

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

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(Copy)

Honorable John Lee Smith, Chairman
State Legislative Audit Committee
State Capitol
Austin, Texas

Honorable J. E. Winfree, Secretary
State Legislative Audit Committee
Austin, Texas

Gentlemen:

Opinion No. 0-5507

Re: Salary to be paid State Auditor
and his First Assistant, under
Senate Bill No. 27, 48th Leg-
islature.

We have your request for an opinion on the following
question:

What amount of salary may be paid the State
Auditor and his First Assistant, under Senate Bill 27,
48th Legislature?

Senate Bill 27, 48th Legislature, was finally
approved by the Senate on May 5, 1943, by the House on
May 7, 1943, and by the Governor on May 10, 1943. It
became effective as a law ninety days after adjourn-
ment of the Legislature. Portions of it pertinent to
the questions submitted are:

"Section 1. House Bill No. 170, Chap-
ter 91, of the Acts of the First Called
Session of the 41st Legislature of the
State of Texas, 1929, be and the same is
hereby repealed, save and except that the
State Auditor and Efficiency Expert and
his employees shall continue to discharge
the functions of the office under such

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House Bill No. 170 until a State Auditor has been appointed and has qualified under the terms of this Act. Upon the qualification of a State Auditor under the terms of this Act, any funds remaining in the appropriation for the current biennium for the office of State Auditor and Efficiency Expert and for the Auditor provided in Section 18, Chapter 212, Acts, Regular Session, 40th Legislature, may be used by and are appropriated for the office of State Auditor provided for in this Act, subject to the provisions hereof. In addition, there is hereby appropriated for the remainder of the current biennium the sum of Fifteen Hundred (\$1500.00) Dollars or so much thereof as, together with appropriations transferred, is necessary to pay the State Auditor the salary hereinafter provided."

"Sec. 11. . . . The State Auditor shall receive for his services compensation at the rate of \$7,500.00 per annum until September 1, 1945, and thereafter such sum as may be provided in the biennial appropriation bill All sums appropriated to the State Auditor for that department shall be expended under the direction and subject to the control of the Legislative Audit Committee. . . . The salary of no assistant auditor shall exceed the sum of Four Thousand Two Hundred (\$4,200.00) Dollars per annum, except the First Assistant, whose salary shall not exceed Six Thousand (\$6,000.00) Dollars per annum. . . . All such assistant auditors . . . shall be named and appointed by the State Auditor. The salaries paid shall in no event exceed the amounts paid in other departments for similar services."

The language of the Act is plain. From and after the appointment and qualification of a State Auditor, under Senate Bill 27, his salary is fixed by the Act itself at \$7,500.00 per annum. The Act, by necessary implication, authorizes payment of a salary to the First Assistant State Auditor which does not exceed the salary paid for similar services in other departments, but in no

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event more than \$6,000.00 per annum. The amount of the salary to be paid is to be fixed by the Legislative Audit Committee, within these limits.

The difficulty is not found in the Act itself, which is plain and clear. Such questions as arise are presented by that section of the Departmental Appropriation Bill making an appropriation for the State Auditor's Department, and by Senate Bill 363, 48th Legislature.

Senate Bill 363, 48th Legislature, was finally approved by the Senate on April 29, 1943, by the House on May 5, 1943, and by the Governor on May 8, 1943. It became effective as a law at the same moment as Senate Bill 27 -- ninety days after adjournment of the 48th Legislature. It provides in part:

"Section 1. The salaries of all State officers and all State employees . . . shall be, for the period beginning September 1, 1943, and ending September 1, 1945, in such sums or amounts as may be provided for by the Legislature in the general appropriation bill. . . ."

"Sec. 2. All laws and parts of laws fixing the salaries of all state officers and employees . . . are hereby specifically repealed insofar as they are in conflict with this Act."

The first question arising is whether the provisions of Senate Bill 363, 48th Legislature govern Senate Bill 27. From September 1, 1943, to August 31, 1945, is the State Auditor's salary \$7,500.00, or that amount appropriated therefor in the Departmental Appropriation Bill? And is the authority to contract with the First Assistant as to his salary limited by the terms of Senate Bill 427, or by the amount specified for that position in the Departmental Appropriation Bill?

We are of opinion that, as to these matters, Senate Bill 27, rather than Senate Bill 363, controls. These acts were passed by the same Legislature; they are in pari materia. In such case they are to be construed together and harmonized, if possible, so as to give effect to each. The provisions of

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Senate Bill 27 ar to be read as though they were incorporated in Senate Bill 363; thus read, the rprovisions of Senate Bill 27 constitute an exception to the general rule provided by Senate Bill 363. 39 Tex. Jur., "Statutes", Section 137, pp. 258-260.

The next question is, whether an appropriation has been made to pay the \$7,500.00 salary of the State Auditor and the salary of the First Assistant as fixed by the Committee under the authority of Senate Bill 27, during the biennium beginning September 1, 1943.

The appropriation to the State Auditor for the ensuing biennium provides in part:

"1. State Auditor and Efficiency Expert.....	\$4,600.00	\$4,600.00
"2. First Assistant State Auditor	3,600.00	3,600.00
"		

"The money appropriated for the State Auditor is hereby appropriated to the Legislative Audit Committee according to Senate Bill 27, Acts Regular Session, 48th Legislature should such bill become a law. In addition thereto there is hereby appropriated to the Legislative Audit Committee to be expended for and on behalf of Senate Bill No. 27, Acts Regular Session, 48th Legislature, the sum of \$50,000.00 per fiscal year, should such bill become a law." (Emphasis added).

It seems apparent that the Legislature was in doubt whether Senate Bill 27 would become a law, and provided the additional \$50,000.00 per annum in the rider above to the Legislative Audit Committee to be expended under the terms and provisions of Senate Bill 27 should it become a law. In our opinion, the itemized salaries set opposite the "State Auditor" and "First Assistant" were intended to control the compensation for these positions only if Senate Bill 27 should not become law. It follows that, in our judgment, the \$50,000.00 appropriation is available for payment of that portion of the State Auditor's

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salary provided in Senate Bill 27, represented by the difference between the \$4,600.00 itemized and the \$7,500.00 per annum stipulated in Senate Bill 27. Likewise, the \$50,000.00 is available for payment of that portion of the salary fixed by the Committee, under authority of Senate Bill 27, for the First Assistant Auditor, which exceeds the \$3,600.00 itemized.

We understand no increase in the salary of the First Assistant Auditor was made by the Committee to take effect before September 1, 1943. This renders unnecessary a consideration of whether an increase in the salary of the First Assistant for a period of time before September 1, 1943, is effective. As to the State Auditor, the Act specifically provides \$1,500.00, or so much thereof as taken with the appropriation already made and transferred by the Act, may be necessary to pay the pro rata portion of the State Auditor's salary of \$7,500.00 per year accruing during the period between his appointment and qualification, under Senate Bill 27, and the end of the current fiscal year.

We trust that the foregoing answers your question.

Very truly yours

APPROVED OPINION COMMITTEE
BY B. W. B. CHAIRMAN.

ATTORNEY GENERAL OF TEXAS

APPROVED SEPT. 3, 1943

/s/ Gerald C. Mann

By

/s/ R. W. Fairchild
Assistant

ATTORNEY GENERAL OF TEXAS

RWF-MR
PW