



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

April 26, 1993

Honorable Harvey Hilderbran
Chairman
Committee on Human Services
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 93-33

Re: Whether a state employee may serve on
the board of directors of a municipal utility
district (ID# 19055)

Dear Representative Hilderbran:

You have requested our opinion regarding that portion of article XVI, section 40, Texas Constitution, which permits

[s]tate employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, permits [to serve] as members of the governing bodies of school districts, cities, towns, or other local governmental districts; provided, however, that such State employees or other individuals shall receive no salary for serving as members of such governing bodies.

You indicate that an internal memorandum issued in January, 1988, by a division of the Office of the Attorney General construed this exception to permit a state employee to serve as a member of the board of directors of a municipal utility district *and* to accept per diem compensation for such service.

Subsection 54.114(a) of the Water Code authorizes each director of a municipal utility district to receive, as "fees of office," not more than \$50.00 per day for each day of service, up to a maximum amount of \$200.00 per month. The 1988 memorandum concluded that this allowance "is not in the nature of a salary or 'emolument,'" and "may be considered a reimbursement of expenses." Although it is true that a *mere* reimbursement of expenses does not constitute "compensation" for purposes of article XVI, section 40, it is also true that, in order to qualify as "reimbursement," the amount paid to the individual must correspond to the actual expenses incurred. A payment of \$10.00 per meeting attended, up to a maximum of \$520.00 per year, qualifies as "compensation." *Willis v. Potts*, 377 S.W.2d 622 (Tex. 1964). Likewise, a payment of \$5.00 per meeting, with a maximum allowable of \$10.00 per month, constitutes something more than "reimbursement of expenses." Attorney General Opinion JM-704 (1987).

In the situation you describe, any doubt about the nature of the \$50.00 per diem allowance is obviated by subsection (b) of section 54.114 of the Water Code, which declares that

[u]pon approval by the board, a director may be reimbursed for travel or other expenses incurred on behalf of the district upon presentation of a verified statement.

Since subsection (b) clearly provides for reimbursement of expenses, any payment rendered pursuant to subsection (a) must necessarily be regarded as "salary" or "compensation." Accordingly, a state employee may serve on the board of directors of a municipal utility district *only* if she receives no compensation therefor.¹

S U M M A R Y

A state employee may serve on the board of directors of a municipal utility district *provided* she declines to accept any compensation for that position other than reimbursement of actual expenses.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee

¹We note that, under that portion of article XVI, section 40, which prohibits the holding of more than one "office of emolument," the individual may not qualify for the second office simply by refusing to accept the proffered compensation, since the compensation "is an incident to the title of office." *Markwell v. Galveston County*, 186 S.W.2d 273 (Tex. App.—Galveston 1945, writ ref'd); see also Attorney General Opinions JM-704, *supra*; JM-333 (1985); Attorney General Letter Opinion No. 88-49 (1988). In order to make sense, however, the proviso under consideration here must be construed to *contemplate* a refusal of compensation.