



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

June 5, 1974

The Honorable Robert S. Calvert
Comptroller of Public Accounts
State Finance Building
Austin, Texas

Opinion No. H- 233

Re: Expenses of members of
the Texas Youth Council in
city of his residence.

Dear Mr. Calvert:

On February 20, 1974, we issued our Opinion H-233. That opinion is now withdrawn, is no longer of any effect, and the following substituted in its place.

The specific question you asked in your request for our opinion was whether a state official "as defined in Section 2 of Article 6823a, V. T. C. S." would be entitled to expenses for meals incurred within the city in which he resides. The account in question was submitted by a member of the Texas Youth Council.

Article 6823a, V. T. C. S. is the Travel Regulations Act of 1959 governing the payment of travel expenses of state officers, heads of state agencies, and state employees. You also cited to us various sections of the General Appropriations Act having to do with travel and the reimbursement of travel expenses.

As we read the question you have asked, it does not involve actual travel by the official. We are of the opinion that neither the Travel Regulations Act of 1959 (Article 6823c, V. T. C. S.), nor the Appropriations Act in its general travel provisions governs the answer to your question. We are aware that it has been held in Attorney General Opinion M-873 (1971) that the Act does apply to travel by a state employee within the city of his designated headquarters.

Article 6823a, Sec. 8 recognizes the allowance for travel within the designated headquarters but, in Sec. 9, expressly prohibits collection of a per diem for the period of time an employee is within his official designated headquarters.

Section 11 of Article V, the General Provisions of the Appropriations Act (Acts 1973, 63rd Leg., ch. 659, p. 1786 at p. 2203) requires that, to be entitled to travel expenses, an official must travel.

It is our opinion that the answer to your question, rather, is governed by Sec. 4 (c) of Article 5143d, V. T. C. S. which provides:

All members of the Texas Youth Council and the Executive Directors appointed by them shall receive as expenses the actual expenses incurred while on state business for the Texas Youth Council.

In Attorney General Opinion H-58 (1973) we were concerned with the question of whether a member of the Texas Animal Health Commission was entitled to recover per diem and expenses for various trips he had made other than to official meetings and without direction from the Commission to perform any of the travel or the services for which reimbursement was claimed. In answering that question we said:

It appears that the only limitation imposed upon a Commissioner as to his expenses for which he is entitled to reimbursement is that they be 'actual and necessary' and that they be 'incurred while in the performance of his official duties.' Surely the official duties of a Commissioner must include more than merely attending meetings of the entire Commission and it is our opinion that each Commissioner of a department headed by a Commission has considerable discretion in determining what his activities are to be and what expenses he incurs. His discretion, however, is not unlimited.

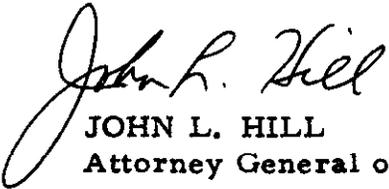
Whether or not the services are 'in the performance of his official duties' is a determination to be made primarily by the Commissioner himself and certified to in his travel voucher; secondly by the Commission Chairman in approving or disapproving the voucher for payment; and thirdly, by the Comptroller of Public Accounts. And see also Attorney General Opinion H-133 (1973).

It is our opinion therefore that a member of the Texas Youth Council may be reimbursed for actual expenses incurred by him in the city in which he resides provided that the expenses are reasonable and are incurred while on State business for the Texas Youth Council, and provided, or course, funds are appropriated to the Texas Youth Council for that purpose.

SUMMARY

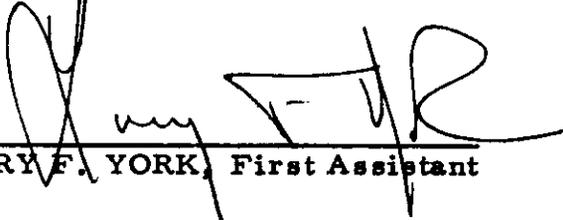
A member of the Texas Youth Council is entitled to be reimbursed for reasonable expenses incurred by him in attending meetings within the city limits of the city in which he resides provided they are actual expenses incurred while on State business for the Texas Youth Council.

Very truly yours,

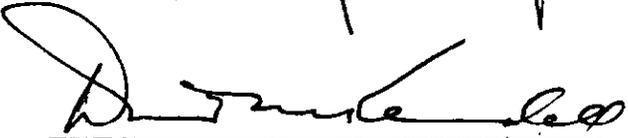


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APPROVED:



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Opinion Committee