



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

April 2, 1954

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

Letter Opinion No. MS-125

Re: Fund to which the salary
of Judge A. S. Broadfoot
is to be charged.

Dear Mr. Calvert:

On March 19, 1954, the Chief Justice of the Supreme Court of Texas, pursuant to the provisions of Section 7, Article 6228 (b), Vernon's Civil Statutes, issued an order recalling the Honorable A. S. Broadfoot from retirement, and assigned him as the District Judge of the 79th Judicial District of Texas. The vacancy in this Judicial District was occasioned by an order of the Supreme Court of Texas which removed C. Woodrow Laughlin from the office of District Judge in this District as of 12:00 o'clock noon, March 17, 1954. Judge Broadfoot qualified on the 29th day of March, 1954, by executing his official oath which was filed in the office of Secretary of State. The question has arisen as to whether his salary shall be charged to the funds set aside by the Judicial Retirement Act or to the appropriation for the judiciary section of the Comptroller's Department for the payment of salaries of District Judges.

In Attorney General's Opinion No. V-1061 (1950) this office stated that the compensation of retired judges while on active duty should be paid from those funds apportioned by the Legislature to the Judicial Retirement System. In that Opinion, the particular factual situation related to those judges recalled to active duty in judicial districts wherein the dockets were crowded and the services of the judges were needed. In the situation before us the district judge has been removed by the Supreme Court, and a vacancy exists in the 79th Judicial District which was filled by recalling and assigning to active duty a retired district judge. A district judge appointed to this vacancy by the Governor would be paid from those funds appropriated for carrying

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on the judiciary, and by analogy a district judge assigned to carry on the duties of a district judge wherein there is a vacancy in the office should be paid in the same manner as the regularly qualified and acting judge. For this reason the factual situation before us can be distinguished from Opinion No. V-1061.

It is, therefore, my opinion that the Honorable A. S. Broadfoot, Judge of the 79th Judicial District, should be paid from those funds appropriated to the judiciary section of the Comptroller's Department which is used for the payment of salaries of district judges.

Yours very truly,

/s/ John Ben Shepperd

JOHN BEN SHEPPERD
Attorney General of Texas