



THE ATTORNEY GENERAL  
OF TEXAS

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AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

March 20, 1952

Hon. Paul H. Brown  
Fire Insurance Commissioner  
Board of Insurance Commissioners  
815 Brazos  
Austin 1, Texas      Opinion No. V-1422.

Re: Limitation upon reimbursement for meal and lodging expenditures by State Fire Insurance Commissioner, or by employee of the Fire Insurance Division when investigating a fire at the request of an interested party.

Dear Sir:

You have requested the opinion of this office on the following questions:

"1. Is the State Fire Marshal, when he makes an investigation under Article 5.45 Insurance Code providing 'then the expenses of the State Fire Marshal, clerical expenses, witnesses and officers fees incident and necessary to such investigation shall be paid by such insurance company' limited to the \$6.00 per day expenses provided in the rider to the appropriation bill set out in Section 2(12) - Traveling Expenses-g?

"2. Is an employee of the Fire Insurance Division when so acting and so designated, to be paid his expenses as provided in Article 5.45 or is he limited under the rider to the appropriation bill to \$6.00 per day for meals and lodging?"

An employee of the Fire Insurance Division who was appointed by you under the authority contained in Article 5.45, Insurance Code, to make an investigation, incurred meal and lodging expense in excess of

\$6.00 per day. Your problem has arisen because of the refusal of the Comptroller to issue a warrant for a sum in excess of \$6.00 per day.

Article 5.45, Insurance Code, provides:

"If for any reason the State Fire Marshal is unable to make any required investigation in person, he may designate the fire marshal of such city or town or some other suitable person to act for him; and such person so designated shall have the same authority as is herein given the State Fire Marshal with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as the Board may allow. If the investigation of a fire is made at the request of an insurance company, or at the request of a policyholder sustaining loss, or at the request of the mayor, town clerk or chief of the fire department of any city, village or town in which the fire occurred, then the expenses of the Fire Marshal, clerical expenses, witnesses and officers fees incident and necessary to such investigation shall be paid by such insurance company, or such policy holder or such city or town as the case may be, otherwise the expenses of such investigation are to be paid as part of the expenses of the Board. The party or parties, company or companies, requesting such investigation, shall before such investigation is commenced deposit with the Board an amount of money in the judgment of said Board sufficient to defray the expenses of said Fire Marshal in conducting such investigation."<sup>1</sup>

This statute in effect requires an insurance company or other party requesting an investigation to pay to the Board, on behalf of the State, an assessment equal to the actual expenses incurred in the requested investigation. This assessment becomes state property upon the completion of the investigation and the approval of the expense account. Att'y Gen. Op. V-1336 (1951).

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<sup>1</sup>/ Emphasis added throughout.

The above statute makes this money available only for the specified purpose of paying the expenses incurred in carrying out the investigation.

However, the fact that an assessment is made and collected and the fund is earmarked by general statute for a certain use does not make it available unless it is also appropriated by the Legislature for that use. Furthermore, even though a general statute specifies payment of a certain amount, the amount actually paid is determined by the amount appropriated by the Legislature. State v. Steele, 57 Tex. 200 (1882), and Linden v. Finley, 92 Tex. 451, 49 S.W. 578 (1899), Att'y Gen. Op. V-1267 (1951).

Therefore the basic question to be determined is whether the general appropriation bill for the biennium ending August 31, 1953, appropriates to Fire Insurance Division personnel acting as fire investigators their actual expenses when making an investigation at the request of an insurance company or other party.

Section 12(g) of Article III, House Bill 426 (the general appropriation bill), Acts 52nd Legislature, R.S. 1951, ch. 499, p. 1228, at p. 1437, provides:

"All employees traveling at the expense of the State are hereby limited to the amount of Four Dollars (\$4) per day for meals and a total of Six Dollars (\$6) per day for meals and lodging it being specifically provided that the employees shall obtain receipts for all items of expense claimed except meals, and shall file such receipts with their duly itemized and sworn expense accounts; provided, however, that the meals and lodging limitations imposed by this subsection (12g only) shall not apply to any elected State official nor to any appointed State official nor to any appointed State official whose appointment is subject to Senate confirmation, when traveling in or out of the State; nor to employees of the Executive Department, and employees of other State Departments designated by the Governor to represent him officially at governmental meetings or

conferences when held out of the State; nor to any Assistant Attorney General, or representative of the State Health Officer, or representative of the Adjutant General, or representative of the State Board of Vocational Education, or representative of the Department of Public Welfare, or representative of the State Highway Commission or representative of the Railroad Commission when any of these classes of State employees are appearing before any Federal Agencies or agencies of other States in any other State or Washington, D.C."

The underlined portion of the above quoted subsection answers your first question. The proviso that section 12(g) shall not apply to appointed officials subject to confirmation by the Senate is applicable to you as Fire Insurance Commissioner since your office is of the excepted type and the investigation of fires is one of your duties.<sup>2</sup> You are therefore advised that the traveling expense of the State Fire Insurance Commissioner is not limited by this section, and that you should receive your actual expenses, which are to be paid out of the fund hereinafter discussed when you are making an investigation pursuant to Art. 5.45, supra.

The above exception is not applicable to employees of the Fire Insurance Division, and if this were the only section regulating the expenditures for meals and lodging the maximum reimbursement to employees would be \$6.00 per day.

The appropriation to the Fire Insurance Division provides in part:

"Provided also that such sums as are received by the Fire Division as provided

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<sup>2/</sup> Art. 1.02, Insurance Code, provides in part:  
". . . The duties heretofore and now placed upon and the powers and privileges heretofore and to be exercised by the State Fire Marshall shall continue in and be had, enjoyed, and exercised by the Fire Insurance Commissioner."

by Article 4898 R.C.S. [Art. 5.45, Insurance Code] shall be deposited to the Departmental Suspense Account in the State Treasury. Expenses of State employees incident to the investigations shall be paid from travel expenses hereinabove appropriated and such travel expense appropriation shall be reimbursed for the actual amounts expended under the provisions of Article 4898 R.C.S. [Article 5.45, Insurance Code] by a transfer from the amount on deposit in the Departmental Suspense Account." H.B. 426, supra, at p. 1373.

We have previously held this provision to be a continuing appropriation during this biennium of the expense money fees collected from parties requesting fire investigations. Att'y Gen. Op. V-1336 (1951). This provision appropriates a sum sufficient to pay the actual expenses incurred by employee investigators under the provisions of Article 5.45, supra. These expenses would obviously include the actual cost of meals and lodging.

Thus, in the general appropriation bill, there is a specific provision appropriating funds to defray the actual expenses of a fire investigator, and a general provision limiting meals and lodging expenses of State employees to \$6.00 per day. The provisions are in conflict whenever actual expenses are in excess of \$6.00 per day. In case of conflict, the specific provision controls over the general provision of the same act. Gulf Insurance Co. v. James, 143 Tex. 424, 185 S.W.2d 966 (1945); Att'y Gen. Op. V-378 (1947). In compliance with this well established rule you are advised that employees of the Fire Insurance Division investigating fires at the instance of insurance companies or other parties pursuant to Article 5.45, supra, may properly be issued warrants for their actual expenses.

Our holding is in accord with the results reached in Attorney General's Opinions O-4289 (1942) and O-7067 (1946). These opinions involved the question of whether insurance examiners traveling out of State to make examinations under the provisions of Article 1.16, Insurance Code (Art. 4690a, V.C.S.), were

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limited to \$4.00 per day for meals and lodging as provided in the general appropriation bills. Both opinions held that the examiners were entitled to their actual expenses. These opinions were based on the wording of the general statute, and the question of an appropriation of the funds for the expenses of the examiners was not discussed. However, a search of the appropriation bills during the years involved reveals that the funds collected were appropriated for the actual expenses of the examiners incurred in making the examinations.

SUMMARY

The State Fire Commissioner, being an appointed State official subject to Senate confirmation, is excepted from the provision of the general appropriation bill limiting meal and lodging expenses to \$6.00 per day (Sec. 12(g), Art. III, H.B. 426, Acts 52nd Leg., R.S. 1951, ch. 499, p. 1228, at p. 1437).

The specific appropriation contained in H.B. 426, supra, at p. 1373, to cover the actual meal and lodging expenses of employees investigating fires at the request of a party pursuant to Article 5.45, Insurance Code, is controlling over the general limitation contained in the appropriation bill limiting State employees to \$6.00 per day for meals and lodging.

Yours very truly

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