



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 14, 1995

Mr. Curtis Tunnell
Executive Director
Texas Historical Commission
P.O. Box 12276
Austin, Texas 78711-2276

Letter Opinion No. 95-084

Re: Travel reimbursement for members
of the Texas Historical Commission
(ID# 34830)

Dear Mr. Tunnell:

You ask whether members of the Texas Historical Commission are limited to reimbursement of eighty dollars per day for actual expenses for meals and lodging pursuant to Texas Government Code sections 659.031 through 659.033. The Texas State Historical Survey Committee, now the Texas Historical Commission, *see* Act of March 29, 1973, 63d Leg., R.S., ch. 38, § 1, 1973 Tex. Gen. Laws 56, 56, was established by the adoption of former article 6145, V.T.C.S., Act of June 12, 1957, 55th Leg., R.S., ch. 500, 1957 Tex. Gen. Laws 1460. Section 5 of that act governed the reimbursement of commission members for travel expenses. Upon enactment, that section read as follows: "Members of the Committee shall serve without pay but *shall be reimbursed for their actual expenses incurred in attending meetings of the Committee*, subject to the approval of the President." *Id.* § 5, at 1461 (current version codified at Gov't Code § 442.002(i) (as redesignated by Act of May 8, 1995, 74th Leg., R.S., ch. 109, § 1, 1995 Tex. Sess. Law Serv. 909, 910)) (emphasis and footnote added).

In 1981 the legislature attempted to standardize *per diem* allowances for all Texas boards and commissions by adopting the omnibus *per diem* statute, V.T.C.S. article 6813f, *repealed* by Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 46(1), 1993 Tex. Gen. Laws 583, 986, which preceded Government Code sections 659.031 through 659.033. *See* Act of June 11, 1981, 67th Leg., R.S., ch. 428, 1981 Tex. Gen. Laws 1840. The current sections contain substantially the same language as the originally enacted statute and provide as follows:

§ 659.031 Definition

In this subchapter, "state board" means a board, commission, committee, council, or similar agency in the executive or judicial branch of state government that is composed of two or more members.

¹In 1973 the legislature deleted the requirement that the president of the committee approve reimbursement. *See* Act of May 17, 1973, 63d Leg., R.S., ch. 311, sec. 1, § 5, 1973 Tex. Gen. Laws 719, 720.

§ 659.032 Per Diem Entitlement

(a) A member of a state board is entitled to a per diem in an amount set by the General Appropriations Act for the member's service on the board.

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

§ 659.033 Statutory Per Diem Suspended

(a) A law setting the amount of per diem for members of a state board is suspended to the extent of conflict with this chapter.

(b) The law setting the amount of per diem for a member of a state board is not suspended if the General Appropriations Act does not set the amount of per diem to which the member is entitled.

(c) A law setting a limit on the number of days for which a state board member is entitled to a per diem is not suspended by this chapter.

Gov't Code §§ 659.031 - .033.

The attorney general interpreted the original omnibus per diem statute shortly after the legislature enacted it: "[T]he clear intent of article 6813f is to supersede conflicting provisions regarding per diem in statutes such as articles 4413(41) and 4515.² In light of this, it is apparent that article 6813f not only should, but *must* prevail, to the extent of conflict, over these statutes." Attorney General Opinion MW-388 (1981) at 4 (footnote added). Four years later, the attorney general clarified the pre-emptive effect of the omnibus per diem statute:

[T]he basic preemptive effect of article 6813f must depend primarily upon when it was enacted. As a general rule, when two statutes deal with the same subject, the most recently enacted statute prevails. Consequently, a statute which is passed subsequent to article 6813f and which concerns the amount of per diem a particular board's members are entitled to receive would create an exception to article 6813f with regard to that board or commission.

Attorney General Opinion JM-382 (1985) at 7.

²Articles 4413(41) and 4515 governed per diem for the Texas Amusement Machine Commission and the Board of Nurse Examiners, respectively.

Thus, whether the current omnibus per diem provisions, Government Code sections 659.031 through 659.033, prevail over section 442.002(i), which provides for the commission's members to be reimbursed for actual expenses incurred, depends on which of the statutes was enacted most recently. In fact, the Government Code requires such statutory construction: "[I]f statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails." Gov't Code § 311.025(a).

In 1988 the attorney general determined that a 1985 amendment to the statute providing per diem for members of the Texas Board of Irrigators reflected a legislative intent to reinstate an earlier statutory provision providing for actual travel expenses. Attorney General Opinion JM-888 (1988) at 4. The legislature adopted this amendment to the per diem provision after the enactment of the omnibus per diem statute. *Id.* at 2. The attorney general stated that the legislature, in passing this amendment, demonstrated an intent to reinstate the original "actual expenses" provision because the 1985 amendment to the Board of Irrigators statute

replaced the \$25 a day compensatory amount of the original act with the reference to the amount authorized in the general appropriations act [as provided in the omnibus per diem statute]. The amendment retained the [original statute's] language authorizing "actual travel expenses." This statutory reference to the appropriations act eliminates any argument that the legislature was unaware of the existence of the appropriations act and the conflict between the "actual travel expenses" of the board's [amended] statute and the monetary ceiling placed on food and lodging in the language of the appropriations act.

Id. at 3-4. If section 442.022(i) can be said to have been amended such that it was "re-enacted" since the passage of the original omnibus per diem statute in 1981, section 442.022(i) prevails over sections 659.031 through 659.033.

Unlike the per diem provision of the Texas Board of Irrigators statute, however, the Texas Historical Commission's reimbursement provision has not been amended since 1981 such that there has been a demonstration of legislative intent to supersede the omnibus per diem provisions. The only change in the commission's reimbursement provision since the 1981 enactment of the omnibus per diem statute occurred in 1987, when the legislature nonsubstantively codified the executive branch statutes as the Government Code. The commission's reimbursement provision was revised to state: "A member of the commission serves without pay but shall be reimbursed for actual expenses incurred in attending a meeting of the commission." Gov't Code § 442.002; *see also* Act of May 21, 1987, 70th Leg., R.S., ch. 147, § 1, 1987 Tex. Gen. Laws 316, 506.

The 1987 modification to the Texas Historical Commission's reimbursement provision does not reflect a legislative intent to supersede the omnibus per diem statute because the legislature intended no substantive change in the law. Act of May 21, 1987,

70th Leg., R.S., ch. 147, § 7, 1987 Tex. Gen. Laws 316, 534; *see also* Gov't Code § 323.007(a), (b). Accordingly, we conclude that the omnibus per diem provisions, originally enacted in 1981 and currently codified at Government Code sections 659.031 through 659.033, prevail over section 442.002(i) of the Government Code. Texas Historical Commission members are limited to per diem as set by the General Appropriations Act. Gov't Code § 659.032(a).

The current Appropriations Act sets out the following per diem allowances:

1. As authorized by Section 659.032, Government Code, the per diem of state board and commission members shall consist of (1) compensatory per diem, if specifically authorized by law, at \$30 per day; (2) reimbursement of actual expenses for meals and lodging not to exceed \$80 per day when traveling within the State of Texas and reimbursement of actual expenses for meals and lodging when traveling outside of the State of Texas in an amount not to exceed the rates specified in Sections 15.3 and 15.4 of this article; and (3) reimbursement of transportation and incidental expenses at the rates specified in this Act for state employees.

2. If a law enacted after former Article 6813f, V.T.C.S. authorizes per diem for members of a particular state board or commission, but does not specify the amount of the per diem, then the amount of the per diem shall be as listed in the preceding subsection.

General Appropriations Act, 74th Leg., R.S., ch. 1063, art. IX, § 4, 1995 Tex. Sess. Law Serv. 5242, 6062. Accordingly, members of the Texas Historical Commission are limited to reimbursement of eighty dollars per day for actual expenses for meals and lodging.

S U M M A R Y

Pursuant to Texas Government Code sections 659.031 through 659.033, Texas Historical Commission members are limited to reimbursement of eighty dollars per day for actual expenses for meals and lodging.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee