



**Commission on
State Emergency
Communications**

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October 27, 2004

The Honorable Greg Abbott
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

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OPINION COMMITTEE

FILE # MC-44003-04

I.D. # 044003

Re: Request for Attorney General Opinion

Dear General Abbott:

RQ-0288-GA

The Commission on State Emergency Communications (Commission) has authorized me to request an opinion from the Attorney General of the State of Texas regarding the following issue:

Are members of the Commission entitled to compensatory per diem?

Background: The Commission on State Emergency Communications is composed of nine appointed members and three non-voting ex officio members, Texas Health and Safety Code § 771.031. With regard to the appointed members, the Lieutenant Governor and the Speaker of the House of Representatives each appoint two members as representatives of the general public. The governor appoints: (1) one member who serves on the governing body of a regional planning commission; (2) one member who serves as a director of or is on the governing body of an emergency communication district; (3) one member who serves on the governing body of a county; (4) one member who serves on the governing body of a home-rule municipality that operates a 9-1-1 system that is independent of the state's system; and (5) one member as a representative of the general public.

The Commission understands and concedes that the ex officio members, who serve by reason of their state office, are not entitled to compensatory per diem. The Commission further acknowledges that Texas Government Code § 574.005 provides that an individual who holds an elected or appointed local government office may be appointed to the governing body of a state agency, and may not receive compensation for serving on the governing body, but may be reimbursed as provided by law for reasonable and necessary expenses incurred in the performance of an official function. Hence, the Commission understands that Commission members who are elected or appointed local government officers may not receive compensatory per diem.

With regard to the remaining Commission members, the Commission seeks clarification regarding the issue of entitlement to compensatory per diem.

Statutory References:

Health and Safety Code § 771.034 provides:

EXPENSES. The expenses of a member of the commission shall be paid as provided by the General Appropriations Act.

As you are aware, Tex. Gov't Code § 659.032 provides that a member of a state board is entitled to a per diem in an amount set by the General Appropriations Act for the member's service on the board. As authorized by Tex. Gov't Code § 659.032, the General Appropriations Act (the Act), article IX, section 4.04, provides that per diem of state board and commission members consists of three components: compensatory per diem, if specifically authorized by law; reimbursement of actual expenses for meals and lodging; and, reimbursement of transportation and incidental expenses at the rates specified in the Act for state employees. Section 4.04 (Per Diem of Board or Commission Members), page IX-24, article IX, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act).

Article IX, Section 4.04 of the Act goes on to state:

(d) An agency that has a "Schedule of Exempt Positions and Per Diem of Board (or Commission) Members" following the agency's appropriations may expend appropriations for board or commission member compensatory per diem in an amount not to exceed the amount specified in the schedule for each respective fiscal year.

As specified by the Act, art. IX, sec. 4.04(d), the Commission's appropriations provision for the current biennium is followed by a "Schedule of Exempt Positions" with "Per Diem of Commission Members" in the amount of \$4,300 per fiscal year.

Request: The Commission respectfully requests an opinion from the Attorney General to reconcile the above provisions and state whether certain Commission members are entitled to compensatory per diem.

If you or anyone on your staff has any questions on this matter, please feel free to contact me directly at 305-6920.

Regards,


Paul Mallett
Executive Director

PM/b

cc: Judge Dorothy Morgan, Presiding Officer
Russell Gregorczyk, Internal Auditor