



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

May 20, 1969.

Hon. David P. Bell
Executive Director
Texas Industrial Accident
Board
State Insurance Building
Austin, Texas 78701

Opinion No. M-398

Re: Whether the Industrial
Accident Board is auth-
orized to award attorney
fees or expenses in
certain given fact
situations.

Dear Mr. Bell:

In your opinion request to this office you set forth two fact situations and questions as follows:

"In Board File H-58933, a copy of which is attached, the insurance carrier filed an admission of liability and tendered payment of death benefits prior to the final award of the Board. The Board in its final award awarded attorney's fees in the amount of \$250 to the attorney for the widow and guardian of the named minors. Was the award of attorney's fees proper under the aforesaid Sections 7c and 7d?"

"In Board File H-14293, a copy of which is attached, the insurance carrier and the surviving beneficiaries entered into a lump sum settlement agreement before a final award of the Board was entered. Viewing the lump sum settlement agreement as an admission of liability and tender by the carrier, no attorney's fees were allowed in the final award of the Board. Was this action proper under the aforesaid Sections 7c and 7d, Article 8306?"

We are further advised that both of these situations involve (1) death claims; (2) an admission of liability by the insurance carrier; (3) the insurance carrier tendered payment of maximum benefits; and, (4) the claim was still pending before the Industrial Accident Board.

Article 8306, Section 7d, Vernon's Civil Statutes, provides, in part, as follows:

"Provided, however, that in all cases involving fatal injuries where the Association admits

liability on all issues involved and tenders payment of maximum benefits in writing under this Act while the death benefits claim of such beneficiaries is pending before the Board, then no attorney fee shall be allowed."

By this provision the Legislature of this State has clearly and unambiguously provided that no attorney fee shall be allowed by the Board in any case:

1. Involving fatal injuries;
2. When the Association admits liability on all issues involved;
3. When the Association tenders payments of maximum benefits in writing; and
4. When such action is taken while the death benefit claim of such beneficiaries is pending before the Board.

Both of the fact situations which you present in your opinion request fall squarely under the provisions of Section 7d aforesaid. It is the opinion of this office that no attorney fee may be allowed by the Board in either of your fact situations.

However, Section 7d deals with a specialized situation and should not be divorced from the rest of the provisions governing awards to attorneys by the Board.

Article 8306, Section 7c provides, in part, as follows:

"No attorneys' fees for representing claimants before the Board shall be allowed or approved against any party or parties not represented by such attorney, nor exceeding an amount equal to fifteen per cent (15%) of the total recovery, in addition to the reasonable expenses incurred by the attorney in the preparation and presentation of the said claim before the Board, such expenses to be allowed by the Board."

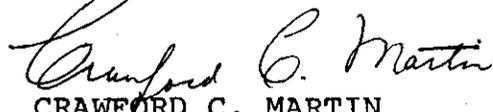
The above quoted provision clearly shows that the Texas Legislature has made a distinction between attorney fees

and reasonable expenses incurred by the attorney. While the last paragraph of Section 7d prohibits the Board from granting an attorney a fee for handling a claim, which falls within the conditions set out in said paragraph, it is the opinion of this office that such prohibition does not apply to reasonable expenses incurred by the attorney, in the preparation and presentation of said claim before the Board, the approval by the Board of said expenses being allowed by Section 7c.

S U M M A R Y

Article 8306, Section 7d, Vernon's Civil Statutes, prohibits the Industrial Accident Board from awarding attorney fees in those cases in which there is a fatal injury, when the insurance carrier admits liability on all issues and tenders payment of the maximum benefits, while the claim is pending before the Board. The Board is not, however, prohibited from allowing reasonable expenses incurred by the attorney in the preparation and presentation of said claim before the Board, said expenses being allowed by Article 8306, Section 7c.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Robert E. Owen
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
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W. V. Geppert
Staff Legal Assistant

Hawthorne Phillips
Executive Assistant