



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

December 22, 1952

Hon. Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. V-1560

Re: Legality of reimbursing the travel expense of members of the Board of Vocational Nurse Examiners at a mileage rate greater than that fixed in the general appropriation bill.

Dear Sir:

You have requested the opinion of this office on the question of whether the limitations of the general appropriation bill apply to reimbursement for mileage traveled by members of the Board of Vocational Nurse Examiners who use their own automobiles while traveling on official State business. You have aptly described the distinguishing features of this problem by pointing out that the funds against which these expenses are attempted to be drawn are deposited in the State Treasury but that the appropriation authorizing their use for this purpose is not included in the general appropriation bill but is contained in a distinct and separate appropriating act.

In Attorney General's Opinion V-1255 (1951) it was held that Section 13 of H.B. 47, Acts 52nd Leg., 1951, ch. 118, p. 197, the act creating the Board of Vocational Nurse Examiners, effected a two-year appropriation, for purposes of administering the act, of all monies paid into the State Treasury under the act even though no itemized appropriation for such purposes was contained in the general appropriation bill. Said Section 13 provides in part:

"All monies so paid into the State Treasury are hereby specifically appropriated to the Commission for the purpose of paying the salaries and expenses of all persons employed or appointed as provided herein for the administration of this Act, including equipment and maintenance of any

supplies for such offices or quarters as the Commission may occupy, and necessary traveling expenses for the Commission or persons authorized to act for it when performing duties hereunder at the request of the Commission."

Your request discloses that several claims for reimbursement for intrastate travel expenses have been presented to you by members of the Board wherein the claimant seeks reimbursement for use of his own automobile at a rate of 10¢ per mile. Article III, Section 2(12)f of the general appropriation bill, H.B. 426, Acts 52nd Leg., 1951, ch. 499, p. 1228, states:

"Unless otherwise specifically provided by the statutes, it is provided that any officer or employee who travels on official State business and who used 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: Six Cents (6¢) per mile for the first thousand miles traveled and Five Cents (5¢) per mile for each mile traveled in excess of one thousand miles.
. . ."

The same section and subsection sets out other limitations and requirements relevant to reimbursement for mileage traveled in a private automobile while on State business.

We are of the opinion that Article 6823, Vernon's Civil Statutes, answers the question of whether mileage rates specified in the general appropriation bill are to be applied to mileage reimbursement claims submitted by members of the Board of Vocational Nurse Examiners. That article presently provides:

"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 or supplemental 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 the 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 set by the Legislature for each mile actually traveled, and no additional expense incident to the operations of such automobile shall be allowed."

This statute, being general legislation, evidences a legislative policy that the specific travel expense limitations and requirements contained in each general appropriation bill are intended to have some application to travel expense appropriations other than those covered by the general appropriation bill. If this were not true, Article 6823 would serve no purpose and its enactment would have been a vain thing since, obviously, Article III, Section 2(12)f of H.B. 426, supra, applies to funds appropriated in that act.

The extent of application of the specific travel expense limitations and requirements of Section 2(12)f, supra, to appropriations separately enacted must be determined by a comparison of the Section 2(12)f provisions to the provisions of each individual appropriation act. Article 6823 requires that such a comparison be made. If the individual appropriating act contains no specific travel expense provisions, then the provisions of Section 2(12)f are entirely applicable. However, if the individual appropriating act evidences a legislative intent relative to those particular travel expense reimbursements which is completely or in some respects at variance with Section 2(12)f, then, to the extent of variance, Section 2(12)f limitations and requirements do not apply because by express reservation the provisions of this part of the general appropriation bill apply only where it is not "otherwise specifically provided by the statutes."

Applying these rules to the present facts, it is clear that Section 2(12)f travel expense reimbursement provisions are applicable to members of the Board of Vocational Nurse Examiners. The separate appropriation bill

authorizing reimbursement in this case, H.B. 47, supra, does not specifically authorize a 10¢ per mile reimbursement rate or any other rate. In fact, it does not specify any limitations or requirements whatsoever for determining and paying the "necessary traveling expenses" therein authorized to be reimbursed.

Our study of this question has brought to our attention one prior opinion of this office which should be mentioned. Attorney General's Opinion O-4928 (1942) expresses the view that Article 6823, as it existed prior to amendment in 1949, did not

" . . . incorporate by reference the limitations upon traveling expenses which may be contained in the Departmental Appropriation Bill or any other general appropriation bill into other appropriations wherein such limitations are not expressly contained."

The above opinion request did not involve the same kind of travel expense limitation as the present, nor did it concern the present, amended form of the statutes here dealt with. Consequently, Opinion No. O-4928 is not contra to the conclusion herein expressed and need not be overruled. On the other hand, the reasoning employed in that opinion and, particularly, the construction placed on Article 6823, is in our opinion not sound and is obviously contrary to what is expressed herein.

SUMMARY

Under the provisions of Article 6823, the mileage reimbursement provisions of the general appropriation bill, H.B. 426, Acts 52nd Leg., 1951, ch. 499, p. 1228, are applicable to claims for reimbursement by members of the Board of Vocational Nurse Examiners because no mileage reimbursement provisions are "otherwise specifically provided" in the appropriating section of the act (H.B. 47, Acts 52nd Leg., 1951, ch. 118, p. 197) creating the Board of

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Vocational Nurse Examiners, or in any other
statutes.

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Yours very truly,

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