



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

April 24, 1958

Honorable A. C. Spencer  
Executive Director  
Texas State Soil Conservation Board  
1112 First National Bank Building  
Temple, Texas

Opinion No. WW-419

Re: Authority of the State Soil Conservation Board to compensate Field Planning Engineers in an amount in excess of the salary schedule of other employees of the State Soil Conservation Board.

Dear Mr. Spencer:

You have requested our opinion on the following question:

"For the purpose of fulfilling the responsibilities delegated to the State Soil Conservation Board, in Section 3(b) of Senate Bill #1, Acts of the Fifty-fifth Legislature, First Called Session, may the State Soil Conservation Board pay from unexpended balances for the current biennium (Sept. 1, 1957 - Aug. 31, 1959) an engineers salary that is in excess of salaries paid to other employees of the State Soil Conservation Board?"

Your request for an opinion has been supplemented by the following information:

"The two Field Planning Engineers presently employed by the State Soil Conservation Board are not engineers. They are graduates in the field of Agriculture and work with boards of supervisors of soil conservation districts in planning programs to apply such practices as range management, cover cropping and residue management. They also assist local districts in organizing local people as well as state and federal agencies in carrying out the districts program. This position is in no way similar or comparable to the engineer employed to help develop a Master Plan for Upstream Flood Prevention for Texas.

"The employee whose salary is in question is a graduate engineer with 17 years experience in planning and constructing upstream flood prevention structures."

The pertinent provisions of House Bill 133, Acts of the Fifty-fifth Legislature, Chapter 385 (General Appropriation Act), contain the following appropriation to the Soil Conservation Board:

"Out of General Revenue Fund:

"For Salaries, Wages and Per Diem---

"1. Board Members, Per Diem .....	\$ 2,500	\$ 2,500
2. Executive Director .....	7,200	7,200
3. Field Planning Engineers, NTE \$6,300 .....	12,600	12,600
4. Executive Assistant .....	5,400	5,400
5. Secretary .....	3,420	3,420
6. Seasonal and Part-time Help ..	950	950
	<hr/>	<hr/>
"Total, Salaries, Wages and Per Diem .....	\$ 32,070	\$ 32,070

". . .

"Any unexpended balances in the reappropriations authorized by the Fifty-fourth Legislature, of funds and properties to the Soil Conservation Districts, are hereby reappropriated for the biennium beginning September 1, 1957, for the purposes provided for under the Soil Conservation Statutes."

Section 3(a) and a portion of Section 3(b) of Chapter 11, Acts of the Fifty-fifth Legislature, First Called Session (Water Planning Act of 1957), provides as follows:

"Sec. 3(a). The Planning Division shall be under the supervision and direction of the State Board of Water Engineers, and its functions shall be:

". . .

"(4) To enter into contracts with federal, state and local political subdivisions and agencies including the State Soil Conservation Board

and any other persons, firm or corporation for topographic mapping, joint investigation and research in the field of water and soil resource planning.

"Sec. 3(b). . . .

"The State Soil Conservation Board is authorized to appoint a representative to advise and work with the Planning Division; the State Soil Conservation Board is hereby authorized to use any funds heretofore appropriated for use during the current biennium ending August 31, 1959, for the purpose of paying the salary, travel expenses and other expenses of the representatives appointed by the Soil Conservation Board."

Under the Water Planning Act of 1957, the Planning Division of the State Board of Water Engineers is authorized to enter into contracts with the State Soil Conservation Board for topographic mapping, joint investigation and research in the field of water and soil resource planning, and the State Soil Conservation Board is specifically authorized to expend funds appropriated by the current biennium Appropriation Act for the purpose of paying salaries, travel expenses and other expenses of the representatives appointed by the State Soil Conservation Board.

Items one through six of the appropriation to the Soil Conservation Board are made for the purposes of paying salaries while the remaining items are appropriated for the payment of other expenses. The previous unexpended balance is likewise appropriated to the Soil Conservation Board as a lump sum. Therefore, it is our opinion that the previous unexpended balance appropriated to the Soil Conservation Board as a lump sum may be expended for the purpose of paying salaries, travel expense and other expenses of the representatives of the Soil Conservation Board.

Section 8 of Article VI of the General Appropriation Act limits the compensation that may be paid employees, providing:

"Limitations on use of Other Expense funds for paying salaries and wages. None of the funds appropriated in Article I, II, and III of this act in items designated for travel expense, other operating expense, for capital outlay or equipment,

or for maintenance, miscellaneous and contingent expenses, may be used for paying any salaries and wages unless the language of those items explicitly authorizes such use.

"In those instances where the language of such items does explicitly authorize the use of such funds for paying salaries and wages, such employees shall not be paid a larger amount than that provided in the regular appropriated salary items for similar positions in such agency of the State. In the event there are no similar positions within such agency, then such employees shall not be paid a larger amount than that provided for similar work or positions elsewhere in the State Government. In the event common laborers, skilled laborers, and mechanics cannot be obtained at the salary rates indicated in this paragraph, then the head of such agency of the State may pay for temporary employment only at rates not exceeding the prevailing wage scale paid in the locality where temporary service is to be rendered."

In view of the provisions above quoted, the salaries that may be paid from the lump sum appropriation are limited to (1) that provided in the regular appropriated salary items for similar positions in such agency of the State, and (2) that provided for similar positions elsewhere in the State government.

According to your request, the first limitation is inapplicable for the reason that no similar position exists within the Soil Conservation Board, and you state that the position is comparable to the positions set out in Items 5, 8, 9, 14, 21 and 22 of Section IV of Senate Bill I, Acts of the 55th Legislature, First Called Session, Chapter 11, page 23 (Water Planning Act of 1957). The limitations contained in these items are \$9,000 and \$8,600 per annum, depending on the particular position. It is, therefore, our opinion that you are authorized to set the salary of the representatives appointed by the Soil Conservation Board, pursuant to the Water Planning Act of 1957, at any sum not to exceed \$9,000 or \$8,600 per annum, whichever is comparable.

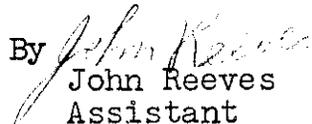
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SUMMARY

The Soil Conservation Board is authorized to pay the salaries of representatives appointed by the Soil Conservation Board, pursuant to the Water Planning Act of 1957, at any sum not to exceed the salaries authorized by the Water Planning Act of 1957 for similar positions.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
John Reeves  
Assistant

JR:pf:wb

APPROVED:

OPINION COMMITTEE

Geo. P. Blackburn, Chairman  
B. H. Timmins, Jr.  
Mary K. Wall  
W. E. Allen

REVIEWED FOR THE ATTORNEY GENERAL

BY: W. V. Geppert.