



**THE ATTORNEY GENERAL
OF TEXAS**

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AUSTIN 11, TEXAS

September 2, 1954

Hon. Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Letter Opinion No. MS-151

Re: Applicability of the
salary raise provided by
Chapter 6, Acts 53rd Leg.,
1st C.S., to members of the
Board of Control.

Dear Mr. Calvert:

You have requested an opinion on whether members of the Board of Control may receive the \$10 per month pay raise provided in Chapter 6, Acts 53rd Legislature, First Called Session, 1954, for state officials and employees during the fiscal year beginning September 1, 1954.

Section 1, subdivision (c) of Chapter 6 provides for a salary raise for each position authorized in Article III of Chapter 81, Acts of the 53rd Legislature, Regular Session, 1953 (the General Appropriation Act), except those positions for which salaries are fixed by the Constitution or for which the salaries fixed by general laws are not suspended by Chapter 136 Acts of the Regular Session of the 53rd Legislature. A further provision in Section 2 prohibiting an increase in salaries over \$10,000 per year or an increase which would make the total annual salary exceed \$10,000 is not here relevant.

Item 1 of the appropriation for the Board of Control contained in Article III of Chapter 81 appropriated \$25,740 for each fiscal year for salaries of "Board members, 3 NTE \$8,580." After the Appropriation Act was passed, the Legislature enacted a bill (Chapter 208, Acts 53rd Leg., R.S., 1953) reorganizing the Board of Control. The new law still provides for a Board of Control consisting of three members, who, instead of serving on a full-time basis as formerly, now are required only to "devote such time to their duties as may be necessary for their discharge." Many of the duties formerly performed by the Board members themselves are now performed by an Executive Director "subject to and under the direction of the Board," which is authorized to "delegate such power, authority and duties to such Director as it may deem necessary and proper." Chapter 208 provides for the compensation of the Board members in the following language:

"During the biennium beginning September 1, 1953, each member of said Board shall be compensated for his services at the annual rate of Two Thousand Five Hundred (\$2,500.00) Dollars, and said Director shall be compensated for his services at the annual rate of Twelve Thousand (\$12,000.00) Dollars; and the amounts actually due under said rates of compensation shall be paid from the appropriation made to the Board of Control for salaries and wages in Items 1 and 2, as set forth in Article III of House Bill No. 111 [Chapter 81], Acts of the 53rd Legislature, Regular Session. Balances not hereinbefore allocated may be used for other salaries."

Section 4 of Chapter 208 reads:

"It is the intent and purpose of this Act, and this Act shall and does abolish the Board of Control as now constituted, and creates a new Board having the same name, to-wit: 'The State Board of Control,' with all the powers, duties and responsibilities heretofore vested in the Board of Control abolished by this Act, as well as the powers vested in such Board by this Act. All laws and parts of laws in conflict with this Act are repealed hereby to the extent of such conflict only."

We shall first consider whether the members of Board of Control come within the exception stated in subdivision (c), Section 1 of Chapter 6. If the salary provision in Chapter 208 were a general law, it would be necessary to determine whether Chapter 136, Acts 53rd Legislature, Regular Session, suspended this later enactment which repeals all conflicting laws to the extent of such conflict, but that question need not be resolved. Although contained in a general law, the salary provision in Chapter 208 is not itself a general law. It is merely a part of an appropriation provision fixing salaries for the current biennium and does not form a part of the permanent law. As these salaries are not fixed by general law, there is no impediment to supplementation of the salaries by later appropriation acts.

If the memberships on the reorganized Board of Control are positions "authorized in Article III of Chapter 81" within the meaning of Chapter 6, the members may receive the salary increase provided by Chapter 6. Although Chapter 208 abolished the Board of Control as then con-

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stituted, the newly created Board continues to operate under the appropriation made in Chapter 81 and the salaries of the Board members themselves are payable out of that appropriation. Thus, Chapter 208 in effect amends Items 1 and 2 of the appropriation contained in Chapter 81.

As was pointed out in Opinion No. MS-141 (1954), Chapter 6 referred to positions authorized in Chapter 81 as a broad descriptive term intended to embrace all positions normally included in the General Appropriation Act. Looking to the purpose of Chapter 6 to provide a general salary increase for state officers and employees, we believe it includes all positions for which salaries are paid out of appropriations contained in Chapter 81 as originally passed or as subsequently amended unless it appears that the Legislature took into account the salary raise accorded by Chapter 6 in making the amendment and intended to remove the persons affected by the amendment from the operation of this general increase. We are of the opinion that "positions authorized in Article III of Chapter 81" embraces these successor positions. You are therefore advised that the members of the Board of Control may receive the salary increase in accordance with the terms of Chapter 6.

Yours very truly,

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By

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