



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

**PRICE DANIEL
ATTORNEY GENERAL**

December 3, 1947

Hon. Charles R. Martin
County Auditor
Harrison County
Marshall, Texas

Opinion No. V-446

Re: Basis of pay of temporary shorthand court reporter obtained by reason of the illness of the regularly appointed official reporter.

Dear Mr. Martin:

Your request for an opinion of this Department as to the construction of Article 2326a, V.C.S., as it relates to the pay of a temporary court reporter is substantially as follows:

"On October 8th, 1947, the regular shorthand reporter became ill, necessitating the Judge of the District Court getting another shorthand reporter, and one was secured who resides out of the District, his residence being in Henderson, Texas.

"QUESTION: Would the shorthand reporter who resides out of this District, be paid under the first paragraph of Article 2326, Vernon's Civil Statutes, which provides hotel bills of \$4.00 per day and mileage, either by rail, bus, or private conveyance, also per diem, or should he be paid under the last paragraph of this same article, which states that the shorthand reporter shall receive and be paid all actual and necessary expenses in going to and returning from the place where he or she may be called on to report the proceedings of any Regular or Special Terms of Court?

"QUESTION: If you conclude that he should be paid under the last paragraph of Article 2326a, that is, his actual and nec-

essary expenses in going to and returning from the place where he or she may be called on to report the proceedings, then is he entitled to any per diem in addition to his necessary and actual expenses?"

Subsequent to your request for an opinion, you informed this office that the temporary court reporter for the 71st Judicial District is the official court reporter for the 4th Judicial District.

Article 2326a, V.C.S., provides in part as follows:

"All official shorthand reporters and deputy official shorthand reporters of the District Courts of the State of Texas composed of more than one county, when engaged in the discharge of their official duties in any county in this State other than the county of their residence shall, in addition to the compensation now provided by law for their services, be allowed their actual and necessary expenses while actually engaged in the discharge of such duties, not to exceed the sum of Four Dollars per day for hotel bills, and not to exceed four cents a mile when traveling by railroad or bus lines, and not to exceed ten cents a mile when traveling by private conveyance in going to and returning from the place where such duties are discharged, traveling the nearest practical route. . .

"Whenever a special term of any District Court in this State is convened and the services of an additional official or deputy official shorthand reporter is required, then this Act shall also apply to said shorthand reporter so employed by the Judge of said special term, and all expenses as herein provided shall be allowed and paid said shorthand reporter so employed for said special term by the county wherein said special term is convened and held, and shall be in addition to the expenses herein provided for the official or deputy official shorthand reporter of the district.

"Where the official or deputy official shorthand reporter does not reside in the Judicial District for which he or she is appointed, he or she shall only be entitled to traveling expenses from the time he or she reaches the County Line of any county in the Judicial District. Provided, however, that whenever any official or deputy official shorthand reporter is called upon to report the proceedings of any special term of Court, or on account of the sickness of any official shorthand reporter of any Judicial District, necessitating the employment of a shorthand reporter from some other county within the State, then the shorthand reporter so employed shall receive and be paid all actual and necessary expenses in going to and returning from the place where he or she may be called on to report the proceedings of any Regular or Special terms of Court." (Emphasis added)

In determining the question of whether the first portion of Article 2326a controls or whether the last portion of said Article controls, it will be necessary to carefully analyze the provisions of this Article. The first paragraph of said Act provides for actual and necessary expenses while actually engaged in the discharge of such duties, not to exceed the sum of \$4.00 per day for hotel bills and not to exceed 4¢ per mile when traveling by railroad or bus lines, and not to exceed 10¢ per mile when traveling by private conveyance when going to and returning from the place where such duties are discharged. The last paragraph of said Act provides that if the court reporter does not reside in the judicial district for which he or she is appointed, he or she shall only be entitled to traveling expenses from the time he or she reaches the County Line, whereas if any official or deputy shorthand reporter is called upon to report the proceedings of any special term of court on account of the sickness of any official shorthand reporter of any judicial district, then the shorthand reporter so employed shall receive and be paid all actual and necessary expenses in going to and returning from the place where he or she may be called on to report the proceedings of any regular or special terms of court. The construction placed upon this last paragraph by this Department is

that the official court reporter from another county would be entitled to actual and necessary expenses in going to and returning from the place where called upon to report such proceedings. Therefore, it is the opinion of this Department in answer to your first question, that such reporter should be paid all actual and necessary expenses, and in answer to your second question it is the opinion of this Department that the substitute court reporter who is the official court reporter for the 4th Judicial District would not be entitled to any per diem in addition to the actual and necessary expenses. He would, of course, continue to draw his regular salary from the county or counties in which he is regularly employed.

SUMMARY

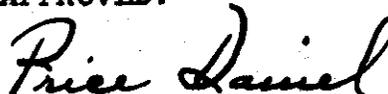
A court reporter who resides out of the judicial district, substituting for the official court reporter in said district by reason of illness, would be entitled to his or her actual or necessary expenses in going to and returning from the place where he or she may be called upon to report such proceedings pursuant to Article 2326a, V.C.S.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By 
Burnell Waldrep
Assistant

APPROVED:


ATTORNEY GENERAL

BW: djm:mw