



THE ATTORNEY GENERAL OF TEXAS

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November 14, 1973

The Honorable Truett Latimer
Executive Director
Texas State Historical Survey Committee
Box 12276, Capitol Station
Austin, Texas 78711

Letter Advisory No. 72

Re: Can the Texas Historical
Survey Committee pay
salaries out of Item 3 of
the current biennial
appropriation bill, H. B. 139,
63rd Leg., Reg. Session?

Dear Mr. Latimer:

Item 3 of the appropriation for the Texas State Historical Survey Committee, in the budget for fiscal 1974 and 1975 (House Bill 139, 63rd Leg., 1973, p. III-80), is for "Professional Fees and Services." You have asked our opinion as to whether the Committee may pay salaries out of that item.

We are met at the outset by the provisions of Article 8, § 6, of the Constitution of Texas which prohibit the withdrawal of any money from the State Treasury except in pursuance of a specific appropriation. Bullock v. Calvert, 480 S. W. 2d 367 (Tex. 1972).

Although "professional Fees and Services" is not technically a salary account, like a salary account it is to be expended for personal services. Unlike items designated for consumable supplies and materials, current and recurring operating expenses or capital outlay (Appropriations Act, Article V, p. 38), the Act contains no specific prohibition of payment of salaries out of an item for professional fees and services.

In construing a statute we will not remodel it by inserting and striking out words or clauses. It is not our function to correct legislative errors, mistakes or omissions. 53 Tex. Jur. 2d, Statutes, §138, p. 201 and §140, p. 203, et seq.

However, the guiding rule of statutory interpretation is the ascertainment of the legislative intent and when that intent is clear, we are authorized

to so interpret the language used by the Legislature as to give its intent effect: State v. Shoppers World, Inc., 380 S. W. 2d 107 (Tex. 1964). For example, in Sweeny Hospital District v. Carr, 378 S. W. 2d 40 (Tex. 1964) the statute under consideration limited the tax levy to "seventy-five (\$.75) in any one (1) year." Finding that the Act was clearly intended to authorize an annual tax not to exceed "seventy-five cents (\$.75) on the one hundred dollar (\$100) valuation of all taxable property within the district," the court so construed the statute. It said:

"The courts of this state have on occasion added words or phrases to statutes when necessary to give effect to legislative intent, provided the intent of the Legislature is clearly disclosed by the remainder of the statute. . . ." (378 S. W. 2d at 47)

In the Appropriations Act for fiscal 1972 (Senate Bill II, Acts 1971, 62nd Leg., Reg. Session) and fiscal 1973 (Senate Bill I, Acts 1972, 62nd Leg., 3rd Called Session) the appropriations for Personal Services for the Commission are broken into seven items, the first five being line items for specific positions, the sixth item being for salaries of Classified Positions and the seventh reading as follows:

"For necessary research to validate, investigate, and authenticate historical and archaeological sites, structures, archives, and inscriptions, including salaries and wages, travel and other necessary expenses, to be expended by contractual relations with colleges, universities, historical societies or individuals, or by part-time and temporary employment!" (emphasis added) See, for example, Article 3, p. 78; Senate Bill I, Acts 1972, 62nd Leg., 3rd Called Session.

The current appropriations bill involves a new bill pattern for the Commission. Although Governor Preston Smith recommended the funds to continue existing programs, (Executive Budget for Fiscal Years 1974 and 1975, at p. III-60) the wording of the portion of the appropriations bill devoted to this relatively small agency is considerably reduced. Compare House Bill 139, 63rd Leg., 1973, p. III-80, and Senate Bill I, Acts 1972, 62nd Leg., 3rd

Called Session, p. III-78. On page 5 of the budget estimates submitted to the executive and legislative budget office, the Committee explained:

"[O]ur appropriation bill pattern has grown rather large and unwieldy. Immediately following this statement is a new bill pattern for the agency which we trust the budget offices will approve. It deletes many line item salaries and converts them to classified positions. Other language has either been consolidated or deleted to make a 'cleaner' bill pattern."

The budget estimate submitted for fiscal 1974 and 1975 has one line item salary, which was the executive director. Four other positions which had been separate items in earlier bills became classified positions and were included in item 2 as such. Item 3, obviously intended to include what had theretofore been Item 7, was submitted as "Professional Fees and Services, part-time and seasonal help." This one item, however, with amounts appropriated unchanged from what was requested, appears in House Bill 139 as simply: "Professional Fees and Services." If the Legislature had intended to narrow the scope of Item 3 by dropping the words "part-time and seasonal help," we believe it would have also reduced the appropriation for that item.

The amount involved in each of the four fiscal years and the general pattern of the appropriations entry for the Commission confirms in our view that Item 3, submitted for the present appropriations act, was intended to cover the same items covered by Item 7 in the two preceding years. This is demonstrated graphically in the Legislative Budget Board draft of the bill where appropriations, budgets, requests and recommendations for fiscal years 1971, 1972, 1973, 1974 and 1975 are compared.

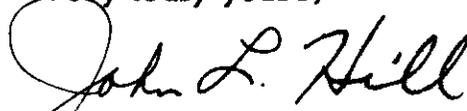
For us to insist that the Comptroller must abide by the precise, literal wording used and thus deny the payment of items for which the appropriation was intended, would accomplish nothing. Such a slavish adherence to technicalities, particularly where to hold otherwise would involve no harm to anyone, has no appeal for us.

We conceive it to be our purpose in interpreting statutes, including the Appropriations Act, to achieve the legislative intent, not to thwart it. It

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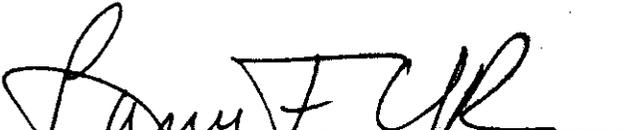
appears to us beyond argument that Item 3 of House Bill 139 of the 63rd Legislature was intended, in a shorthand rendition, to cover the same items which were covered by Item 7 of the appropriations acts for the preceding two fiscal years.

Very truly yours,



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APPROVED:



LARRY F. YORK, First Assistant



DAVID M. KENDALL, Chairman
Opinion Committee