OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable H. A. Jamison, Commissioner
State Department of Banking
Austin 14, Texas

Dear Sir:

Opinion No. O-6511
Re: Authority of the Banking Commissioner to employ two additional senior bank examiners and two additional junior examiners to those for which specific appropriations have been made by the Legislature.

We beg to acknowledge receipt of your inquiry as follows:

"Article 4 Chapter II of The Texas Banking Code reads in part as follows:

"'The Commissioner shall appoint not exceeding one bank examiner and one assistant bank examiner for each forty corporations subject to examination by the Banking Department.'

"There are at the present time subject to examination by our State bank examiners the following:

406	State banks
91	credit unions
6	loan and brokerage companies
503	Total Corporations

"In addition to the types of institutions hereinabove identified subject to our examining jurisdiction you are advised that through our building and loan division we are required to

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supervise 55 building and loan associations, which are regularly examined by a building and loan examiner appointed pursuant to the provisions of law set out in the building and loan code.

"Our itemized appropriation as set out in the Departmental Appropriation Bill extends a salary authorization for ten examiners and ten assistant examiners. We have heretofore presumed that the Departmental Appropriation Bill superseded the statutory expression as it had to do with salaries to be paid and we hold the opinion of our office Counsel on this point, but we have not heretofore had occasion to determine whether or not we would be authorized, under the law to appoint additional examiners under the reference to one examiner and one assistant for each forty corporations, and if so whether or not we would be permitted to pay said additional examiners and assistant examiners out of our receipts an amount comparable to the sum paid to individuals occupying the same position under the itemized appropriation bill.

"In summary, therefore, we should like your advice as to the following:

"1. Are we authorized to employ two additional senior bank examiners and two additional junior examiners?

"2. If your answer to the question next above is in the affirmative then please advise if we are authorized to pay such persons out of our receipts or moneys collected, and if so would we be bound by the minimum salary authorization, or the maximum salary permitted in the itemized section of the Departmental Appropriation Bill as it has to do with the Banking Department."

As you point out, the Banking Code authorizes the Commissioner to appoint not exceeding one bank examiner and one assistant bank examiner for each forty corporations subject to examination by the Banking Department.

You state you have 406 state banks and 91 credit unions subject to your examination. Thus, you have a total of 497 corporations subject to examination by the Banking Department in these two types of corporations making up your complement of institutions entitling you under the Code to twelve bank examiners and twelve assistant bank examiners. It is not necessary therefore for us to consider the six loan and brokerage companies under your supervision subject to examination, and we do not do so in view of the fact that the present appropriation in Items 15 and 16 provides for two Building and Loan-Loan and Brokerage Examiners.

Senate Bill No. 363 passed at the Regular Session of the 48th Legislature (General and Special Laws of Texas 1943, p.415) declares:

> "The salaries of all state officers and all state employees, except those constitutional state officers whose salaries are specifically fixed by the Constitution, and except the salaries of the district judges and other compensation of district judges shall be, for the period beginning September 1, 1943, and ending August 31, 1945, in such sums or amounts as may be provided for by the Legislature in the general appropriation bill."

It likewise repeals all laws and parts of laws fixing the salaries of such state officers and employees.

The appropriation act, as pointed out by you, makes provision for ten bank examiners and ten assistant bank examiners and no more. So that, while the appropriation act has not repealed the Banking Code authorizing an examiner and assistant examiner for each forty corporations subject to the Commissioner's examination - nor could an appropriation bill have such effect - yet it has effectually denied an appropriation beyond the ten examiners and ten assistant examiners provided for, and moreover,

the statute above quoted has repealed any possible legal provision for any statutory salaries other than those to be named in the appropriation bill.

Under these circumstances it is idle to speculate upon the question whether, if the additional examiners and assistant examiners were appointed by you, and if they were to perform their official duties for the remainder of the biennium the succeeding Legislature would be authorized to make, or would make an appropriation to pay them. So that for all practical purposes, your first question should be answered in the negative.

What we have said renders it unnecessary to answer your second question.

APPROVED APR 15 1945
Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By Ocie Speer
Ocie Speer
Assistant

OS:LJ

APPROVED
OPINION
COMMITTEE
BY BWM