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GOVERNMENTAL INQUIRY
UNIT

State of Texas
House of Representatives

RON LEWIS
STATE REPRESENTATIVE
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September 29, 1997

COMMITTEES:
CHAIRMAN
COUNTY AFFAIRS
MEMBER
NATURAL RESOURCES
MEMBER
LEGISLATIVE COUNCIL

Honorable Dan Morales
Attorney General, State of Texas
Price Daniel Building, 8th Floor
209 W. 14th Street
Austin, Texas 78701

FILE # ML-39838-97
I.D. # 39838

RD-10/2

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OCT 17 1997

Opinion Comm...

Re: Request for Attorney General's Opinion

Dear Attorney General Morales:

The purpose of this letter is to respectfully request the opinion of your office regarding the effect of the passage of SB 1316 by the 75th Legislature Opinions 93-33 and 94-072. SB 1316 was passed by the Legislature in 1997 and became effective September 1, 1997. A copy of the enrolled version of the bill is attached. It amends Section 49.060 of the Texas Water Code by adding a new Section 49.060(d), which provides that "instead of the fees of office and reimbursement of actual expenses, a director may elect to receive a per diem of \$100 for each day the director actually spends performing the duties of a director."

Previously, your office had concluded that because of the language in Article XVI, Section 40, Texas Constitution, state employees who serve on municipal utility district boards could not receive "fees of office" established by Texas Water Code Section 54.114(a). Section 40 provides that:

State 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, shall not be barred from serving 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. (emphasis added).

Prior opinions concluding that "fees of office" could not be accepted by State employees were based upon the fact that a municipal utility district director is entitled to receive reimbursement for expenses in addition to "fees of office".

A large number of State employees and other governmental employees were impacted by these

prior opinions. In order to address this, the 75th Legislature passed SB 1316, which allows a municipal utility district director to elect to receive a per diem instead of the "fees of office" and reimbursable expenses. Both the House and Senate Bill Analyses refer to the prohibition against State employees receiving fees of office and explain that a State employee can receive a per diem, which would not constitute salary, and thus avoid the prohibition of article XVI, Section 40 of the Texas Constitution. Copies of the House Bill Analysis and Senate Bill Analysis are attached.

SB 1316 impacts many State employees who are the intended beneficiaries of the change in the law authorizing a per diem. However, many of these individuals are reluctant to accept the per diem, due to your office's prior opinions. Due to the importance of this issue to those affected, and the fact that SB 1316 authorizes per diem payments effective September 1, 1997, I respectfully request that your office consider this question at its earliest possible convenience. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Ron Lewis". The signature is written in black ink and is positioned below the word "Sincerely,".

Ron Lewis

AN ACT

1-1 relating to fees of office and expenses of water district
1-2 directors.

1-3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-4 SECTION 1. Section 49.060, Water Code, is amended by
1-5 redesignating Subsection (d) as Subsection (e) and adding a new
1-6 Subsection (d) to read as follows:

1-7 (d) Instead of the fees of office and reimbursement of
1-8 actual expenses, a director may elect to receive a per diem of \$100
1-9 for each day the director actually spends performing the duties of
1-10 a director. The total per diems received may not exceed \$6,000 per
1-11 annum except for directors of a special water authority that is
1-12 engaged in the distribution and sale of electric energy to the
1-13 public. In order to receive the per diem, each director shall file
1-14 with the district a general description of the duties performed for
1-15 each day of service.

1-16 (e) Section 49.002 notwithstanding, in all areas of conflict
1-17 the provisions of this section shall take precedence over all prior
1-18 statutory enactments. If the enactment of this section results in
1-19 an increase in the fees of office for any district, that district's
1-20 fees of office shall not increase unless the board adopts a
1-21 resolution authorizing payment of the higher fees.

1-22 SECTION 2. This Act takes effect September 1, 1997.

1-23 SECTION 3. The importance of this legislation and the
2-1 crowded condition of the calendars in both houses create an
2-2 emergency and an imperative public necessity that the
2-3 constitutional rule requiring bills to be read on three several
2-4 days in each house be suspended, and this rule is hereby suspended.

President of the Senate Speaker of the House
I hereby certify that S.B. No. 1316 passed the Senate on
April 18, 1997, by a viva-voce vote.

Secretary of the Senate
I hereby certify that S.B. No. 1316 passed the House on
May 21, 1997, by a non-record vote.

Chief Clerk of the House
Approved:

Date

Governor

JBM S.B. 1316 75(R) BILL ANALYSIS

NATURAL RESOURCES

S.B. 1316

By: Barrientos (Krusee)

5-13-97

Committee Report (Unamended)

BACKGROUND

Currently, directors of water districts are allowed a fee for serving of \$100 per day not to exceed \$6,000 per year. Because a position as director is considered by constitutional and statutory law as an office, state employees and certain local government employees cannot serve as a district director and receive the fee without violating dual office holding provisions. However, officials can receive a per diem payment without it counting as a salary and thus avoid the dual office holding provision. This bill will authorize a director of a water district to elect to receive a per diem payment for each day spent on district business, not to exceed \$6,000 per year.

PURPOSE

To authorize a director of a water district to elect to receive a per diem payment for each day spent on district business, not to exceed \$6,000 per year.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency or institution.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 49.060, Water Code, by redesignating Subsection (d) as Subsection (e), and adding a new Subsection (d), to authorize a director of a water district, instead of the fees of office and reimbursement of actual expenses, to elect to receive a per diem of \$100 for each day the director actually spends performing the duties of a director. Prohibits the total per diems received from exceeding \$6,000 per annum except for directors of a special water authority that is engaged in the distribution and sale of electric energy to the public. Requires each director, in order to receive the per diem, to file with the district a general description of the duties performed for each day of service. Provides that, Section 49.002, Water Code, notwithstanding, in all areas of conflict the provisions of this section shall take precedence over all prior statutory enactments. Provides that, if the enactment of this section results in an increase in the fees of office for any district, that district's fees of office shall not increase unless the board

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adopts a resolution authorizing payment of the higher fees.

SECTION 2. Effective date: September 1, 1997.

SECTION 3. Emergency clause.