



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

May 21, 1948

Hon. V. C. Marshall
Executive Director
State Soil Conservation Board
Temple, Texas

Opinion No. V-584

Re: Applicability of sub-
section 11g, Section
2, Appropriation bill
for current biennium,
to members of the
State Soil Conserva-
tion Board.

Dear Sir:

Reference is made to your letter of recent date, from which we quote as follows:

"Since Members of the State Soil Conservation Board first took their oaths of office in 1939, they have been reimbursed for meals and lodging as State Employees, being limited at the present time to Four (\$4.00) Dollars a day for meals and lodging.

"We should appreciate having the opinion of your Department regarding: Appropriations - State Department and Agencies, General Provisions, Section 2 Paragraph 11-g, General and Special Laws - Texas, 50th Legislature, Regular Session, 1947. And, Section 4-D, paragraph 2, Texas State Soil Conservation Law, Acts of the 47th Legislature, Regular Session, 1941.

"Appropriations, State Department and Agencies, General Provisions, Section 2, paragraph 11-g, General and Special Laws - Texas, 50th Legislature: -- '* * * Provided, however, that the meals and lodging limitation imposed by this Section (11-g only) shall not apply to any elected State Official when traveling in or out of State."

"Section 4-D, paragraph 2, Texas State Soil Conservation Law, Acts of the 47th Legislature, Regular Session, 1941:
' * * but each member shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties as members of the Board.'

"We should like the opinion of your Department on the following question: Are members of the State Soil Conservation Board entitled to be reimbursed in the amount of expenses actually incurred for meals and lodging?"

The State Soil Conservation Law was first enacted in 1939 (Acts 46th Leg., p. 7), reenacted and amended in 1941 (Acts 47th Leg., p. 491), and is now known as Article 165a-4, Vernon's Civil Statutes. Section 4A thereof in part, reads:

"There is hereby established to serve as an agency of the State and to perform the functions conferred on it in this Act, the State Soil Conservation Board. The Board will consist of five (5) members. The following shall serve in an advisory capacity to the Board: The President of the Agricultural and Mechanical College of Texas, the President of Texas Technological College, the Director of Vocational Agriculture of Texas, the State Commissioner of Agriculture and the State Coordinator of the Soil Conservation Service of the United States Department of Agriculture. The five (5) elective members of the Board shall be selected as follows: The State of Texas is hereby divided into five (5) State Districts for the purpose of selecting five (5) members of the State Soil Conservation Board." (Emphasis added throughout this opinion).

The remainder of this section names the counties comprising each of the five districts.

Sections 4B and 4C prescribe the procedure to be followed in selecting members of the Board, one from each district. The provisions of Section 4B are substantially as follows:

Whenever a member of the Board is to be selected, the Board notifies the County Judge of each County in a "State District" wherein a "District Conservation Convention" is to be held. Upon receipt of such notice, each County Judge is required within twenty days to appoint a "County Soil Conservation Committee" of four members, one from each Commissioners' precinct, each of whom must be a landowner and actually engaged in the business of farming or animal husbandry. The persons so appointed are within five days notified by the County Judge of their appointment. The members of the Committee so selected meet, organize, and select one of its members as chairman.

Section 4C reads:

"The County Soil Conservation Committee in each county shall elect one of its members as a delegate to attend the State District Conservation Convention. The name and address of the delegate to the District Convention shall be certified to the State Soil Conservation Board by the Chairman of the County Soil Conservation Committee not less than twenty (20) days prior to the date of the convention. Each State District Conservation Convention shall elect from among the qualified delegates present, by a majority vote, a member of the State Soil Conservation Board. The Chairman of the District Convention shall within five (5) days, certify to the State Soil Conservation Board, and the Secretary of State the name and address of the person elected. A majority of all qualified delegates elected to the State District Convention shall constitute a quorum. Each member of the State Soil Conservation Board shall be a qualified delegate to the State District Convention which elects his successor.

"Board members for Districts 2 and 4 elected in 1941 under the provisions of House Bill No. 20, Acts, Forty-sixth Legislature, Regular Session shall serve for the term for which they were elected, and until their successors are elected and have qualified. On the first Tuesday in May, 1943, at a place within the district to be

designated by the State Soil Conservation Board, State District 2 shall elect a board member as hereinabove provided, to serve on the State Soil Conservation Board for a period of five (5) years, and State District 4 shall elect a board member as hereinabove provided to serve on the State Soil Conservation Board for a period of four (4) years. Thereafter, board members elected from State Districts 2 and 4 shall be elected for a period of five (5) years or until their successors are elected and have qualified.

"Board members for districts 1, 3, and 5, elected under the provisions of House Bill No. 20, Acts, Forty-sixth Legislature, Regular Session, shall hold their offices for the terms for which they were elected, and until their successors are elected and have qualified. On the first Tuesday in May, 1942, at a place within the district to be designated by the State Soil Conservation Board, State District 1 shall elect a board member as hereinabove provided to serve on the State Soil Conservation Board for a period of two (2) years, and State District 3 shall elect a board member as hereinabove provided to serve on the State Soil Conservation Board for a period of three (3) years, and State District 5 shall elect a board member as hereinabove provided to serve on the State Soil Conservation Board for a period of four (4) years. Thereafter, board members elected from State Districts 1, 3, and 5 shall be elected for a period of five (5) years or until their successors are elected and have qualified.

"Terms of office of all State Board Members shall begin on the day following their election."

Section 4D reads:

"Each member of the State Soil Conservation Board shall take the State Constitutional oath of office, and said State

Soil Conservation Board shall designate one of its elective members to serve as Chairman.

"Vacancies upon such Board shall be filled for an unexpired term or for a full term, by the same manner in which the retiring members were respectively elected. Elective members of the Board may receive compensation for their services on the Board, not to exceed the sum of Ten Dollars (\$10) per diem for each day of actual service rendered, but each member shall be entitled to expenses, including traveling, necessarily incurred in the discharge of his duties as a member of the Board."

The Fiftieth Legislature made an appropriation to the State Soil Conservation Board of \$1800 for each year of the current biennium for "Travel Expense, Five Board Members." Act 1947, Item 11, p. 924.

Subsection 11g of the rider to the appropriation bill for State Departments and Agencies for the current biennium reads:

"All employees traveling at the expense of the State are hereby limited to the amount of Three Dollars (\$3.00) per day for meals and a total of Five Dollars (\$5.00) per day for meals and lodging, it being specifically provided that the employees shall obtain receipts for all items of expense claimed except meals and shall file such receipts with their duly itemized and sworn expense accounts; provided, however, that the meals and lodging limitations imposed by this Subsection (11g only) shall not apply to any elected State official nor to any appointed State official whose appointment is subject to Senate confirmation, when traveling in or out of the State; nor to any assistant Attorney General, or representative of the State Health Officer, or representative of the Adjutant General, or representative of the State Highway Commission, or representative of the Railroad Commission, when any of these classes of State employees are

appearing before or consulting with, on State business, any Federal Agencies in Washington, D. C."

In Opinion No. O-6615, dated July 13, 1945, a former Attorney General advised the Comptroller of Public Accounts that since Section 4D of Article 165a-4 provided each member of the State Soil Conservation Board "shall be entitled to expenses, including traveling, necessarily incurred in the discharge of his duties as a member of the Board", the Legislature was not prohibited by Section 44, Article III, of the Constitution from making an appropriation to pay the claim of a member of the Board for expenses so incurred by him in excess of the amount appropriated to the Board for that purpose.

We believe the term "State official", as that term is used in Subsection 11g, means the same thing as State officer, or includes such officers. In the case of Collins v. State, 161 S. W. 115, our Court of Criminal Appeals said: "In a popular sense a State officer is one whose jurisdiction is coextensive with the State." The statute creating the State Soil Conservation Board prescribes its powers and duties which are coextensive with the State. Its members are specifically required to take the constitutional oath of office, and their tenure of office is fixed. Considering the statute in its entirety and the public purposes for which the Board was created, we think the members of the Board are undoubtedly "State officials" or State officers within the purview of subsection 11g.

It is our opinion that the term "elected State official", as used in subsection 11g, means a State official elected by the qualified voters of the State, the ordinarily accepted definition of that term. It is also our opinion that the manner prescribed by the statute for selecting members of the Board, whether for a full term or to fill a vacancy on the Board, must be construed as an appointment of such officers.

Section 12, Article IV, of the Constitution provides that all vacancies in State offices, except members of the Legislature, shall be filled "unless otherwise provided by law," by appointment of the Governor, which appointment shall be subject to Senate confirmation. The statute creating the State Soil Conservation Board fully prescribes the procedure to be fol-

lowed in appointing members of the Board and a vacancy on the Board is filled in the same manner in which the retiring member was appointed.

In view of the foregoing conclusions, it necessarily follows that members of the Board do not come within the exceptions found in subsection 11g pertaining to an "elected State official" or an "appointed State official whose appointment is subject to Senate confirmation."

We have carefully examined all department appropriation bills enacted by the Legislature since 1901 and have found that the Forty-third Legislature was the first Legislature to attach riders to such bills putting a per diem limitation for meals and lodging on State employees or State officers. (Acts 1933, p. 511). The pertinent part of these riders read:

"All employees covered under this bill who are traveling at the expense of the State are hereby limited to the following amounts for meals and lodging: for meals not exceeding One Dollar and Sixty Cents (\$1.60) per day, for lodging not exceeding Two Dollars (\$2.00) per night . . . provided the provisions of this Act shall not apply to members of Boards and Commissioners who do not receive an annual or monthly salary, nor to the Executive Board or the heads of State Departments.

"It is expressly provided that the provisions of this Act with reference to traveling expenses shall not apply to the Governor and Lieutenant Governor."

Similar riders have been attached to such appropriation bills enacted since 1933. The State officers specifically exempted from the meals and lodging limitations have not always been the same, but the word "employees" has invariably appeared in the rider containing such limitations. In the appropriation bills of 1939 through 1945 the officers exempted from the meals and lodging limitations are identified in separate riders.

The pertinent part of subsection 2e and all of subsection 2g of the appropriation bill of 1939 (Acts

46th Leg., Spl. Laws, p. 228) respectively read:

Subsection 2e.

"All employees traveling at the expense of the State are hereby limited to the amount of \$4. per day expenses for meals and lodging."

Subsection 2g.

"It is expressly provided that the provisions of this Act, with reference to traveling expenses, shall not apply to the Governor and Lieutenant Governor of this State."

This office had occasion to construe the provisions of these two subsections in Opinion No. O-1634, dated November 1, 1939, from which opinion, we quote:

"The specific exemption of these two officials of our State Government indicates clearly that it was the legislative belief that, unless such specific exemption was made, the Governor and Lieutenant Governor in incurring traveling expenses would be limited by the provisions of the rider relative thereto."

The general meals and lodging limitation provision of the Appropriation Bill of 1939 (subsection 2e) was brought forward without change in the Appropriation Bill of 1941 as subsection 12g and subsection 2g was brought forward as subsection 13f. (Acts 47th Leg., p. 1291). Subsection 13f reads:

"It is expressly provided that the provisions of Subsection 12g of this Act with reference to limitation of amount of traveling expense shall not apply to the Governor, the Lieutenant Governor, and the members of Commissions who receive no salary or per diem, when traveling in or out of the State. Nor shall said provision apply to the Adjutant General and his representatives when appearing in Washington, D. C., before the War Department, the Attorney General and his assistants when appearing before the Supreme Court of the United States and Federal Agencies

in Washington, D. C., nor the members of the Railroad Commission when appearing before the Interstate Commerce Commission or other Federal Commissions in Washington, D. C."

Subsections 12g and 13f were construed in Attorney General's Opinion No. O-3998, dated September 30, 1941, wherein it is said:

"We believe that 'State employees' as used in the appropriation bill (subsection 12g) covers all officers, representatives, and agents of the State. If this were not clearly the legislative intent, then the inclusion of subsection 13f in the bill would be a foolish act."

The records of the Comptroller's Office reveal that from September 1, 1933, the effective date of the appropriation bill of 1933, down to the present time, the construction placed on the riders considered in the two foregoing opinions is the same as has been given by that department to all such riders attached to the respective departmental appropriation bills.

We think it is apparent that each successive Legislature since 1933 was aware of the departmental construction given to the meals and lodging limitations imposed by the rider attached to the departmental appropriation bill of 1933, and approved it, for a rider of the same general character has been attached to all such appropriation bills enacted since that time, and each of such bills has contained a provision exempting certain State officers from such limitations.

In view of the foregoing, it is our considered opinion that it was the purpose and intent of the Legislature in enacting Subsection 11g that the limitation imposed therein upon daily expenditures for meals and meals and lodging should apply to all State officers except those therein specifically exempted therefrom. Members of the State Soil Conservation Board are not so exempted.

It is our further opinion that a member of the Board may legally expend more than \$3.00 per day for meals and more than \$5.00 per day for meals and lodging, if such expenditures be necessary in the performance of his duties, but he cannot be reimbursed

for such excess so incurred from the current appropriation made to the Board for payment of traveling expenses. He may, however, present his claim for the amount of such excess so paid to the Legislature for approval and payment and the Legislature may legally make an appropriation to pay the same, because the statute provides that such members shall be entitled to their traveling expenses incurred in the discharge of their official duties.

SUMMARY

A member of the State Soil Conservation Board is subject to the meals and lodging limitations imposed by Subsection 11g of the rider to the current departmental appropriation bill. H. B. 391, Acts 50th Leg., Article 165a-4, V. C. S.; Sec. 12, Art. IV, State Constitution.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By *Bruce W. Bryant*
Bruce W. Bryant
Assistant

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APPROVED:
Price Daniel
ATTORNEY GENERAL