



THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN

AUSTIN 11, TEXAS

~~WILL WILSON~~
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. O-4382
Re: Deficiency allowance to State
Soil Conservation Board

You request the opinion of this department upon the question whether the request of the State Soil Conservation Board to the Governor for a deficiency appropriation, as revealed by the file which is attached to your letter, is authorized by the provisions of Article 4351, R. S. 1925.

The file reflects that the deficiency allowance sought is for mileage for district supervisors, and mileage and per diem for district supervisors outside the district, for the current biennium. The application for the deficiency states that funds to pay the supervisors' per diem were provided by the legislature by appropriation for the current biennium, but that no appropriation was paid for their mileage, or for supervisors' per diem and mileage while attending a State-wide meeting of supervisors.

Section 6, House Bill No. 444, Acts of the 47th Legislature, provides:

"A supervisor may receive compensation for services not to exceed \$4.00 for each day he shall be in attendance at the regular meeting of the board of supervisors. and 5¢ per mile for travel each way between the residence of a supervisor and the designated business office of the district supervisors. Supervisors shall be paid quarterly for their services, and not receive compensation and mileage for any number of days in excess of five in any three months period, except that one member of each board of supervisors shall be entitled to receive \$4.00 per day not to exceed two days and 5¢ per mile while attending an annual State-wide meeting of supervisors to be held at a time and place to be determined by the State Soil Conservation Board. The provision providing 5¢ per mile for travel for district supervisors shall be in effect September 1, 1941, and thereafter."

An examination of the appropriation bill for the current biennium reveals that the legislature has, under the heading "salaries", in the appropriation for the State Soil Conservation Board, provided the following item:

"4. District Supervisors (1942-75 districts \$400.00 each or \$80.00 per supervisor; 1943-90 districts) - \$30,000.00 - \$36,000.00."

This item of appropriation is broad enough in its scope to authorize the use of the funds provided for district supervisors' per diem while in attendance upon the State-wide meeting of supervisors, as well as the per diem for attendance upon the regular meetings of the district supervisors.

There is no appropriation provided, however, for mileage for supervisors. Item 4 above quoted, under the heading "Salaries", is clearly intended to provide funds for the compensation of the supervisors, not to reimburse them for expenses incurred in discharging their duties. The mileage allowance is not "compensation", but represents a fixed allowance, presumably sufficient, to cover the traveling expenses of the supervisor in attending the meetings involved.

Since there is no appropriation provided by the legislature for mileage of district supervisors, it follows that a deficiency may not be allowed for this purpose under the provisions of Article 4351. This department has on numerous occasions held that Article 4351, authorizes deficiency warrants with the approval of the Governor only to supplement an existing appropriation; that deficiency warrants may not be authorized to supply funds for a purpose or project for which the legislature has made no appropriation. See our opinion No. 0-2118.

We return your file herewith.

Yours very truly

ATTORNEY GENERAL OF TEXAS

s/ R. W. Fairchild

By

R. W. Fairchild
Assistant

APPROVED March 4, 1942
s/ Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

RWF:AMM

APPROVED
OPINION
COMMITTEE
By BWB
CHAIRMAN

Enclosure