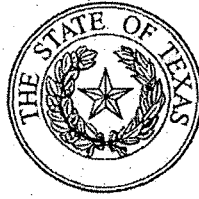


# State Office of Administrative Hearings



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**OPINION COMMITTEE**

Cathleen Parsley  
Chief Administrative Law Judge

FILE # ML-46910-11

I.D. # 46910

December 21, 2011

The Honorable Greg Abbott  
Attorney General of Texas  
Office of the Attorney General  
209 West 14<sup>th</sup> Street  
Austin, Texas 78701

HAND DELIVERY

**RQ-1032-GA**

Re: Request for Attorney General Opinion on SOAH fees in cases heard under Chapter 2260 of the Government Code

Dear General Abbott:

I respectfully request your opinion on whether the State Office of Administrative Hearings (SOAH) may charge hearing fees in contract claims cases heard under Chapter 2260 of the Government Code if SOAH receives an appropriation of general revenue (GR) for the hearings work performed for the agency that is a party to the dispute.

As background, SOAH is an independent state agency that provides an impartial forum for adjudicative hearings and mediation services within the executive branch. Currently, approximately 50 state agencies refer cases to SOAH. SOAH is also authorized to contract with other governmental entities to provide hearing services for a fee.

SOAH is funded from several sources. These include an appropriation of GR, an allotment from State Highway Fund 006, and interagency contracts. Currently, when SOAH's work is not covered by GR, Fund 006, or specified amount, its approved billing rate is \$100 per hour. [Rider 7, page VIII-3 (H.B. 1) Acts of the 82<sup>nd</sup> Legislature, Regular Session, 2011 (the General Appropriations Act).]

Additionally, Chapter 2260 of the Government Code provides a specific funding mechanism for cases SOAH administers under that chapter. The chapter provides that, when a contractor has a dispute with a unit of state government, the contractor may request a hearing before a SOAH administrative law judge. These matters are referred to as "contract claims" cases. SOAH's Chief Administrative Law Judge is authorized to set the fee for the hearing at an amount not less than \$250 and at a level that allows SOAH "to recover all or a substantial part of its costs in holding hearings." SOAH may "assess the fee against the party who does not prevail in the hearing" or "apportion the fee against the parties in an equitable manner." Tex. Gov't Code 2260.103. The amount in dispute in these cases has varied widely from fairly small claims to those involving several million dollars. SOAH's time and attendant costs vary correspondingly. The largest fee SOAH has charged for a

contract claims case, which involved millions of dollars in issue and numerous complicated claims and counter-claims, was \$112,000. This was based on SOAH's then approved billing rate of \$90 per hour under the General Appropriations Act.

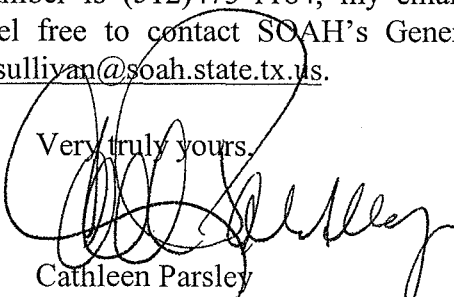
My question relates to how Section 2260.103 should be applied with respect to those agencies (and their disputing contractors) for which SOAH receives an appropriation of GR. The General Appropriations Act provides that the GR appropriated to SOAH is for "billable casework hours performed by SOAH for conducting administrative hearings" for 34 specified agencies that do not receive appropriations to pay SOAH. [General Appropriations Act, Rider 7, page VIII-3] These agencies include the Texas Department of Transportation (TxDOT), the Department of Public Safety, and the Texas Lottery Commission. Each of these agencies refers numerous hearings to SOAH relating to a variety of subjects. Each also has referred at least two hearings governed by Chapter 2260 of the Government Code.

When agencies such as TxDOT refer contract claims cases to SOAH, the question is whether SOAH should bill the agency in accordance with special provisions of Chapter 2260 or whether the costs of these hearings are instead included in SOAH's GR appropriation. Historically, in these cases, SOAH has not billed agencies such as TxDOT for which it receives an appropriation of GR. SOAH also no longer bills the non-governmental parties in those proceedings. (Early on, SOAH did bill the contractor even when the agency party was funded by GR, but we stopped this practice in 2007 when we concluded that the same statutory billing considerations apply to both parties.)

SOAH believes the General Appropriations Act and Government Code Section 2260.103 may reasonably be interpreted either to allow the charges addressed in this request or to disallow them. Our current practice not to bill either party if SOAH receives GR funding for the agency does, however, lead to an unusual and perhaps unfair disparity in the potential liability of contractors for SOAH's costs. If the agency against which the contractor has brought its claim receives GR to pay SOAH, then the contractor (as well as the agency) is potentially liable for SOAH's costs. But if it is SOAH rather than the referring agency that receives direct GR funding for this hearing work, then neither the agency nor the contractor are liable for SOAH's costs. From the contractor's perspective, this distinction in potential liability likely seems arbitrary.

Thank you for your consideration of this question. If you need additional information or have questions, please let me know. My phone number is (512)475-1184; my email address is [cathie.parsley@soah.state.tx.us](mailto:cathie.parsley@soah.state.tx.us). Please also feel free to contact SOAH's General Counsel, Kerry Sullivan, at phone (512)936-0707 or [kerry.sullivan@soah.state.tx.us](mailto:kerry.sullivan@soah.state.tx.us).

Very truly yours,



Cathleen Parsley  
Chief Administrative Law Judge