



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

June 8, 1959

Honorable Mack H. Hannah, Jr.
Chairman, Board of Directors
Texas Southern University
Houston, Texas

Opinion No. WW-639

Re: Whether the President of
Texas Southern University
may be issued his salary
voucher while serving on
the National Science Board?

Dear Mr. Hannah:

In your letter of May 23, 1959, you state that Dr. S. M. Nabrit, President of Texas Southern University, has been informed by the Comptroller of Public Accounts that his salary voucher for the month of May could not be paid because of his service on the National Science Board. You seek to be advised as to whether such is the case.

The National Science Board is established pursuant to Title 42, Chapter 16, Sections 1861-1875, United States Code Annotated, which provides in part as follows:

"Sec. 1861. There is established in the executive branch of the Government an independent agency to be known as the National Science Foundation (hereinafter referred to as the 'Foundation'). The Foundation shall consist of a National Science Board (hereinafter referred to as the 'Board') and a Director."

"Sec. 1863. (a) The Board shall consist of twenty-four members to be appointed by the President, by and with the advice and consent of the Senate, and of the Director ex officio, and shall, except as otherwise provided in this chapter, exercise the authority granted to the Foundation by this chapter. . . ."

"Sec. 1873. (d) The members of the Board, and the members of each divisional committee, or special commission, shall receive compensation at the rate of \$25 for each day engaged in the business of the Foundation pursuant to authorization of the Foundation, and shall be allowed travel expenses as authorized by section 73b-2 of Title 5."

Without deciding whether Dr. Nabrit is filling a "civil office of emolument" by serving as a member of the Board, as envisaged by Section 40 of Article XVI of the Constitution of Texas, we are compelled to advise you that your question is controlled by Section 33 of Article XVI of the Constitution of Texas, which reads in part as follows:

"Sec. 33. The Accounting Officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution. . . ."

It will be noted this section does not forbid the holding of such dual offices or positions of honor, trust or profit, under this State or the United States, but it does forbid payment by warrant upon the Treasury in favor of such person for salary or compensation whatsoever. (Attorney General's Opinion O-5157 (1943).)

The President of Texas Southern University is paid a salary from the State Treasury. (House Bill 133, Acts 55th Legislature, Regular Session, 1957, Ch. 385, p. 1123; the General Appropriation Bill.) Without deciding whether Dr. Nabrit is holding an "office of profit or trust" as provided by Section 12 of Article XVI of the Constitution of Texas, it cannot be questioned that a member of the National Science Board is serving in a position of honor, trust or profit.

The commonly accepted indicia of such a position appear in the present case. Appointment is made by the President of the United States, and the office requires Senate confirmation. Travel expenses and a per diem allowance is provided. It is regrettable that the high importance of the office held

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by Dr. Nabrit and the attending honor and prestige accruing, not only to Texas Southern University, but to the educational system of the whole State of Texas, requires that we inform you that the provision of the Constitution of Texas above quoted prohibits a warrant for payment of salary from being issued to Dr. Nabrit so long as he remains on the National Science Board while serving as President of Texas Southern University.

We attach a copy of Attorney General's Opinion No. 0-6232 (1944) which compiles some of the former opinions by this department to show the frequent recurrence of this question, and to illustrate the respective factual situations involved.

Dr. Logan Wilson, President of the University of Texas, has been tendered an appointment on this same Board. We are sending him a copy of this opinion.

SUMMARY

Section 33 of Article XVI, Constitution of Texas, prohibits the Comptroller from issuing a salary warrant to the President of Texas Southern University while he serves as a member of the National Science Board.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Tom I. McFarling
Assistant

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Enclosure

APPROVED:
OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL
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