



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

June 27, 1963

Hon. Joe D. Carter, Chairman
Texas Water Commission
P. O. Box 2311
Capitol Station
Austin, Texas

Opinion No. C-102

Re: Travel expense of employees of the Texas Water Commission.

Dear Mr. Carter:

Your request for an opinion reads as follows:

"By your Opinion Number C-3, dated January 23, 1963, the Texas Water Commission was advised that expenditures could be made from our Appropriation Line Item #14 (cancellation fund) for certain expenses incurred and to be incurred in participating in the suit in the Lower Rio Grande Valley to adjudicate water rights, styled State of Texas et al vs. Hidalgo County Water Control and Improvement District No. 18 et al. In this suit cancellation of water rights claims is sought by the Texas Water Commission. Line Item 14 is as follows:

	"For the Years Ending	
	August 31,	August 31,
	1962	1963

"14. For expense of cancellations, notices, including advertising, postage, fees and other costs	15,000	U.B."
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"Another expense which will be incurred in connection with this litigation relates to making personnel available to plat

on maps acres now being irrigated in order that a determination can be made concerning those areas which are not entitled to receive Rio Grande waters. Such undertaking is a necessary step in the path leading to cancellation of unused water right claims, and the maps, when completed, will constitute evidence necessary for the proper preparation of the State's case.

"In normal cancellation proceedings before the Commission, work of this type is done in our office using the records of the Commission. However, to do the work in the Valley case, our personnel must go to the Courthouse at Edinburg where are maintained the records containing the information that will be transposed to the maps being prepared. Naturally, this will entail per diem and travel expense which our normal travel expense line item cannot accommodate.

"The Commission believes that monies available in the cancellation fund could lawfully be used for this mapping work since you have previously ruled the fund could be utilized to acquire aerial maps. The maps we now need to prepare are just as important to the State's case, and unless such cancellation fund can be used to pay expenses of our employees while in Edinburg, we will have to bring this phase of our cancellation program to a halt.

"On the basis of the foregoing facts, may the Water Commission pay from our Appropriation Line Item 14 travel and per diem expenses of employees whose presence is required in the Lower Rio Grande Valley to prepare evidence necessary for the proper preparation of the State's case in State of Texas et al vs. Hidalgo County Water Control and Improvement District No. 18?"

Items 4 and 14 of the Appropriation to the Texas Water Commission read as follows:

	"For the Years Ending	
	August 31, 1962	August 31, 1963
"4. Travel Expense and the operation and maintenance of trucks.	52,000	52,000
"		
"14. For expense of cancellations, notices, including advertising, postage, fees and other costs	15,000	U.B."

In construing the provisions of Item 14, above quoted, it was held in Attorney General's Opinion C-3 (1963):

"It is noted that the \$15,000 appropriation contained in Item 14 may be expended for any necessary expense involved in cancellation of water rights. It is further noted that such appropriation is not limited to expense involved in an administrative proceeding but includes expense involved in cancellation whether by an administrative proceeding or a judicial proceeding.

"Since it has been determined that the maps and aerial photographs referred to in your request are necessary to the proper preparation of a case seeking certain cancellations, you are advised that Item 14 may be expended for such purpose."

In construing the provisions of Item 4, above quoted, we are governed by the provisions of subdivision (a) of Section 31 of Article V of the General Appropriations Act, which reads as follows:

"The amounts specifically appropriated in this Act to each agency of the State for the payment of travel expenses are intended to be and shall be the maximum amounts to be expended by employees and officials of the respective agencies. None of the moneys appropriated by this Act for travel expenses

may be expended unless the official travel and the reimbursement claims therefor are in compliance with the following conditions, limitations, and procedures: . . ." (Emphasis added).

In Attorney General's Opinion O-1294 (1939), the same being Conference Opinion 3089, this office held:

"Where a department or division of a department is provided with a specific item of appropriation for 'traveling expenses,' the amount thus provided represents the maximum which may be spent for that purpose by the department or division of a department, and such amount may not be supplemented from any source, save and except from Federal funds authorized by the Federal Government to be used for such purpose."

This conclusion was based on a construction of the General Rider appended to Senate Bill 427, Acts of the 46th Legislature, Regular Session, providing in part as follows:

"Except as to field travel expense of the Highway Department, it is provided that no expenditure shall be made for traveling expenses by any department of this State in excess of the amount of money itemized herein for said purpose. This provision shall be applicable whether the item for traveling expenses is to be paid out of the appropriation from the General Fund, from fees, receipts or special funds collected by virtue of certain laws of this state, or from any other funds (exclusive of Federal funds) available for use by a department."

Since expenditures for travel expenses have been specifically provided for in Item 4, it is our opinion that the appropriation for travel expense may not be supplemented by funds appropriated in Item 14. Attorney General's Opinions O-5899 (1944) and O-2131 (1940). Thus it was not the legislative intent to allow necessary travel expense to be paid from funds appropriated in Item 14, in view of the provisions of Section 31 of Article V of the General Appropriation Act, above quoted.

You are therefore advised that the travel and per

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diem expenses of employees whose presence is required in the Lower Rio Grande Valley to prepare evidence necessary for the proper preparation of the State's case in State of Texas v. Hidalgo County Water Control and Improvement District No. 18 is to be paid for out of Item 4 rather than Item 14.

S U M M A R Y

The travel and per diem expenses of employees whose presence is required in the Lower Rio Grande Valley to prepare evidence necessary for the proper preparation of the State's case in State of Texas v. Hidalgo County Water Control and Improvement District No. 18 is to be paid for out of Item 4 rather than Item 14.

Yours very truly,

WAGGONER CARR
Attorney General

By 
John Reeves
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman
W. O. Shultz
Grady Chandler
Ben Harrison
Pat Bailey

APPROVED FOR THE ATTORNEY GENERAL
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