



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Geo. H. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

Dear Mr. Sheppard:

Opinion No. 0-4060

Re: Whether or not, under the facts set forth, a wife's employment by the Merit System Council while at the same time the husband is employed by the Game, Fish & Oyster Commission on regular State salary is forbidden by the rider to the general appropriation bill.

We have your letter presenting a fact situation, together with an inquiry for an opinion, as follows:

\*A husband is employed by the Game, Fish & Oyster Commission on regular state salary. His wife is employed by the Merit System Council.

\*May the wife be employed by the Merit System Council and not conflict with the rider to the General Appropriation bill covering the restrictions with reference to husband and wife employment by the state?\*

Section 2(21) of the general provisions appended to S. B. No. 423, 47th Legislature, regular session, the appropriation bill for executive and administrative departments of the State government is the rider to which you refer. It provides:

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\*None of the foregoing appropriations for salaries shall be paid or warrants issued therefor by the State Comptroller to any employee until the employee shall have filed with the head of the department in which he or she is employed an affidavit showing his or her marital status, and if married, whether or not the spouse of such employee is also employed in one of the departments of this State and the name of the department where such spouse is employed, together with the name of such spouse; \* \* \*.

The rider provides for a method of determining which spouse shall receive pay; the rider further provides a method of determining which affected employee is to be retained in the State employ, but clearly forbids the payment of both from the appropriation.

The case you explain to us does not fall within subdivision (b) of the rider, in that neither of the parties affected was in the employ of the State at any time during the month of January, 1941.

Subdivision (10) of Section 2 of the general provisions under consideration provides;

\*The proper officer or officers of any State departments, bureaus, or divisions of State agencies are hereby authorized to make application for and accept any gifts, grants, or allotments or funds from the United States Government to be used on State co-operative and other Federal projects and programs in Texas, including construction of public buildings, repairs and improvements. Any of such Federal funds as may be deposited in the State treasury are hereby appropriated to the specific purpose authorized by the Federal Government, and subject to the limitation placed on this act.\*

The grants and contributions by the Federal Government, which, under the scheme of governmental co-operation with the State, make possible the beneficent work of our State

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Welfare Board, nevertheless pass into the State treasury for disbursement, according to the scheme of governmental co-operation.

Section 6 of Article VIII of the Constitution declares:

"No money shall be drawn from the treasury but in pursuance of specific appropriations made by law."

The gifts, grants and allotments of funds from the United States Government to be used on State co-operative programs have been specifically appropriated by the Legislature in subdivision (10) above quoted.

Subdivision (21) of the general departmental appropriation bill does, therefore, apply to the situation presented by you.

APPROVED OCT 15, 1941

*Wm. H. Miller*

FIRST ASSISTANT  
ATTORNEY GENERAL

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Ocie Speer*  
Ocie Speer  
Assistant

OS-NR

