



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

August 10, 1951

Hon. George B. Butler, Chairman
Board of Insurance Commissioners
Austin, Texas

Opinion No. V-1234.

Re: Maximum salaries which
may be paid investigators
under Item 10 of the ap-
propriation for the Life
Division of the Board of
Insurance Commissioners
in House Bill 426, Acts
52nd Leg., 1951.

Dear Sir:

Your request for an opinion reads in part as
follows:

"We desire the opinion of your office as to the proper interpretation of House Bill 426, Acts 52nd Legislature, insofar as it relates to the maximum salaries of investigators for the Insurance Department. The appropriation for these investigators is found on Page 112 under the heading Group 10 of the supplement to the House Journal. You will note that the Act provides for 4 investigators, none of whose salaries shall exceed \$3,320.00 per year, but at the same time, the gross amount of \$13,680.00 is appropriated for the purpose of paying these salaries.

"Even if the salary of \$3,320.00 was paid to each of the four investigators, only \$13,280.00 could be expended. It therefore appears that the bill contains a patent ambiguity which necessitates an interpretation looking to the legislative intent. We do not believe that a vain act should be attributed to the legislature and certainly this would be the case if we interpreted this statute to mean that the legislature had appropriated \$13,680.00 for the payment of certain salaries and had at the same time prohibited the use of \$400.00 of this money

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toward the payment of such salaries. It is the opinion of this Department, based on the reasoning which follows, that the correct meaning of the term 'none to exceed \$3,320.00 per year' is actually 'none to exceed \$3,420.00 per year.' Your opinion is therefore desired as to whether we are correct in our interpretation which would permit the payment of a maximum salary of \$3,420.00 annually to each of the four investigators provided for."

In the exhibits you have attached to your request, it is shown that under the appropriation bill of the 51st Legislature for your department these investigators received a salary not to exceed \$3,180.00 per year. With certain exceptions not here involved, the 52nd Legislature provided for an increase of 10% of the first \$2,400.00 of the annual salary, or a total of \$240.00 per year, to all state employees making \$5,004.00 or less. This is evidenced by a comparison of House Bill 426 as first passed by the House of Representatives to its present form as finally adopted. If this \$240.00 increase applies to the investigators in question, their salary would be \$3,420.00. Otherwise, their salary would be \$3,320.00, which would amount to an increase of only \$140.00.

We are of the opinion that the salary of \$3,320.00 set out in Item 10 is an error and that it should read \$3,420.00. The Legislature obviously intended to raise these employees to not to exceed \$3,420.00, as evidenced by the total sum of \$13,680.00 appropriated for Item 10, and as evidenced by the general increase of \$240.00 to each state employee coming within the category of those embraced in Item 10. Also, the grand total appropriated for the Life Insurance Division is correctly computed only if the figure of \$13,680.00 is used, rather than \$13,280.00, which would be the total amount for Item 10 if the 4 investigators were to receive only \$3,320.00 each.

The rule with regard to the correction of obvious legislative errors is stated in 50 Am. Jur. 219, Statutes, Sec. 232, as follows:

"There are, however, many cases in which it has been regarded proper to correct legislative errors. In this respect, there is authority for the rule that clerical mistakes should be disregarded, that

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manifest or obvious mistakes may be corrected, . . . If a clerical error renders a statute incapable of reasonable construction, the proper word or numeral will be deemed substituted, where it can be supplied by reference to the context or other statutes. This is but making the strict letter of the statute yield to the obvious intent."

In Morrison-Merrill & Co. v. Industrial Commission, 18 P.2d 295 (Utah Sup. 1933), the Court, in construing a formula fixing the weekly compensation applicable under a workmen's compensation act supplied a decimal point in the formula, saying:

". . . It is clear that in using the formula a decimal point should be placed before the 60. Section 3137, heretofore quoted in this opinion, provides that the injured employee 'shall receive 60 per cent of his average weekly wages,' etc. It is obvious that the 60 in the formula is intended as 60 per cent. When it is obvious that there is a mistake or omission in a statute and the intention of the Legislature can be collected from the whole statute, courts will deem the proper word substituted or supplied. 25 R.C.L. p. 978, § 227, and cases there cited."

A similar result was reached by this office in Attorney General's Opinion V-1117 (1950) wherein it was held that "1951" was erroneously written for "1950."

SUMMARY

The maximum annual salary which may be paid to investigators under Item 10 of the appropriation for the Life Division of the Board of Insurance Commissioners

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in House Bill 426, Acts 52nd Leg., 1951,
is \$3,420.00.

APPROVED:

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Yours very truly,

PRICE DANIEL
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By

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CF:jmc