



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

July 29, 1953

Hon. John H. Winters, Executive Director
State Department of Public Welfare
Tribune Building
Austin, Texas

Letter Opinion No. MS-74.

Re: Legality of reimbursing the
actual traveling expenses of
employees who attended a
meeting held by a federal
agency at Colorado Springs,
Colorado.

Dear Mr. Winters:

You state that two employees of your department attended a meeting in Colorado Springs, Colorado, called by a federal agency; that the Attorney General, pursuant to Article III, Section 2, Subsection (12)d of the current general Appropriation Act,* gave his prior written opinion that the purpose of such out-of-state travel was for State business; that the State Comptroller has disallowed travel expense reimbursement for these employees in excess of \$4.00 a day for meals or a total of \$6.00 for meals and lodging as specified by the Appropriation Act, in Subsection (12)g,** for ordinary travel; and that it is your opinion that reimbursement for this travel should not be so limited but should be made on the basis of actual expenses incurred as permitted under the exception of Subsection (12)g. Accordingly, you have asked for our opinion on whether these employees are entitled to reimbursement for actual expenses.

The exception to Subsection (12)g provides, among other things, "that the meals and lodging limitations imposed by this subsection (12g only) shall not apply . . . to any . . . representative of the Department of Public Welfare . . . when any of these . . . employees are appearing before any Federal Agencies or agencies of other States in any other State or Washington, D.C." (Emphasis added.) It is obvious that you disagree with the Comptroller over the proper interpretation of the terms "appearing before" and that an interpretation of the legislative intent of this language is essential to our answering your question.

* Acts 52nd Leg. 1951, ch. 499, pp. 1228, 1436.

** Id. at p. 1437.

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You state that it is the Comptroller's view that a representative of your department could not "appear before" an agency unless the appearance was either at "the home office or at a permanent sub-office" of the state or federal agency. We believe this is not a proper construction. In our opinion a State employee may enter an appearance at a place other than at the home office or a permanent sub-office of an agency just as reasonably as he could confer or "consult" at such other point. We have previously held in Attorney General's Opinion No. R-1955 (1949) that

"It is immaterial whether the conference with the Federal agency or representative of the Federal agency at Washington, D.C. took place at the home office of the agency or at a point within any other State of these United States, since Mr. Stewart, as a representative of the State Board of Vocational Education, was consulting with such Federal agency on State business."

Therefore, it is the opinion of this office that within the meaning of the present Subsection (12)g a State employee may "appear before" an agency of another State or a Federal agency at any point which may be designated by such agency. However, in our judgment an employee does not "appear before" an agency unless some kind of formal meeting, hearing or proceeding is being conducted by the out-of-state agency, e.g., a public or semi-public educational meeting, an administrative hearing, a judicial proceeding.

By contrast, we believe that the term "consult with," as used by several previous Legislatures,* was intended to cover informal meetings of State employees with out-of-state agencies, e.g., private conference and discussions. Thus, in our opinion, after the Legislature in 1951 deleted the words "or consult with, on State business" from the language of Subsection (12)g, the only reimbursement of actual expenses authorized for State employees was reimbursement for attendance at formal meetings, hearings, or proceedings which attendance constituted State business. Except

* Acts 51st Leg., R.S. 1949, ch. 615, sec. 2 (12)g; Acts 50th Leg., 1947, ch. 400, sec. 2 (11)g. During 1945-47 only members of the State Highway Commission and the Executive Officer got actual expenses when "consulting" in Washington. Acts 49th Leg., 1945, ch. 378, sec. 2 (12)f.

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that appearances may now be entered anywhere in the United States, the limitation on reimbursement of State employees for actual expenses is now the same as it was prior to 1945.*

The facts disclosed by your letter show that the employees whose actual expense reimbursement is now challenged by the Comptroller attended a formal meeting, a "clinic" conducted by the Bureau of Public Assistance of the United States Department of Health, Education and Welfare.

The facts further disclosed by your letter show that this Federal Agency strongly recommended attendance at this meeting. Based on all the facts presented the Colorado meeting was not an informal consultation. Consequently, it is our opinion that the employees involved "appeared before" the Bureau within the meaning of Subsection (12)g and are entitled to be reimbursed for actual expenses incurred.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By
Phillip Robinson
Assistant

PR:wb

* Acts 47th Leg., 1941, ch. 571, sec. 2 (13)f; Acts 48th Leg., 1943, ch. 400, sec. 2 (13)f.