the rates provided for in Subsection (1) f, Section 2, Chapter 379, Acts of the Forty-ninth Legislature, Regular Session, 1945, p. 936.

Opinion No. 0-7072, approved May 21, 1946, is overruled in as far as it conflicts with this opinion.

SUMMARY

District Judges and District Attorneys using their own cars while traveling on official State business shall be reimbursed for such use at the rates provided in the general Departmental Appropriation Bill, i.e., 5 cents for the first 1,000 miles, during any calendar month and 4 cents for each mile traveled in excess of 1,000 miles. Articles 6820, 6823 R. C. S. 1925; Chapter 379 Acts 1945 (Judiciary Appropriation Bill); Chapter 378, Acts 1945

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(Departmental Appropriation Bill) Opinion
No. O-7072, overruled in part.

Yours very truly

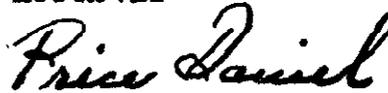
ATTORNEY GENERAL OF TEXAS

By



C. K. Richards
Assistant

APPROVED



ATTORNEY GENERAL

CKR:mrj:jrb