



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

May 5, 1961

Honorable James M. Cotten  
Chairman, Committee on Appropriations  
House of Representatives  
Austin, Texas

Opinion No. WW-1046

Re: Whether any members of the Legislature are entitled to a portion of the annual salary for the period from the effective date of Section 24 of Article III of the Texas Constitution to the convening of the 57th Legislature, and related questions.

Dear Mr. Cotten:

You have requested an opinion on the following questions:

"1. Are any members of the Legislature entitled to a portion of the annual salary for the period from the effective date of the amendment to the convening of the 57th Legislature?

"2. If the answer to the first question above is in the affirmative, is enabling legislation necessary to provide for these salaries, or will an appropriation for these salaries in the general appropriation bill of the 57th session be sufficient?

"3. If the answer to the first question is in the affirmative, which members of the Legislature are entitled to the salary payment, the hold-over members whose terms of office expired, under the Constitution, at the date of the election of their successor but who under the provisions of the Constitution held over in office until their successors qualified, or the members newly elected in the the November 1960 election?

Honorable James M. Cotten, page 2 (WW-1046)

"4. If the answer to question (3) is the newly elected members, is it necessary that they have qualified for office by taking the constitutional oath during the period from the effective date of the amendment to the convening of the 57th Legislature?"

Section 24 of Article III of the Constitution of Texas, as amended at the General Election held on November 8th, 1960, provides as follows:

"Members of the Legislature shall receive from the Public Treasury an annual salary of not exceeding Four Thousand, Eight Hundred Dollars (\$4,800) per year and a per diem of not exceeding Twelve Dollars (\$12) per day for the first one hundred and twenty (120) days only of each Regular Session and for thirty (30) days of each Special Session of the Legislature. No Regular Session shall be of longer duration than one hundred and forty (140) days.

"In addition to the per diem the Members of each House shall be entitled to mileage in going to and returning from the seat of government, which mileage shall not exceed Two Dollars and Fifty Cents (\$2.50) for every twenty-five (25) miles, the distance to be computed by the nearest and most direct route of travel, from a table of distances prepared by the Comptroller to each county seat now or hereafter to be established; no Member to be entitled to mileage for any extra Session that may be called within one (1) day after the adjournment of the Regular or Called Session." (Emphasis added).

It is noted that the underlined portion of the above-quoted constitutional amendment makes it mandatory that members of the Legislature receive an annual salary. Therefore, in answer to your first question, you are advised that members of the Legislature are entitled to an annual salary beginning at the effective date of the amendment (November 25, 1960, the date of the canvassing of the returns of the General Election held on November 8, 1960).

We assume by your second question that you desire to know whether the provisions of Section 24 of Article III,

as amended, constitute pre-existing law, authorizing the Legislature to make an appropriation for the payment of the annual salary provided therein. Since the constitutional amendment specifically states that members of the Legislature shall receive from the public treasury an annual salary of not exceeding \$4,800 per year, you are advised that such language constitutes pre-existing law authorizing an appropriation by the 57th Legislature for the payment of such annual salary.

An answer to your third and fourth questions depends on the date that an individual qualified as a member of the Legislature. In other words, if an individual member of the 57th Legislature qualified prior to canvassing of the returns of the election held on November 8th, 1960, he would be entitled to the compensation provided in Section 24 of Article III, as amended, until his successor qualifies for office. On the other hand, if an individual member did not qualify until some date subsequent to the canvassing of the returns of the General Election held on November 8th, 1960, his predecessor in office would be entitled to the compensation provided for in Section 24 of Article III of the Constitution of Texas, as amended, until such time as the successor of such individual had qualified.

You are, therefore, advised in answer to questions Nos. 3 and 4, a newly elected member of the Legislature who did not qualify until the convening of the 57th Legislature would not be entitled to the constitutional salary prior to the date of his qualification, but the hold-over member whom the newly elected member succeeded would be entitled to the constitutional salary prior to the date his successor qualified.

Summarizing our holding herein, you are advised that members of the Legislature are entitled to the constitutional salary, per diem and expenses provided therein, from the effective date of the amendment adopted at the election held on November 8th, 1960 (to-wit: November 25, 1960, the date of the canvassing of the returns). Newly elected members are entitled to the constitutional salary when they qualify for office and may not receive the constitutional salary for any period of time prior to the date they qualify for office. Hold-over members are entitled to the constitutional salary from the date of the canvassing of the returns

Honorable James M. Cotten, page 4 (WW-1046)

of the General Election held on November 8, 1960. Members of the Legislature who were not re-elected to office will receive the constitutional salary from the date of the canvassing of the returns of the General Election of November 8th, 1960, to the date that the newly elected member qualifies for office.

SUMMARY

Section 24 of Article III of the Constitution of Texas, as amended at the General Election held November 8th, 1960, constitutes pre-existing law, authorizing the Legislature to appropriate money for the purpose of paying the compensation and expenses provided therein to qualified members and it is not necessary that any enabling legislation other than an appropriation be enacted.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
John Reeves  
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE  
W. V. Geppert, Chairman

Henry G. Braswell  
C. Dean Davis  
Edward A. Cazares

REVIEWED FOR THE ATTORNEY GENERAL  
BY: Leonard Passmore