



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 17, 1959

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-730

Re: Whether the Comptroller is authorized to pay a per diem to the Members of the State Board of Insurance Commissioners for services performed on Saturday.

Dear Mr. Calvert:

You have requested an opinion on the following question:

"Please advise me if I may legally pass, for payment, out of funds appropriated in H. B. 4, per diem for services performed on Saturday?"

The payroll submitted with your request is for per diem of members of the State Board of Insurance for the Saturdays during the month of September, 1959, which the members of the State Board of Insurance devoted to the discharge of their official duties.

Item 1 of the appropriation to the State Board of Insurance contained in House Bill 4, Acts of the 56th Legislature, Third Called Session, 1959, Chapter 23, page 442 (General Appropriation Act), reads as follows:

"Board Members at \$50 per day . . ."

The first paragraph following the appropriation to the State Board of Insurance reads as follows:

"From funds appropriated in item 1 above, the State Board of Insurance Commissioners shall receive a per diem of not to exceed \$50.00 per day for a total of every working day as defined in this Act. Legal holidays and vacation

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time of Board Members shall not be included in computing the per diem allowance." (Emphasis ours).

Although the Legislature has used the phrase "working day as defined in this Act," we fail to find any definition of a working day in House Bill 4, Acts of the 56th Legislature, Third Called Session, Chapter 23, page 442. While "working day" is not defined, Subdivision (a) of Section 26 of Article V of House Bill 4 states the office hours of State agencies to be as follows:

"OFFICE HOURS OF STATE AGENCIES will be from 8:00 a.m. to 5:00 p.m., Monday through Friday of each week except holidays authorized in this Act. The responsible executive head will arrange for the State headquarters of each agency to be open on each Saturday from 8:00 a.m. to 12:00 noon with an administrative assistant on duty in order to carry out any business of the agency. Regular employees of the State shall work 40 hours a week excepting official holidays. It is further provided that exceptions to the minimum length of work week may be made by the operating head of a State agency for house parents and other employees whose duties require them to reside in a State hospital or institution; for guards, firemen, and other employees whose services are required for longer periods in the public interest; and pursuant to Article II of this Act." (Emphasis ours).

The first Monday in September, 1959, was September 7, 1959, and under the provisions of Article 4591 constituted the only legal holiday during the month of September, 1959. Likewise, September 7, 1959, was the only legal holiday designated by the current General Appropriation Bill as a legal holiday under the provisions of Subdivision (b) of Section 26 of Article V.

The payroll submitted with your request does not seek payment of per diem for September 7, 1959, nor is the period covered by the payroll designated to be "vacation time of Board members."

Since "working day" is not defined in the Current General Appropriation Bill and the executive head of each agency is directed to arrange for the State headquarters of such agency to be open on each Saturday, and none of the days

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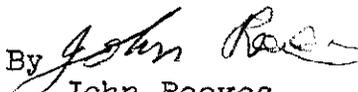
set forth in the payroll submitted with your request fall on a legal holiday or "vacation time of Board members," you are advised that under the facts submitted, the payroll submitted with your request is due and payable.

SUMMARY

Members of the State Board of Insurance are entitled to a per diem not to exceed Fifty Dollars (\$50) per day for each day devoted to the discharge of their official duties including Saturdays, except legal holidays and "vacation time of Board members."

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant

JR:mfh

APPROVED:

OPINION COMMITTEE
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Robert Shannon
Tom I. McFarling
Linward Shivers
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REVIEWED FOR THE ATTORNEY GENERAL
BY: W. V. Geppert