



0-991

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Overruled by 0-991A

Hon. Walter C. Woodward
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Opinion No. 0-991
Re: Is the rate of pay applied to Mr. Sanderford correct under the provisions of S. B. 397 and the letter from the Superintendent Of Insurance of New York and if the Comptroller is authorized to issue warrant on this basis?

Your request for an opinion on the above stated question has been received by this office.

Your letter reads in part as follows:

"We have an Examiner in the State of New York at the present time participating in the examination of the Fidelity-Phenix Fire Insurance Company, a New York corporation. We are attaching copy of a letter from the Superintendent of Insurance of New York with reference to the rates of pay of Examiners employed by New York. In submitting our payroll to the Comptroller we have used the highest rate of the Principal Examiners in New York, for the reason that Homer Sanderford, Senior Examiner from Texas who is assigned to the position, is one of our oldest Examiners in point of experience and ability. While the Texas law designates only two classes of Examiners, Assistant and Senior, the appropriation bill provides for three classes so far as the rate of pay is concerned. These three classes are: Assistant Examiners, salary not to exceed \$2,520.00 per

Hon. Walter C. Woodward, Page 2

year; Senior Examiners, Salary not to exceed \$3,750.00 per year; and Senior Examiners, salary not to exceed \$4,200.00 per year. There are only four Examiners in the last rate class of \$4,200.00 per year, and Mr. Sanderford is one of these examiners. In other words, he is paid the highest rate that is in effect in Texas.

"Will you please advise this office and the Comptroller's office if the rate of pay applied to Mr. Sanderford is correct under the provisions of Senate Bill No. 397, and the letter from the Superintendent of Insurance of New York, and if the Comptroller is authorized to issue warrant on this basis."

We quote from a copy of a letter from Hon. Louis H. Pink, Superintendent of Insurance of New York which was enclosed with your inquiry, as follows:

"In the Department there are four grades of examiners, namely, Junior, Assistant, Senior and Principal. The first three groups do substantially all of the actual examination work. The latter or "principal" group is composed of chiefs of the various bureaus, namely, Chief of the Fire & Marine Bureau, Chief of the Life Bureau, Chief of the Miscellaneous Bureau, etc. Each of the groups has a minimum and maximum salary. Upon entrance to a grade an examiner is paid the minimum salary thereof and then by the process of yearly increments reaches the maximum where he remains until his promotion to the next higher grade. Appointments to the Junior grade are made as a result of open competitive examinations whereas promotions to grades higher than Junior result from promotion examinations confined to eligible men within the department. The minimum and maximum salaries for each grade follow:

<u>"Grade</u>	<u>Minimum</u>	<u>Maximum</u>
Junior	\$2,400	\$3,000
Assistant	3,000	3,750
Senior	3,750	4,625
Principal	5,600	6,850

Hon. Walter C. Woodward, Page 3

"With reference to the specific inquiry you make, our charges to the companies examined so far as salaries are concerned, is on the basis of 1/280th of the examiner's annual salary times the number of days required for the examination.

"We also charge for traveling and subsistence expenses which are limited by rules of the State Comptroller, copy of which is enclosed. To these charges is added 20% of the amount charged for the salaries of examiners, which added per cent is for the analytical and supervisory functions of the chief or "principal" examiner."

Senate Bill No. 397, Acts of the Regular Session of the 46th Legislature, amending Articles 4690a and 4690b, Revised Civil Statutes, reads as follows:

"Section 3. The expenses of all examinations of domestic insurance companies made on behalf of the State of Texas by the Chairman of the Board of Insurance Commissioners or under his authority shall be paid by the corporations examined in such amount as the Chairman of the Board of Insurance Commissioners shall certify to be just and reasonable.

"Assessments for the expenses of such domestic examination, which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Act, shall be made by the Chairman of the Board of Insurance Commissioners upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets and/or insurance in force; provided such assessments shall be made and collected only at the time such examinations are made.

"All sums collected by the Chairman of the Board of Insurance Commissioners, or under his authority, on account of the cost of examinations

Hon. Walter C. Woodward, Page 4

assessed as hereinabove provided for shall be paid into the State Treasury to the credit of the Insurance Examination Fund; and the salaries and expenses of the actuary of the Board of Insurance Commissioners and of the examiners and assistants, and all other expenses of such examinations, shall be paid upon the certificate of the Chairman of the Board of Insurance Commissioners by warrant of the Comptroller drawn upon such fund in the State Treasury.

"If at any time it shall appear that addition pro-rata assessments are necessary to cover all of the expense and disbursements required by law and necessary to comply with this Act, the same shall be made, and any surplus arising from any and all such assessments, over and above such expenses and disbursements, shall be applied in reduction of subsequent assessments in the proportion assessed so that there shall be so assessed and collected the funds necessary to meet such expenses and disbursements and no more.

"In case of an examination of a company not organized under the laws of Texas, whether such examination is made by the Texas authorities alone, or jointly with the insurance supervisory authorities of another state or states, the expenses of such examination due to Texas' participation therein, shall be borne by the company under examination. Payment of such cost shall be made by the company upon presentation of itemized written statement by the Chairman, and shall consist of the examiners' remuneration and expenses, and the other expenses of the Department of Insurance properly allocable to the examination. Payment shall be made directly to the Chairman, and all money collected by assessments on foreign companies for the cost of examination shall be deposited in the State Treasury by the Chairman to the credit of the

Hon. Walter C. Woodward, Page 5

Insurance Examination Fund out of which shall be paid, by warrant of the State Comptroller of Public Accounts on voucher of the Chairman of the Board of Insurance Commissioners, the examiners' remuneration and expenses in the amounts determined by the method hereinafter provided, when verified by their affidavit and approved by the Chairman; and said money is hereby appropriated for that purpose, the balance, if any, to remain in the Insurance Examination Fund in the State Treasury subject to be expended for the purposes as are other funds placed therein. Examiners' remuneration and expenses shall be the same as that which would be paid by the home state of a company under examination to persons conducting the examination of a Texas company admitted to do business in that State. If there be no recognized charge for such service, the Chairman shall fix the remuneration and expense allowance of the examiners at such reasonable figure as he may determine.

"Section 2.

"Section 3aa: The Chairman of the Board of Insurance Commissioners shall appoint such number of examiners, one of whom shall be the chief examiner, and such number of assistants as he may deem necessary for the purpose of making on behalf of the State of Texas and of the Board of Insurance Commissioners all such examinations of insurance companies, at the expense of such companies or corporations, as are required to be made or provided for by law; and, after this Act shall take effect he shall also appoint an actuary to the Board of Insurance Commissioners to advise the Board in connection with the performance of its duties and for aid and advice and counsel in connection with all such examinations required by law.

Hon. Walter C. Woodward, Page 6

Such examiners and assistants shall, as directed by the Chairman of the Board of Insurance Commissioners, perform all the duties relative to all examinations provided by law to be made by the Board of Insurance Commissioners of the State of Texas, and it is the purpose of this Act to provide for the examination hereunder by the Chairman of the Board of Insurance Commissioners of all corporations, firms or persons engaged in the business of writing insurance of any kind in this State whether now subject to the supervision of the Insurance Department or not.

"All such examiners and assistants and such actuary shall hold office subject to the will of the Chairman of the Board of Insurance Commissioners and the number of such examiners and assistants may be increased or decreased from time to time to suit the needs of the examining work. The actuary and all such examiners and assistants shall be paid out of the Insurance Examination Fund, such salaries as shall be fixed from time to time by the Legislature, and their necessary traveling expenses shall be paid out of said fund upon sworn, itemized accounts thereof to be rendered monthly and approved by the Chairman of the Board of Insurance Commissioners before payment.

"Where the Chairman of the Board shall deem it advisable he may commission the actuary of the Board, the chief examiner, or any other examiner or employee of the Department, or any other person, to conduct or assist in the examination of any company not organized under the laws of Texas and allow them compensation as herein provided, except that they may not be otherwise compensated during the time they are assigned to such foreign company examinations. Other than as thus provided, neither the actuary of the Board of Insurance Commissioners nor any examiner or assistant shall continue to serve

Hon. Walter C. Woodward, Page 7

as such if, while holding such position, he shall directly or indirectly accept from any insurance company any employment or pay or compensation or gratuity on account of any service rendered or to be rendered or any account whatsoever."

Senate Bill No. 397, supra, provides that examiners representing the state of Texas in examination of companies outside of the state of Texas shall receive remuneration and expenses the same as shall be paid by the home state of a company under examination to persons conducting the examination of a Texas company admitted to do business in that state. However, if there be no recognized charge for such service, the Chairman shall fix the remuneration and expense allowance of the examiners at such reasonable figure as he may determine.

According to the information contained in the letter of the Hon. Louis H. Pink, Superintendent of Insurance, above quoted, charges made to the company examined so far as salaries are concerned, are on the basis of $1/380$ th of the examiner's annual salary times the number of days required for the examination, plus traveling and subsistence expenses which are limited by the rules of the State Comptroller, plus twenty per cent of the fees charged for the salaries of examiners, which added per cent is for the analytical and supervisory functions of the chief or principal examiner. Under this formula charges made to companies examined should be on the basis of $1/280$ of the examiner's annual salary times the number of days required for the examination plus traveling and subsistence expenses plus twenty per cent of these charges. In submitting your payroll to the Comptroller, the salary of \$4,200.00 per year should be used and not the salary of the senior examiner of New York.

You are respectfully advised that it is the opinion of this department that the rate of pay applied to Mr. Sanderford is not correct under the provision of Senate Bill No. 397 and the letter from the Superintendent of Insurance of New York and that the Comptroller is not authorized to issue warrants on this basis. You are further

Hon. Walter C. Woodward, Page 8

advised that it is our opinion that the proper rate of pay to be applied under the provision of Senate Bill No. 397 by the letter of the Superintendent of Insurance of New York should be on the basis of 1/380 of the examiner's annual salary which is \$4,200.00 per year times the number of days required for the examination plus traveling and subsistence expenses plus twenty per cent of the amount charged for the salary of examiner.

Trusting that the foregoing answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

AW:AW

APPROVED JUN 30, 1939

Gerard B. Mann

ATTORNEY GENERAL OF TEXAS

