



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 26, 1994

Honorable **Ciro D. Rodriguez**
Chair
Committee on Local and Consent Calendars
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 94-043

Re: Whether the San Antonio Housing
Authority may reimburse commissioners
on a per diem basis (ID# 24034)

Dear Representative Rodriguez:

On behalf of the Committee on Local and Consent Calendars, you have requested an opinion from this office concerning the reimbursement to housing authority commissioners for travel expenses. You advise us that the San Antonio Housing Authority ("SAHA") reimburses its commissioners for the following travel expenses:

1. The actual cost of airfare based on a receipt (usually paid directly by SAHA).
2. The actual cost of lodging based on a receipt from the place of lodging.
3. Transportation such as by taxi based on itemized claims that show the date, points of travel, mode of transportation, and actual cost.
4. Registration fees based on a receipt (usually paid directly by SAHA).
5. Per diem for meals and incidental expenses.

You further state that SAHA uses the same per diem rates as the City of San Antonio, and that this is the usual practice across the state. You ask whether such reimbursement to commissioners based on a per diem for meal and incidental expenses incurred in the discharge of their duties while on official travel status on behalf of the housing authority is in compliance with section 392.035 of the Local Government Code.

Chapter 392 of the Local Government Code governs housing authorities established by municipalities and counties. Section 392.035 of the code prohibits the payment of compensation to a commissioner of a housing authority, but provides for

reimbursement for necessary travel expenses. Hence, we begin our analysis by considering section 392.035 of the code which provides the following:

A commissioner of a housing authority may not receive compensation for service as a commissioner. A commissioner is entitled to receive reimbursement for the necessary expense, including traveling expenses, incurred in the discharge of duties as a commissioner.

While this provision alone does not provide the answer to your inquiry, by extension we believe that it provides authoritative guidance. Prior to its codification, section 392.035 (formerly V.T.C.S. art. 1269k, § 5) was strictly construed to prohibit payment of a monthly travel allowance.¹ *Housing Authority v. State ex rel. Velasquez*, 539 S.W.2d 911 (Tex. Civ. App.—Corpus Christi 1976, writ *ref'd n.r.e.*); Attorney General Opinion JM-1204 (1990) at 1.

In *Housing Authority*, the court reasoned that the right of a public official to reimbursement for necessary expenses must be interpreted strictly and held that "the Commissioners be reimbursed for their necessary expenses only upon a satisfactory *presentment of each singular expense item.*" 539 S.W.2d. at 916 (emphasis added). Furthermore, the court stated that any payment not supported by "adequate evidence of actual money expended" would be deemed as a gift or compensation, which is prohibited by law. *Id.* Based upon the court's reasoning and analysis, we conclude that any reimbursement to the commissioners for *necessary* travel expenses must be supported by "adequate evidence of actual money expended."² Your request letter outlines the current policy for reimbursement by SAHA. However, because it is not clear from the information you have provided whether the per diem is supported by adequate evidence of actual money expended, we are unable to determine whether the current reimbursement policy is in compliance with section 392.035 of the Local Government Code.

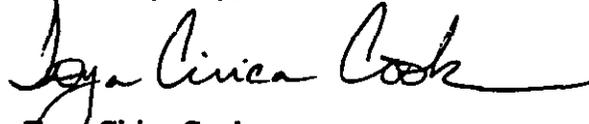
¹The Seventieth Legislature repealed section 5 of article 1269k, V.T.C.S. Acts 1987, 70th Leg., ch. 149, § 49. The provision is now codified in the Local Government Code at chapter 392, section 392.035. The codification is a nonsubstantive revision. *Id.* § 51.

²Neither statute nor case law provides a definition of the term "adequate evidence of actual money expended." However, we understand the term to mean a detailed accounting of the expenses incurred supported by such evidence as receipts of payment.

S U M M A R Y

Section 392.035 of the Local Government Code prohibits a commissioner of a housing authority from receiving compensation in any form. However, a commissioner may receive reimbursement for necessary expenses incurred while travelling in his official capacity as long as such expenses are supported by adequate evidence of actual money expended.

Yours very truly,

A handwritten signature in black ink, appearing to read "Toya Cirica Cook". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Toya Cirica Cook
Assistant Attorney General
Opinion Committee