



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. P. A. Kerby
Business Officer
State Board of Health
Austin, Texas

Dear Mr. Kerby:

Opinion No. 0-5209

Re: Payment of traveling expenses
in excess of \$4.00 a day from
Federal Funds in State Treas-
ury.

From your letter of May 12, it appears that in the allotment of funds to the State Board of Health by the Federal government, a certain amount is designated by the Federal agency to be used for travel for the State Health Officer. These funds, we are informed, are deposited in the State Treasury and payments made therefrom on warrants issued by the Comptroller. You request the opinion of this Department upon the following question:

On trips to Washington, D. C., at the request of the Surgeon General of the United States, where the traveling expenses are payable from such Federal funds, is the State Health Officer limited to \$4.00 a day for meals and lodging?

Federal funds allocated and granted by the United States to the State of Texas become State monies, subject to the control of the Legislature of Texas to the extent that legislative regulation of their expenditure does not violate the terms and conditions of the Federal grant. See our Opinions Nos. 0-290 and 0-330.

The Departmental Appropriation Bill for the current biennium (S. B. 423, Acts 47th Legislature, Reg. Sess.) provides, under the heading "General Provisions", Sec. 2, subsection 10:

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"(10) United States Funds and Aid. The proper officer or officers of any State Departments, bureaus, or divisions of State agencies are hereby authorized to make application for and accept any gifts, grants, or allotments or funds from the United States Government to be used on State cooperative and other Federal projects and programs in Texas, including construction of public buildings, repairs, and improvements. Any of such Federal funds as may be deposited in the State Treasury are hereby appropriated to the specific purpose authorized by the Federal Government, and subject to the limitation placed on this Act." (Emphasis ours)

One of the limitations imposed by the Act on the expenditure of monies appropriated thereby is found in Sec. 2, Subs. (12)g:

"All employees traveling at the expense of the State are hereby limited to the amount of Four (\$4.00) Dollars per day expenses for meals and lodging; . . ."

The only exceptions made to this rule are found in Sec. 2, subs. (13)f:

"It is expressly provided that the provisions of Subsection 12g of this Act with reference to limitation of amount of traveling expense shall not apply to the Governor, the Lieutenant-Governor, and the members of commissions who receive no salary or per diem, when traveling in or out of the State. Nor shall said provision apply to the Adjutant General and his representatives when appearing in Washington, D. C. before the War Department, the Attorney General and his assistants when appearing before the Supreme Court of the United States and Federal agencies in Washington, D. C., nor the members of the Railroad Commission when appearing before the Interstate Commerce Commission or other Federal Commissions in Washington, D. C."

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The exemptions do not apply to the State Health Officer. Since Sec. 10 expressly appropriates Federal funds received by the State agencies and deposited in the State Treasury subject to the limitations imposed by the Act on the expenditure of monies appropriated therein, the \$4.00 a day limitation on expenses for meals and lodging applies. Opinion No. 0-1562. In this connection, it may be observed that an employee is "traveling at the expense of the State" though the State may pay such expense from funds donated to it; but, in any event, if this be not correct, the \$4.00 a day limitation applies because the Legislature has directed that the limitations on the expenditure of funds appropriated by the Act shall apply to funds received from the Federal government.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

R. W. Fairchild

R. W. Fairchild
Assistant

RWF-MR

APPROVED MAY 19, 1943

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

