



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
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September 20, 1968

Honorable R. T. Weber
Secretary-Treasurer, Texas State
Board of Dental Examiners
310 Capital National Bank Bldg.
Austin, Texas 78701

Opinion No. M-279

Re: Whether the employees of the Texas State Board of Dental Examiners may receive merit salary increases during the fiscal year beginning September 1968 under Article 5, (2) H.B. 5, First Called Session, 60th Legislature.

Dear Mr. Weber:

Your request for an opinion asks the following question

" . . . whether or not the employees of this agency are entitled to merit salary increases during the fiscal year beginning September, 1968, through August, 1969, in the manner and percentage provided in the hereinbefore referred to Article."

You have requested the Comptroller to "transfer from Dental Registration Fund No. 86, Department No. 504, to Merit Salary Increases, Classified Positions, 1.7% of \$31,954.00, or a total of \$543.22, so that payroll change notices may be prepared and submitted to you as soon as possible."

The Comptroller refused this request on the ground that in his opinion the current Appropriation Act does not authorize merit salary increases to employees of the Board of Dental Examiners since there is no item of appropriation to the Board designated "Merit Salary Increases."

None of the eight items of appropriation to the Board of Dental Examiners is specified as "Merit Salary Increases."

Subdivision (2) of Section 1 of Article V of the current Appropriation Act, relating to merit salary increases,

provides:

"(2) MERIT SALARY INCREASES. During the fiscal year beginning September 1, 1968, in addition to other salary increases authorized in this Section, agency administrators may grant merit salary increases to selected employees whose performance or productivity is consistently above that normally expected or required. Such merit increases shall be subject to the following restrictions:

"(a) The source of funds shall be only the items of appropriations in this Act for 'Merit Salary Increases', except as otherwise authorized below. The maximum monthly expenditure for merit salary increases shall be one-twelfth of the total appropriation for that item.

"(b) No employee may receive more than two one-step increases from funds appropriated for merit salary increases during the fiscal year beginning September 1, 1968.

"(c) For agencies financed from more than one fund, the cost of merit increases shall be allocated to each fund in the same proportion as regular payrolls bear to such funds.

"(d) Where a specific line item appropriation is not provided for merit salary increases, agencies are authorized to allocate not more than 1.7% of the fiscal 1969 budget for classified positions, provided however that any merit salary increases so granted shall be subject to the provisions of this section related to merit salary increases." (Emphasis added.)

Since the appropriation to the Dental Board does not contain an item designated "Merit Salary Increases", Subdivision (a), above quoted, would prohibit merit salary increases "except as otherwise authorized below." The exception referred to is contained in Subdivision (d), wherein it is stated that where a specific line item appropriation is not provided, agencies are authorized to allocate not more than 1.7% of the fiscal 1969 budget for classified positions, provided however that any merit salary increase is subject to the provisions of this section. Regular full-time salaried employees of the Dental Board are classified positions under the provisions of Article 6252-11, Vernon's Civil Statutes, unless the employees have been excluded

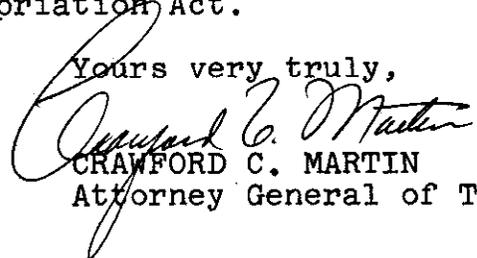
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from such Position Classification Plan by executive order of the Governor or by direction of the Legislature. Article 6252-11, Section 2, V.C.S. Therefore, in view of the provisions of Subdivision (2)(d) of Section 1 of Article V, above quoted, you are advised that regular full-time salaried employees of the State Board of Dental Examiners, not excluded from the Position Classification Plan, may receive merit salary increases during the fiscal year ending August 31, 1969, in the manner provided in Subdivision (2)(d) of Section 1 of Article V of the current General Appropriation Act.

S U M M A R Y

Regular full-time salaried employees of the State Board of Dental Examiners, not excluded from the Position Classification Plan, may receive merit salary increases during the fiscal year ending August 31, 1969, in the manner provided in Subdivision (2)(d) of Section 1 of Article V of the current General Appropriation Act.

Yours very truly,


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Attorney General of Texas

Prepared by John Reeves
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APPROVED:
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