



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

May 26, 1953

Hon. J. F. Gray, Chairman
House Contingent Expense Committee
Fifty-third Legislature
Austin, Texas

Letter Opinion No. MS-43.

Re: Authority of the House of
Representatives to authorize
payment from the Contingent
Expense Fund for official tele-
phone calls by members during
the year beginning May 28, 1953,
in accordance with House Sim-
ple Resolution.

Dear Sir:

House Simple Resolution No. 306 states:

"Be it resolved by the House of Representatives that the Committee on Contingent Expense be directed to appropriate from the Contingent Expense Fund whatever sums shall be necessary to pay for official telephone calls by members of the House of Representatives during the twelve month period beginning on May 28, 1953, provided however, that no member shall be allowed more than an average of \$10.00 (ten dollars) monthly, and further provided no telephone expense other than official calls which are properly charged to the members official toll credit cards shall be paid by the committee."

You have asked whether or not the expenditure directed by this resolution would be a proper expenditure of State funds.

It is our opinion that the expenditure attempted to be authorized in House Simple Resolution No. 306 would not be lawful and proper use of State funds.

The ultimate issue posed by your request is whether the expenses here authorized to be paid are "legislative" expenses or are "personal" expenses of the members. This office on numerous occasions has expressed itself on analogous questions. In every instance we have adhered to the rules of law that compensation of legislators is strictly specified and limited by Section 24 of Article III of the Texas Constitution; that reimbursement for "personal," as opposed to "legislative," expenses is in the nature of excessive and

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unauthorized compensation; and that the only expenses that are "legislative" are those that relate to public purposes concerned with duties imposed by law on the members of the Legislature. Att'y Gen. Op. Nos. MS-40 (1953), V-772 (1949), V-211 (1947), V-84 (1947).

Our answer to your present request is controlled not only by the principles set out and discussed at length in the cited opinions, but is particularly controlled by the opinion of this office in Opinion No. O-3778 (1941) where in we held that a very similar resolution of the Forty-seventh Legislature was invalid. In that case the resolution purported to authorize a stipulated monthly sum to each Senator during the period between sessions

" . . . for the purpose of defraying the expense of hiring a part time stenographer to be used only for the purpose of transacting business incident to his office as State Senator, and only for State business; and further for the purpose of defraying the expense of telephone, telegraph and postage used only in State business and incident to his office as State Senator." (Emphasis added)

Opinion No. O-3778 contains an exhaustive review of the existing authorities as well as what we conceive to be a thorough and accurate analysis of the nature of "legislative" and "personal" expenses of legislators. Among other things we there said:

"It is believed that the matter of legislative and personal expense may be rationalized as follows. Legislative expense is that incident to the workings of the Legislature as an actual law-making body, as a whole, as the Legislature itself, when in session; through a special committee delegated by the Legislature while in session to work on a legislative matter between sessions; through personnel employed to close matters after adjournment; or through employees maintained between sessions for the care of the legislative halls or for maintenance of a central office or clearing house for legislative matters between sessions. These expenses are for the mutual benefit of all members -- for the Legislature itself.

"Personal expense, on the other hand, is that incurred, or which may be incurred, by a member between sessions working under his own will, in his own discretion and as a matter of individual enterprise -- not as a part of the Legislature in session or under extraordinary assignment from the body between sessions.

"If, therefore, an allowance of expenses to individual members of the Legislature during a session, or while on a committee assignment between sessions, is presumptively legislative expense, it does not follow that an expense allowance to each member indiscriminately between sessions is likewise so. To the contrary, in our opinion the latter is presumptively personal expense.

"Essentially this view is grounded upon the historical and constitutional concept of a State legislative office, together with the practical workings of the constitutional methods with reference thereto, and the discernible weight of the cases in support of such conclusion."

A presentation here of all of the other applicable portions of Opinion No. O-3778 would make this opinion unnecessarily long, but a copy of Opinion No. O-3778 is attached for your convenient reference.

Yours very truly,

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Attorney General

PR:wb:da

By

Phillip Robinson
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Enclosure