



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

**PRICE DANIEL
ATTORNEY GENERAL**

April 23, 1948

Hon. Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Opinion No. V-550

Re: Legality of expenditures from the contingent appropriation of the Board of Medical Examiners to defray traveling expense of witnesses on prosecutions for violations of the Medical Practices Act.

Dear Sir:

Your request for an opinion from this office on the above subject matter is, in part, as follows:

"The question has arisen in this department as to whether the Texas State Board of Medical Examiners can use its Contingent Expenses Appropriation for the payment of bringing witnesses either before the county or district court from within or without the State for the purpose of enforcing the law under the Medical Practices Act.

"If you should answer the foregoing question in the affirmative, then would there be any limitation as to the amount the Texas State Board of Medical Examiners could expend in bringing such witnesses before the court; that is, would the amount paid be left to the discretion of the Texas State Board of Medical Examiners or would the amount be covered by Article 1036, C.C.P.?"

Article III, Section 44 of the Texas Constitution provides that no appropriation of money to any individual shall be made when the same shall not have been provided for by pre-existing law.

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Article XVI, Section 31 of the Texas Constitution provides:

"The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for mal-practice, . . ."

Article 742, V. P. C., provides:

"Any person practicing medicine in this State in violation of the preceding Articles of this Chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50), nor more than Five Hundred Dollars (\$500), and by imprisonment in the county jail for not more than thirty (30) days. Each day of such violation shall be a separate offense."

Section 3 of Article 4498a, V. C. S., provides, in part, as follows:

"All annual registration fees collected by the Texas State Board of Medical Examiners under this Act shall be placed in the State Treasury, to the credit of a special fund to be known as the 'Medical Registration Fund,' and all of the current revenues to be derived and placed to the credit of said fund during the two years ending August 31, 1933, are hereby appropriated and shall be used by the Texas State Board of Medical Examiners, and under its direction, in the enforcement of the laws of this State prohibiting the unlawful practice of medicine, and in the dissemination of information to prevent the violation of such laws and to aid in the prosecution of those who violate such laws."

(Emphasis added)

Item 10 of the Appropriation for the State Board of Medical Examiners of the General Appropriation Act of 1947, 50th Legislature, S.B. 391, page 886, provides:

"State Board of Medical Examiners
(Out of Medical Registration Fund)

For the Years Ending	
Aug. 31	Aug. 31
1948	1949

"10. Contingent Expenses for Enforcement Purposes	500.00	500.00"
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Since the State Board of Medical Examiners is authorized to "aid in the prosecution of those who violate" laws prohibiting the unlawful practice of medicine, it is our opinion that the Board may bring witnesses to the trial courts in prosecutions for violations of Medical Practices Act and pay the witnesses their traveling expense out of Item 10, above quoted. Item 10 was appropriated for the purpose of furnishing the State Board of Medical Examiners money to carry out their duties of aiding in the prosecutions of violations of the Medical Practices Act, and certainly the bringing in of witnesses is an aid to such prosecutions.

Article 1036, V. C. C. P., regulates the payment by the State of traveling expense of witnesses in felony cases. However, we know of no comparable statute with reference to witnesses in misdemeanor cases. Therefore, you are advised that it is within the discretion of the Board of Medical Examiners as to the amount to be paid to witnesses in such cases, provided, of course, the sum cannot exceed the amount appropriated.

SUMMARY

Item 10 of the General Appropriation of the 50th Legislature for the Texas State Board of Medical Examiners, entitled "Contingent Expense for Enforcement Purposes" may be used to pay the traveling expenses of witnesses in cases involving

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violations of the Medical Practices Act.
S. B. 391, Acts 50th Leg. 1947, p. 886.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *John Reeves*
John Reeves
Assistant

JR:mw

APPROVED:

Price Daniel
ATTORNEY GENERAL