



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

WAGGONER LARR
ATTORNEY GENERAL

June 1, 1966

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

Opinion No. C-698

Re: Whether the Director
of the Cotton Re-
search Committee
should be reimbursed
on an actual expense
or on a per diem basis
while traveling for
the State and related
questions.

Dear Mr. Calvert:

You have requested an opinion from this office on
the following matter:

"Whether the Director of the Cotton Re-
search Committee should be reimbursed on an
actual expense or on a per diem basis while
traveling for the State and related questions."

Article 165-4a, Vernon's Civil Statutes, after set-
ting forth the Legislature's policies, creates and establishes
the Cotton Research Committee in the following language:

"Sec. 2. A Cotton Research Committee, com-
posed of the Chancellor or Successor of the Texas
Agricultural and Mechanical College System of the
Texas Technological College, and the President of
Texas Woman's University, is hereby created and
established to cause surveys, research and investi-
gations to be made relating to the utilization of
the cotton fiber, cottonseed, and all other pro-
ducts of the cotton plant, with authority to con-
tract with any and all Agricultural Agencies and
Departments of the State, and all State Educational
Institutions and State Agencies to perform any such
services for said Committee and for the use of their
respective available facilities, as it may deem proper,
and to compensate such Agencies, Departments and In-
stitutions, to be paid from money appropriated by the
Legislature for the purposes of this Act, which appro-
priations of monies for cotton research are hereby

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authorized; grants and gifts from the United States or private sources may be accepted for such purposes, and shall be subject only to limitations contained in such grants or gifts."

Pursuant to the authority and power granted by Article 165-4a, the Committee promulgated and adopted a resolution appointing a Director of Cotton Research with extensive duties and responsibilities in the following language:

"The Committee holds the Director of Cotton Research Committee responsible for the promulgation of policies, establishment of budgets, and selection of research programs under which the cooperating institutions operate."

Article 6823a of the Civil Statutes provides, in part, as follows:

"Sec. 1. This Act is the 'Travel Regulation Act of 1959'".

"Sec. 2. The provisions of this Act shall apply to all officers, heads of state agencies, and state employees. The provisions of this Act shall not apply to judges and other judicial employees paid by the state, counties or other political subdivisions pursuant to law. Heads of state agencies shall mean elected state officials, excluding members of the Legislature who shall receive travel reimbursement as provided by the Constitution, appointed state officials, appointed state officials whose appointment is subject to Senate confirmation, directors of legislative interim committees or boards, heads of state hospitals and special schools, and heads of state institutions of higher education. (Emphasis added.)

"Sec. 3. (a) Reimbursement from funds appropriated by the Legislature for traveling and other necessary expenses incurred by the various officials, heads of state agencies, and employees of the state in the active discharge of their duties shall be on the basis of either a per diem or actual expenses as specifically fixed and appropriated by the Legislature in General Appropriation Acts."

Section 17-a, Article V, House Bill #12, Acts of the 59th Legislature, (General Appropriation Bill), provides as follows:

"Executive Heads of State agencies, including the Executive Director of the Legislative Council, shall be reimbursed for their actual meals, lodging and incidental expenses when traveling on official business either in or out of the State."

The effect of the Cotton Research Committee's action, in pursuance of legislative authority, qualifies the Director as an appointed State Official within the meaning of Article 6823a, and authorizes him to be reimbursed for his official travel on an actual expense basis.

The language used by the Legislature in Article 165-4a clearly manifests an intention to provide broad and inclusive power to the Committee in promulgating, establishing and effecting the purposes for which the Committee was created. In delegating such authority, it is clear that the Committee was to have wide latitude and discretion in achieving these purposes. Following the legislative authorization, the Committee in its sound discretion and wisdom, passed the foregoing resolution so as to fulfill the legislative mandate. Such action on the part of the Committee is clearly within the legislative authorization and is not in conflict with the Legislature's intent and policies.

The prior departmental interpretation and construction of the provisions under consideration have been to allow the director to be compensated on an actual expense basis. This interpretation is of long standing, the Committee having been established in 1941, and continued through and after the enactment of the "Travel Regulation Act" in 1959. This interpretation and construction has been consistently applied, not only by the Committee which has the responsibility for carrying out, operating and achieving the purposes set forth in the act, but as well as by the interpretation and construction placed thereon by your office. Such long continued construction is entitled to great weight, especially in view of the fact that the Legislature has been in session numerous times subsequent to the adoption of this interpretation and construction. The Legislature is presumed to have been aware of this interpretation and construction, and made no changes in the language that would indicate a contrary intent. Burrough v. Lyles, 142 Tex. 704, 181 S.W.2d 570, (1944).

Having held that such Director may be compensated on

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an actual expense basis, we express no opinion on the other issue which you submitted.

By letter dated May 20, 1966, you requested an opinion on the following supplemental question:

"Whether the President of Arlington State College of Arlington, Texas, President of Texas Western University of El Paso, Texas, Dean of South Texas Medical School of San Antonio, Texas, and Dean of Southwestern Medical School of Dallas, Texas, should be compensated on an actual expense or on a per diem basis while traveling for the State?"

Considered in the light of the foregoing, you are advised that it is the opinion of this office that all of such individuals are "heads of state institutions of higher education" within the meaning of Article 6823a, and as such are entitled to be compensated on an actual expense basis while traveling for the State. The functions and responsibilities of these individuals are controlling over the particular title which they may be given.

SUMMARY

The Director of the Cotton Research Committee is an appointed state official within the meaning of Article 6823a, Vernon's Civil Statutes, and as such is entitled to be reimbursed on an actual expense basis while traveling on official business for the State and you are authorized to issue a warrant for the reimbursement of such travel expense.

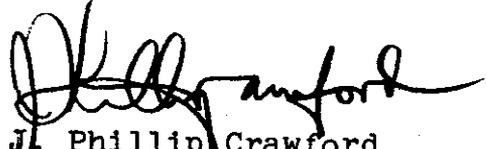
Likewise, the President of Arlington State College, the President of Texas Western University, the Dean of South Texas Medical School and the Dean of Southwestern Medical School should be compensated on an actual expense basis while traveling for the State.

Yours very truly,

WAGGONER CARR
Attorney General

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By:



J. Phillip Crawford
Assistant

JPC:mh

APPROVED:
OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
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