



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

August 30, 1957

The State Board of Water Engineers Opinion No. WW-314
Austin, Texas

Re: Whether or not the
Attorney General must
approve a person filing
for the positions of
examiner and assistant
examiner for the Board
of Water Engineers.

Gentlemen:

In reply to your letter of August 15, 1957, in which you ask whether the Attorney General is required to approve applicants for the positions of examiner and assistant examiner for the State Board of Water Engineers, we tender the following opinion:

The answer to your question is to be found in subdivisions (6) and (11) of Article 7477, V.C.S., which we quote as follows:

"(6) The Board may appoint such other employees as may be deemed necessary for the efficient performance of the duties authorized and required of it by law.

"(11) The Attorney General shall be the legal advisor of the Board and shall represent it in litigation to which it may be a party; provided, that in addition, the Chairman, subject to approval of the Board and written consent of the Attorney General of the State, may employ other legal counsel regularly, or may engage their services temporarily. Suits to enforce any provisions of this chapter may be prosecuted in the courts of the State by the Attorney General."

The language above quoted requires the Attorney General's approval of all legal counsel employed by the Board, whether employed regularly or temporarily. The position of legal counsel, however, is distinct and separate from the position of examiner or assistant examiner.

In administrative practice generally, an examiner is primarily a hearing officer who conducts hearings for the agency

and performs other incidental duties as required by the agency or by statute. See Davis, Administrative Law, Secs. 91 et seq. The status, powers and duties of an examiner depend upon the terms of the statute providing for his appointment and the rules and regulations adopted by the administrative agency which he serves. 73 C.J.S., Public Administrative Bodies & Procedure, Section 17.

Subdivision (11) of Article 7477 places the duty and responsibility for legal advice and representation upon the Attorney General and requires his approval of all persons employed by the Board in the capacity of legal counsel, whether such persons are employed regularly or temporarily. This does not mean, however, that the approval of the Attorney General would be required for a position other than that of legal counsel.

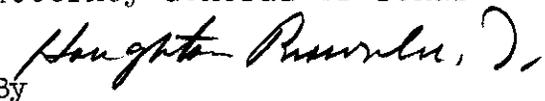
In our opinion, subdivision (6) of Article 7477 empowers the Board to employ an examiner or assistant examiner without the approval of the Attorney General.

SUMMARY

The Attorney General is not required to approve a person filing for the positions of examiner or assistant examiner for the State Board of Water Engineers. The Board may not, however, employ legal counsel, regularly or temporarily, without the approval of the Attorney General.

Very truly yours,

WILL WILSON
Attorney General of Texas


By

Houghton Brownlee, Jr.
Assistant

HB:PC

APPROVED:

OPINION COMMITTEE:

H. Grady Chandler, Chairman
J. C. Davis
James N. Ludlum

REVIEWED FOR THE ATTORNEY GENERAL
BY:

Geo. P. Blackburn