



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

July 22, 1954

Hon. Glenn E. Garrett  
Executive Director

Opinion No. MS-143

Good Neighbor Commission of Texas Re: Applicability of the  
Austin, Texas travel expense limita-  
tions in the Appropria-  
tion Act to consultants  
of the Good Neighbor  
Commission.

Dear Mr. Garrett:

In your request for an opinion you asked whether the limitations on travel expenses in the rider to the Appropriation Act, Acts 1953, 53rd Leg., ch. 81, pp. 345-348, were applicable to a consultant to the Good Neighbor Commission, or whether he would be entitled to his actual traveling expenses.

Article 4101-2, Section 4, Vernon's Civil Statutes, provides:

"The [Good Neighbor] Commission shall have power:

"c. To appoint consultants to the Commission."  
Acts 1947, 50th Leg., ch. 435, p. 1017.

Section 6 of the same Act provides:

"No member, consultant, or officer of the Commission shall receive any compensation for his services in acting in such capacity but shall be paid his actual traveling and other necessary expenses incurred in attending the meetings of the Commission and in the discharge of his duties as a member, consultant, or officer, upon verified and itemized accounts approved by the chairman of the Commission. The necessary clerical and other expenses of the Commission shall be paid in like manner."

Article 6823, V.C.S., as amended in 1953, states:

"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 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 a 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 of seven cents (7¢) for each mile actually traveled, and no additional expense incident to the operation of such automobile shall be allowed."

Acting pursuant to Article 6823, the Legislature provided in the rider to the Appropriation Act as follows:

"All officials and 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, local telephone and taxi fare, and shall file such receipts with their daily itemized and sworn expense accounts; provided, however, the meals and lodging limitations as to amount imposed by this provision 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, nor to the head of institutions named in this act, when traveling in or out of the State; . . ."

It is no longer an open question that the Legislature cannot modify a general statute by a rider attached to an appropriation act. Moore v. Sheppard, 144 Tex. 537, 192 S.W.2d 559 (1946); Linden v. Finley, 92 Tex. 451, 49 S.W. 578 (1899); State v. Steele, 57 Tex. 200 (1882); A.G. Opinions 0-2573, V-412, V-1254, and V-1267.

Article 6823 gives the power to fix travel expenses of "officers, assistants, deputies, clerks and other employees." From a survey of this language it is readily apparent that the term "other employees" includes assistants, etc., by implication as "employees." Thus the Legislature may fix travel expenses of "officers" and "employees." It has been held that the terms "officer" and "employee" refer to those in regular and continuous service, and that a person engaged to render

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service in a particular transaction is neither "officer" nor "employee" within ordinary acceptation of such terms. Louisville, Evansville and St. Louis R.R. v. Wilson, 138 U.S. 501 (1891); City of Prince v. Ducharme, 278 Mich. 474, 270 N.W. 754 (1936). It is clear from this that a consultant would be neither, his duties being to advise the Commission on a particular problem or set of problems. His claim for actual expenses under Article 4101-2, V.C.S., would be, therefore, unquestionably valid, since he is not covered by Article 6823.

A problem might yet remain, however, as to whether the Appropriation Act might be construed as limiting the amount which might be reimbursed out of this particular appropriation. Linden v. Finley, supra.

The limitations in the rider to the Appropriation Act apply to "officials and employees." Acts 1953, 53rd Leg., ch. 81, p. 347. This language is identical with the language in Article 6823 dealing with mileage allowance, which follows the provisions on meals and lodging expense discussed above.

It must be inferred that "officials and employees" is co-extensive with "officers" and "employees" set forth in the earlier portion of the Act. Since consultants are not included in the terminology of the general statute there is no reason to assume that they are included within similar terminology in an appropriations act.

The conclusion must be that consultants are neither within the provisions of Article 6823 nor the travel expense limitations in the Appropriation Act. This being so, they are entitled to draw actual travel expenses for meals and lodging under Article 4101-2, V.C.S.

Yours very truly,

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