



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

May 14, 1957.

Honorable Louis Dugas, Jr.  
Chairman, Contingent Expense Committee,  
House of Representatives,  
Austin, Texas.

Opinion No. WW-131

Re: Constitutionality of  
H.S.R. 284, pertaining  
to the payment of offi-  
cial telephone calls by  
Members of the House,  
during the Interim, be-  
ginning immediately  
following sine die ad-  
journment of the 55th  
Legislature and ending  
at the convening of the  
56th Legislature.

Dear Mr. Dugas:

In your letter of May 6, 1957, you have requested an official opinion of this Department, concerning the constitutionality of House Simple Resolution No. 284. You further state in your letter that:

"Inasmuch as the wording and provisions of this resolution differ somewhat from similar resolutions submitted for opinions in the past, a new opinion is desired relative to the provisions of House Simple Resolution No. 284 of the 55th Legislature."

House Simple Resolution No. 284 reads as follows:

"BE IT RESOLVED by the Texas House of Representatives, That the Committee on Contingent Expense be directed to appropriate from the Contingent Expense Fund whatever sums shall be necessary to pay for official telephone calls by Members of the House of Representatives during the Interim, beginning immediately following sine die adjournment of the Fifty-fifth Legislature and ending at the convening of the Fifty-sixth Legislature. It is provided, however, that no Member shall be

allowed more than Twelve Dollars (\$12) monthly for telephone calls, and it is further provided that no telephone expense other than official calls which are properly charged to the Member's official toll credit cards shall be paid by the Committee. The Contingent Expense Committee shall make any necessary rules or regulations concerning interim telephone calls of Members and shall have full authority to enforce such rules in whatever manner they deem necessary or advisable."

You are no doubt familiar with the previous opinions delivered by this Department relating to the constitutionality of similar resolutions. We shall include in this opinion a comprehensive survey of the rationale contained in several of these prior opinions.

We are unable to find any distinction between the resolution here being considered and that discussed in Attorney General's Opinion No. MS-43. Both contain a provision relating to payment by a toll credit card method. Attorney General's Opinion MS-43 holds that expenditures of this nature would not be a lawful and proper use of State funds. It was therein stated:

"The ultimate issue posed is whether the expenses here authorized to be paid are 'legislative' expenses or 'personal' expenses of the members. This office has, on numerous occasions, expressed itself on analogous questions. In every instance we have adhered to the rule that compensation of Legislators is specified and limited by Section 24 of Article III of the Texas Constitution; and further, that reimbursement for 'personal' as opposed to 'legislative' expenses is in the nature of excessive and unauthorized compensation; and that the only expenses that are legislative are those that relate to public purposes concerned with duties imposed by law on members of the Legislature. Attorney General's Opinions Nos. MS-40 (1953), V-772 (1949), V-211 (1947), V-84 (1947)."

In answering your question we are guided not only by the principles set forth in the cited Opinions, but we are

also controlled by Attorney General's Opinion No. 0-3778 (1941), wherein a similar resolution of the 47th Legislature was held invalid. In that instance the resolution purported to authorize a stipulated, monthly sum to each Senator during the period between sessions.

" . . .for the purpose of defraying the expense of hiring a part-time stenographer to be used only for the purpose of transacting business incident to his office at State Senator, and only for State business; and further for the purpose of defraying the expense of telephone, telegraph and postage used only in State business and incident to his office as State Senator." (Emphasis added)

Opinion No. 0-3778 contains a thorough and exhaustive review of the existing authorities, as well as a complete and accurate analysis of the nature of "legislative" and "personal" expenses of Legislators. This Opinion reads in part as follows:

"It is believed that the matter of legislative and personal expense may be rationalized as follows. Legislative expense is that incident to the workings of the Legislature as an actual law-making body, as a whole, as the Legislature itself, when in session; through a special committee delegated by the Legislature while in session to work on a legislative matter between sessions; through personnel employed to close matters after adjournment; or through employees maintained between sessions for the care of the legislative halls or for maintenance of a central office or clearing house for legislative matters between sessions. These expenses are for the mutual benefit of all members -- for the Legislature itself.

"Personal expense, on the other hand, is that incurred, or which may be incurred, by a Member between sessions working under his own will, in his own discretion and as a matter of individual enterprise -- not as a part of the

"If, therefore, an allowance of expenses to individual members of the Legislature during a session, or while on a committee assignment between sessions, is presumptively legislative expense, it does not follow that an expense allowance to each member indiscriminately between sessions is likewise so. To the contrary, in our opinion the latter is presumptively personal expense.

"Essentially this view is grounded upon the historical and constitutional concept of a State legislative office, together with the practical workings of the constitutional methods with reference thereto, and the discernible weight of the cases in support of such conclusion."

The effect of these previous opinions is that such expense cannot be paid out of public funds, and this prohibition applies whether the funds are paid directly to the Legislator, as in Opinion O-3778, or to a company with whom he incurs the debt through a credit card device, as was the case in Opinion No. MS-43.

It is, therefore, our opinion that the allowance by House Simple Resolution No. 284 of the 55th Legislature, of not to exceed Twelve Dollars (\$12.00) monthly, for official telephone calls by Members of the House of Representatives, during the Interim, beginning immediately following sine die adjournment of the 55th Legislature, and ending at the convening of the 56th Legislature, whether such funds are paid directly to a Legislator or to a company with whom he incurs the debt through a credit card device, is invalid and would not constitute a lawful use of State funds.

#### SUMMARY

House Simple Resolution No. 284, authorizing an expenditure of not to exceed Twelve Dollars (\$12.00) monthly, for payment from the Contingent Expense Fund for official telephone calls by the Members of the House of Representatives, during the Interim, beginning immediately following sine die adjournment of the 55th Legislature and ending at the convening of the 56th Legislature, whether such funds are paid directly to the Legislator, or to a company with whom he incurs a debt through a

credit card device, is unconstitutional  
as an unlawful use of State Funds.

Yours very truly,

WILL WILSON  
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APPROVED:

OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL

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