



**THE ATTORNEY GENERAL  
OF TEXAS**

November 22, 1988

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. Ray L. Goad  
Executive Director  
Commission on Fire Protection Personnel  
Standards and Education  
510 S. Congress, Suite 406  
Austin, Texas 78704

LO-88-128

Dear Mr. Goad:

Because of the tremendous increase in the volume of requests for opinions and open records decisions, we are responding to your request with the enclosed Letter Opinion or Open Records Ruling. A Letter Opinion or Open Records Ruling has the same force and effect as a formal Attorney General Opinion or Open Records Decision, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent Letter Opinion or Open Records Ruling, a formal Attorney General Opinion or Open Records Decision, or a decision of a court of record.

Very truly yours,

A handwritten signature in cursive script that reads "Jim Mattox".

J I M M A T T O X  
Attorney General of Texas

JAM/er  
Enclosure



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Dear Mr. Goad:

You ask whether members of the Commission on Fire Protection Personnel Standards and Education are entitled to receive reimbursement for actual expenses when traveling on state business.

In 1969 the legislature created the Commission on Fire Protection Personnel Standards and Education. Acts 1969, 61st Leg., ch. 668, at 1972 (codified as article 4413(35), V.T.C.S.). Section 5 of article 4413(35) provided:

Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder.

In 1987, article 4413(35) was transferred to the Government Code, and section 5 of article 4413(35) was recodified as section 416.006 of the Government Code. Acts 1987, 70th Leg., ch. 147, at 316.

Article 6813f, V.T.C.S., is a general provision dealing with per diem for members of state boards or commissions. Article 6813f, which was originally enacted in 1981, provides:

Sec. 1. In this Act, "state board or commission" means a board, commission, committee, council, or other similar agency in the executive or judicial branch of state

government that is composed of two or more members.

Sec. 2. (a) A member of a state board or commission is entitled to per diem relating to the member's service on the board or commission. The amount of the per diem is the amount prescribed by the General Appropriations Act.

(b) This section does not apply to a member of the legislature who serves on a board or commission by virtue of the member's position as a legislator.

Sec. 3. Each law prescribing the amount of per diem relating to membership on a state board or commission is suspended to the extent of a conflict with this Act. If the General Appropriations Act does not prescribe the amount of per diem to which a member of a state board or commission is entitled by law, the law prescribing the amount of per diem is not suspended by this Act. If a law imposes a limit on the number of days for which a member of a state board or commission is entitled to claim per diem, the limit is not suspended by this Act.

This office has written a number of opinions about the effect of article 6813f: Attorney General Opinions JM-954 (1988); JM-888 (1988); JM-426 (1986); JM-382 (1985); JM-349 (1985); MW-388 (1981). Those opinions concluded that article 6813f encompasses two different types of per diem: compensatory per diem and per diem that represents reimbursement for expenses. Those opinions also make clear that article 6813f supersedes prior conflicting provisions setting reimbursement for expenses.

The original provision providing for reimbursement for expenses for members of the Commission of Fire Protection Personnel Standards and Education was enacted in 1969, well before the enactment of article 6813f. It has been suggested, however, that the 1987 recodification of section 5 of article 4413(35) as section 416.006 of the Government Code makes the provision for actual expenses for members of the Commission on Fire Protection Personnel Standards and Education a more recent enactment than article 6813f. We disagree. The recodification of section 5 of article 4413(35) was part of a nonsubstantive recodification of the

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statutes relating to the executive branch of government. Acts 1987, 70th Leg., ch. 147, at 316. A nonsubstantive recodification does not make section 416.006 a more recent enactment than article 6813f for purposes of determining the reimbursement to which members of the Commission on Fire Protection Personnel Standards and Education are entitled. See generally Attorney General Opinions JM-954; JM-888 (1988). Therefore, article 6813f prevails over section 416.006 of the Government Code, and members of the commission are entitled to reimbursement as prescribed by in the general appropriations act rather than actual expenses.

Very truly yours,



Sarah Woelk  
Assistant Attorney General  
Opinion Committee

SW/bc

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