



0-5608

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable H. B. Edwards, Chairman,
State Pink Bollworm Commission
P. O. Box 1581
San Antonio, Texas

0-5609

Dear Mr. Edwards:

Opinion No. 0-6698

Re: Whether or not an employe of the State Department of Agriculture may legally serve as a member of the State Pink Bollworm Commission, and may he be paid necessary traveling expenses in addition to his regular salary?

You request the opinion of this Department concerning the above subject matter in the following letter:

"Recently the question has arisen, can a State employe serve on a commission or board? I am an employe of the State Department of Agriculture and receive an annual salary and necessary traveling expenses. I have been serving as a member of the Texas Pink Bollworm Commission. I do not receive any additional salary as a member of the commission. If I were not a member of the commission it would be my duty as Chief Inspector of the Pink Bollworm Division of the State Department of Agriculture to attend hearings of the Pink Bollworm Commission to give expert testimony and would, of course, receive a regular salary and expenses. The questions are:

"1. Can I serve as a member of the State Pink Bollworm Commission while being employed by the State Department of Agriculture, and

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draw my regular salary and necessary traveling expenses?

"2. Can I serve as a member of the commission if I draw only my regular salary but no traveling allowance from the State of Texas?"

Your questions should be answered in the negative.

Section 33 of Article XVI of the Constitution, insofar as pertinent, is as follows:

"The accounting officers of this State shall neither draw nor pay a warrant upon the treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, * * *."

You, as an employee of the State Department of Agriculture, receive an annual salary and necessary traveling expenses which are, of course, paid out of the State treasury upon the warrant of the accounting officers of the State. You are, therefore, an "appointee", within the meaning of Section 33.

Membership in the State Pink Bollworm Commission is, we think, an office under this State, but whether so or not it is at least a "position" of honor and trust, within the meaning of Section 33, and the drawing or payment of a warrant upon the treasury in your favor on account of either office, appointment or position is plainly forbidden during the time he so occupies such dual positions.

This has been the uniform holding of this Department for many years, beginning perhaps with the celebrated holding of First Assistant C. M. Cureton, the late Chief Justice of the Supreme Court, in the matter of Lieutenant Governor Will H. Mayes' serving as Professor of Journalism in the State University, while at the same time holding his office of Lieutenant Governor of Texas, in the course of which opinion Judge Cureton said:

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"It is very clear, therefore, that Mr. Hayes so long as he is Lieutenant Governor could not under the Constitution draw pay from the State, as (1) agent, (2) officer, (3) appointee of the State.

"As we have before endeavored to show that a professor in the University of Texas is an appointee, or in a limited sense an agent, Mr. Hayes could not draw a salary from the State as Professor of Journalism in the University.

"The converse of the above proposition is also true, and, therefore, Mr. Hayes, so long as he was the agent or appointee of the State as a Professor of Journalism in the University, could not draw his pay as Lieutenant Governor of the State, that being an office within the meaning of the Constitution.

"Therefore should Mr. Hayes accept the position of Professor of Journalism in the University and at the same time hold and exercise the duties of the office of Lieutenant Governor, he could not draw pay for either such office or such position." (Opinions Attorney General 1912-1914, p. 830).

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Ocie Speer
Ocie Speer
Assistant

OS-MR

APPROVED SEP 22, 1943
Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY *BWT*
CHAIRMAN