



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

October 3, 1950

Hon. Will R. Wilson, Jr.
District Attorney
Dallas 2, Texas

Opinion No. V-1111

Re: Legality of review by
the County Auditor and
the Commissioners' Court
of expense accounts for
visiting district judges
which have been approved
by the Presiding Judge
of the Administrative
District.

Dear Sir:

You have presented the following questions relative to payment of expense accounts of visiting district judges:

"1. Is such an expense account subject to audit and/or review by:

- "a. The presiding judge of the district;
- "b. County Auditor;
- "c. Commissioners' Court?

"2. If the account is subject to review by the presiding judge of the judicial district, may he refuse approval if, in his opinion, the account does not represent actual expenses or a close approximation thereof?

"3. If the account is subject to review by the auditor, may he refuse approval for payment if, in his opinion, the account does not represent actual expenses?

"4. If the account is subject to review by the Commissioners' Court, may the court refuse approval for payment if, in its opinion, the account does not represent actual expenses or a reasonable approximation thereof?

"5. Is the presiding judge's approval (either with or without review) final and not subject to further audit or review?

"6. If the expense account is subject to review by the County Auditor, is he authorized to demand receipted invoices for hotel bills?"

Article 1660, V.C.S., provides:

"All claims, bills and accounts against the county must be filed in ample time for the auditor to examine and approve same before the meetings of the commissioners court. No claim, bill or account shall be allowed or paid until it has been examined and approved by the county auditor. The auditor shall examine the same and stamp his approval thereon. If he deems it necessary, all such accounts, bill, or claims must be verified by affidavit touching the correctness of the same. The auditor is hereby authorized to administer oaths for the purposes of this law."

The pertinent part of Article 2351, V.C.S., is as follows:

"Each commissioners court shall:

". . .

"10. Audit and settle all accounts against the county and direct their payment."

These are general statutes which require an audit and approval of claims against the county by the auditor and commissioners' court before they may be paid.

However, Section 10 of Article 200a, V.C.S., provides:

"When the district judges are assigned under the provisions of this Act to districts other than their own district and out of their own counties, they shall, in addition to all other compensation permitted or authorized by law, receive their actual expenses in going to and returning from their several assignments, and their actual living expenses while in the performance of their duties under assignments,

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which expenses shall be paid out of the General Fund of the county in which their duties under assignments are performed, upon accounts certified and approved by the Presiding Judge of the Administrative District." (Emphasis added.)

In 2 Sutherland, Statutory Construction (3rd Ed. 1943), 541-543, it is stated:

"General and special acts may be in pari materia. If so, they should be construed together. Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling."

In Townsend v. Terrell, 118 Tex. 463, 467, 16 S.W.2d 1063, 1064 (1929) the court said:

". . . It is only where acts are so inconsistent as to be irreconcilable that a repeal by implication will be indulged. If there exists such conflict, then there is a presumption of the intention to repeal all laws and parts of laws in conflict with the clear intention of the last act. This is necessarily true where both acts cannot stand as valid enactments.

"This rule of construction has found frequent and apt illustration where one of the supposedly conflicting statutes was general in its terms and the other specific. In such a case it is universally held that the specific statute more clearly evidences the intention of the Legislature than the general one, and therefore that it will control. In such a case both statutes are permitted to stand - the general one applicable to all cases except the particular one embraced in the specific statute. . . ."

Applying the principle announced in the above

cases to the instant case, the Legislature did not intend that the approval of the claims of the district judges who have been assigned to try cases in districts other than their own and out of their own counties under the provisions of Article 200a, V.C.S., should be governed by the provisions of Articles 1660 or 2351, V.C.S.

Generally claims to be paid by the county must have the approval of the commissioners' court and county auditor. However, Section 10 of Article 200a sets out specifically the prerequisites for payment of expense accounts for visiting district judges. Under these provisions the only requirement is that such accounts be "certified and approved by the Presiding Judge of the Administrative District." There is no provision in Article 200a to indicate that its provisions are to be cumulative of Articles 1660 and 2351. On the contrary, it is our opinion that the Legislature intended to substitute the approval of the presiding judge in lieu of that of the commissioners' court and county auditor.

You are therefore advised that such expense accounts are subject to audit and review by the presiding judge of the administrative district only.

In answer to your second question, it is our opinion that it is the duty of a presiding judge to refuse to approve an expense account of the district judge if in his opinion the account does not represent actual expenses.

In view of the above answers, we do not deem that a discussion of questions three and four is necessary.

In regard to your fifth and sixth questions, such expense accounts are subject to audit by the county auditor from a "bookkeeping" standpoint. However, this is not to be construed so as to authorize a county auditor to review the legality of items of expenditure contained therein when certified and approved by a presiding judge of the administrative district.

SUMMARY

Expense accounts of visiting district judges are subject to audit and review by the presiding judge of the administrative district only. Art. 200a, Sec. 10, V.C.S. The presiding judge should refuse to approve an expense account of a district judge if in his opinion the account does not represent actual expenses.

APPROVED:

J. C. Davis, Jr.
County Affairs Division

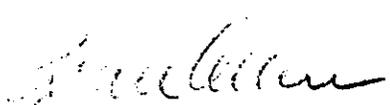
Charles D. Mathews
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BA:mw

Yours very truly,

PRICE DANIEL
Attorney General

By


Bruce Allen
Assistant