



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

March 14, 1975

The Honorable Joe C. Moseley II
Executive Director
Texas Coastal and Marine Council
P. O. Box 13407
Austin, Texas 78711

Opinion No. H- 553

Re: May the salary of the
Executive Director of the
Texas Coastal and Marine
Council be supplemented
from funds received under
an inter-agency contract?

Dear Mr. Moseley:

You have requested our opinion concerning whether a portion of the funds made available to the Texas Coastal and Marine Council under a proposed interagency contract with the General Land Office may be used to provide compensation to the Council's executive director additional to the amount appropriated by the Legislature.

Article 4413(38), V. T. C. S., which creates the Council, provides in part:

Sec. 3.(e) The council may appoint a director to serve at the will of the council. The director is the chief executive officer of the council and subject to the policy direction of the council. He may appoint employees to serve at his will. The council shall determine the compensation of the director and all other employees.

Sec. 5. Until the Legislature provides an appropriation for the operation of the council, the contingent expense funds of the House of Representatives and of the Senate may be expended for such purposes

authorized herein. Prior to any expenditure of funds of the contingent expense committees of either the House or the Senate, a budget for the annual expenses of the committee shall be submitted to such committees and no funds shall be expended from such funds until approved by that committee.

While section 3(e) gives the Council the authority to "determine the compensation of the director and all other employees," article 3, section 44 of the Texas Constitution provides:

The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law.

In addition, article 6813b, V. T. C. S., provides in part:

Section 1. From and after the effective date of this Act, all salaries of all State officers and State employees, including the salaries paid any individual out of the General Revenue Fund, shall be in such sums or amounts as may be provided for by the Legislature in the biennial Appropriations Act. It is specifically declared to be one of the intents hereof that the Legislature shall also fix the amount of supplemental salaries hereafter, out of court fees and receipts, to be paid to the clerks and other

employees of the Courts of Civil Appeals, the Supreme Court and the Court of Criminal Appeals. It is further provided that in instances where the biennial Appropriations Act does not specify or regulate the salaries or compensation of a State official or employee, the law specifying or regulating the salary or compensation of such official or employee is not suspended by this Act.

The Legislature's power under article 3, section 44 may be delegated in some instances. Commissioners Court of Lubbock County v. Martin, 471 S. W. 2d 100 (Tex. Civ. App. --Amarillo 1971, writ ref'd n. r. e.); Wichita County v. Griffin, 284 S. W. 2d 253 (Tex. Civ. App. --Ft. Worth 1955, writ ref'd, n. r. e.); Burkhart v. Brazos River Harbor Nav. Dist. of Brazoria County, 42 S. W. 2d 96 (Tex. Civ. App. --Galveston 1931, no writ).

So long as the statute is complete to accomplish the regulation of particular matters falling within the legislature's jurisdiction, matters of detail reasonably necessary for the ultimate application, operation and enforcement of the law may be expressly delegated to the authority charged with administration. (Emphasis added) Martin at 105.

That case concerned article 42-B, Code Crim. Proc., which allows the compensation of individual probation officers to be determined by a district judge or judges with the advice and consent of the commissioners court. See §10. The court found that this delegation was reasonably necessary, stating:

[s]ince the probation needs and services in the various judicial districts of Texas, ranging from multi-judicial districts within a single county to one judicial district embracing as many as six counties, are of such character that the compensation and probation personnel must vary in the different districts. . . . Martin at 105.

Burkhart and Griffin similarly concerned the compensation of employees of the same class in different counties, tax assessors, and court reporters respectively. As in Martin, the needs and services of each county varied, and it was therefore impractical for the Legislature to determine the compensation for each tax assessor and court reporter.

It is clear that the single office of Executive Director of the Council is quite dissimilar to the many offices of tax assessor, court reporter and probation officers. It is not "reasonably necessary" to permanently delegate the power to determine the compensation of the Executive Director. In addition, the Legislature has not "prescribed sufficient standards to guide the discretion conferred" as required by Moody v. City of University Park, 278 S. W. 2d 912 (Tex. Civ. App. --Dallas 1955, writ ref'd n. r. e.). It is therefore our opinion that section 3(e) of article 4413(38), V. T. C. S., would be an unconstitutional delegation of power if construed to constitute a permanent delegation of the Legislature's authority under article 3, section 44 of the Texas Constitution.

Where possible, a statute is to be construed so as to sustain its validity. State v. Hogg, 70 S. W. 2d 699, 72 S. W. 2d 593 (Tex. Sup. 1934); Martin, supra. Section 5 of article 4413 (38) expressly applied only "until the Legislature provides an appropriation for the operation of the council." In our opinion, this limitation is impliedly contained in section 3(e), and the council was delegated the authority to determine the compensation of the executive director only until the Legislature itself could exercise this authority. We consider this delegation to be "reasonably necessary" under Martin, and section 3(e) to be valid under this construction.

Accordingly, the authority to determine the salary of the executive director rests with the Legislature pursuant to article 3, section 44 of the Texas Constitution and article 6813b, V. T. C. S.

However, it is necessary to consider whether the council may supplement the salary set by the Legislature. Article 6813b states that "salaries . . . shall be in such sums or amounts as may be provided for by the Legislature in the biennial Appropriations Act." Statutes which

provide for the compensation of public officers are to be construed in favor of the government. Madden v. Hardy, 50 S. W. 926 (Tex. Sup. 1899); Allen v. Davis, 333 S. W. 2d 441 (Tex. Civ. App. --Amarillo 1960, no writ); Eastland County v. Hazel, 288 S. W. 518 (Tex. Civ. App. --El Paso 1926, writ ref'd).

In addition, it has been stated that:

The compensation of a public officer must be fixed by the Legislature, or by some governing body expressly authorized so to do. First Baptist Church v. City of Fort Worth, 26 S. W. 2d 196, 198 (Tex. Comm. App. 1930).

Consequently, we believe the use of the word "shall" in article 6813b indicates that as a general matter salaries set by a general appropriations bill may not be supplemented. However such a salary may be supplemented where authorized by either the appropriations act or by general law. Attorney General Opinion WW-376 (1958). This limitation on the alteration of salaries is consistent with the prevailing law in other jurisdictions. 67 C. J. S. Officers, § 93, p. 334, § 94, p. 340; Stansbury v. Guilford County, 36 S. E. 2d 719 (N. C. 1946); Lee v. Macomb County, 284 N. W. 892 (Mich. 1939).

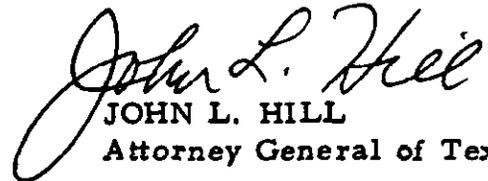
The Legislature has exercised its authority under article 3, section 44 and article 6813b in the current biennial appropriations bill, Acts 1973, 63rd Leg., ch. 659, p. 1928, as well as in the recent state employees pay raise acts. 64th Leg., Senate Bill No. 1, approved Jan. 30, 1975. We have found no authority in either general law or the appropriations act for the supplementation of the salary of the executive director of the Texas Coastal and Marine Council with funds from an interagency contract. The Legislature thus having established his salary, it is our opinion that it may not be supplemented with funds from an interagency contract.

SUMMARY

The Texas Coastal and Marine Council has no

authority to supplement the legislatively determined salary of its executive director with funds received by the Council pursuant to an interagency contract.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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