



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 24, 1959

Mr. John H. Winters, Commissioner
State Department of Public Welfare
Austin 14, Texas

Opinion No. WW-739

Re: Computation of travel allowance on the basis of the shortest route between points, under provisions of House Bill 4, 56th Legislature, 3rd Called Session, and Senate Bill 272, Acts of the 56th Legislature, Regular Session.

Dear Mr. Winters:

We quote as follows from your recent letter:

"In computing transportation allowances for employees in the State Department of Public Welfare, the mileage for travel reimbursement purposes was computed in accordance with Subsection a, Section 32 of Article V of House Bill No. 4, Acts of the 56th Legislature, Third Called Session, and in accordance with Subsection c of Section 6 of Senate Bill No. 272, Acts of the 56th Legislature, Regular Session.

"The travel expense accounts of some of the employees for the month of September were returned by the State Comptroller of Public Accounts on the basis that the mileage for reimbursement purposes had to be computed in accordance with Subsection a of Section 32, Article V of House Bill No. 4 and that reimbursement could not be made for travel on the basis of computations in accordance with Subsection c, Senate Bill No. 272. It is our understanding that the Comptroller of Public Accounts considered that there was no appropriation for travel computation on the basis

of the aforementioned Section of Senate Bill No. 272; but, on the other hand, the computation had to be on the basis of the shortest route between points based upon the mileage indicated on the Farm-to-Market roads as provided in House Bill No. 4.

". . .

"In addition to the foregoing questions pertaining to computation of mileage, we wish to raise another question which, although slightly different, is related. In determining which is the shortest practical route between points, not only the question of the shortest distance but also the question of practicability is involved; for example, the State highway from Austin to Dallas using the super highway around Waxahachie embodies the distance of 199 miles. By 'cutting off' of the super highway and going through the business district of Waxahachie, the shortest distance is 197 miles. The Comptroller has cut back some of the expense accounts for similar reasons and one in particular involving this illustration.

"It is our interpretation that it was more practical to use the super highway than to go through the town of Waxahachie thereby saving two miles in order to use the shortest route which, in this instance, did not comply with the 'shortest practical route.' (Emphasis already added).

"Subsection c of Section 6 of Senate Bill No. 272 and Subsection a, Section 32, Article V of House Bill No. 4, both provide that the latest official highway map as published and released by the State Highway Department shall be used in computing mileage for travel reimbursement; however, the Comptroller has prescribed that the Trucker's Guide shall be used in computing mileage.

". . .

"We will appreciate your reviewing these Sections of the Laws and your giving us your

Mr. John H. Winters, page 3 (WW-739)

interpretation as to how the mileage should be computed by the employees of the State Department of Public Welfare for transportation reimbursement purposes.

". . ."

Subsection c of Section 6 of Senate Bill 272, Acts of the 56th Legislature, Regular Session, 1959, provides as follows:

"In determining transportation reimbursements for travel by private conveyance, the Comptroller shall base reimbursement on mileage along the shortest practical route between point of origin and the destination via intermediate points at which official state business is conducted and other necessary mileage at points where official state business is conducted. The most recent annual official highway map as published and released by the State Highway Department shall be used by the Comptroller in computing the amounts of reimbursement for transportation by personal car within the State. In computing distances in excess of fifty miles, officially designated state and federal highways shall be used in determining the shortest practical route between the point of origin and the point of destination via intermediate points at which official state business is conducted and other necessary mileage at points where official state business is conducted. In computing distances of fifty miles or less, state and federal highways and Farm-to-Market roads shall be used by the Comptroller in determining the shortest practical route between the point of origin and the point of destination via intermediate points at which official state business is conducted and other necessary mileage at points where official state business is conducted."

Section 32 of Article V of House Bill 4, Acts of the 56th Legislature, Third Called Session, provides in part as follows:

"TRANSPORTATION ALLOWANCE. None of the moneys appropriated by this Act for travel expense may be expended to reimburse costs of transportation on official business except in compliance with the

following conditions, limitations, and rules:

"a. The rate of such reimbursement shall be eight (8) cents per mile for the employee's personally owned conveyance. None of the moneys appropriated for travel expense for mileage within the State of Texas for use of personally owned automobiles shall be expended unless the shortest route between points is used. This shall also include the use of Farm-to-Market roads.

"In accordance with the provisions of Senate Bill No. 272, Acts of the Fifty-sixth Legislature, the latest official highway map as published and released by the State Highway Department shall mean the official map in use at the close of each fiscal year."

Both of the acts referred to above became effective September 1, 1959.

Senate Bill 272 is clearly a general law. The act does not mention Farm-to-Market roads in specifying the types of roads which the Comptroller is to use in computing distances in excess of fifty (50) miles. It is a well known rule of statutory construction that the express mention of one thing in an act is tantamount to an express exclusion of all others. 39 Tex.Jur. 188, Statutes, Sec. 100. The validity of this construction is confirmed here by the express mention of Farm-to-Market roads among the types of roads that are to be used in computing distances of fifty (50) miles or less. Hence, it is seen that Senate Bill 272 requires the Comptroller in determining reimbursements for travel by private conveyance to use only State and Federal highways in computing distances in excess of fifty (50) miles and to use Farm-to Market roads as well as State and Federal highways in computing distances of fifty (50) miles or less.

Therefore, if the quoted portion of House Bill 4, the General Appropriation Bill, means that the Comptroller is to use Farm-to-Market roads in addition to State and Federal highways in computing distances in excess of fifty (50) miles, it is in conflict with and attempts to amend a general statute. To the extent of such conflict and attempted amendment, the quoted portions of the appropriation bill would be ineffectual because a provision of an appropriation bill is powerless to amend or modify or repeal an existing general law. State v. Steele, 57 Tex. 200 (1899); Moore v. Sheppard, 144 Tex. 537

Mr. John H. Winters, page 5 (WW-739)

192 S.W.2d 559 (1946); Attorney General's Opinions V-412 (1947); V 1304 (1946); and V-1254 (1951).

Provisions of a general appropriation bill which detail, limit and restrict the use of funds therein appropriated are invalid when in conflict with general legislation or where they amount to general legislation. Conley v. Daughters of the Republic, 106 Tex. 80, 156 S.W. 197 (1913); Attorney General's Opinion V-1254 (1951).

But, in our opinion, the provisions in question are not in conflict when read together. It is a settled rule of statutory interpretation that statutes dealing with the same general subject are considered in pari materia and will therefore be read and construed together as though they were parts of the same law, all parts thereof being harmonized, if possible. 39 Tex.Jur. 253, Statutes, Sec. 135. This rule applies with even greater force to acts passed at the same session of the Legislature. 39 Tex.Jur. 259, Statutes, Sec. 137.

When so read it is apparent that Section 32 of House Bill 4, in providing "None of the moneys appropriated for travel expense for mileage within the State of Texas for use of personally owned automobiles shall be expended unless the shortest route between points is used," means that none of the moneys appropriated for such purpose shall be expended except for claims computed on the shortest practical route based on Farm-to-Market roads, State highways and Federal highways where the distance is fifty (50) miles or less and based only on State and Federal highways where the distance is in excess of fifty (50) miles.

By "shortest route" the quoted portion of House Bill 4 must be referring to the shortest route which the Comptroller is allowed by law, namely Senate Bill 272, to compute. The absurdity of otherwise construing the phrase is seen when the phrase is sought to be applied literally and without reference to the other statute on the same subject. The phrase would include not only county roads, but all other paths and traces which might conceivably be negotiated by an automobile. But a Court will never adopt a construction that will make a statute absurd or ridiculous if the language is susceptible of any other meaning. 39 Tex.Jur. 222, Statutes, Sec. 118.

The sentence in House Bill 4, "This shall also include the use of Farm-to-Market roads," is in no way inconsistent with Senate Bill 272 in that the "shortest route," as we have construed that phrase, does include the use of Farm-to-Market roads. It includes Farm-to-Market roads where the distance is

fifty (50) miles or less. Moreover, House Bill 4 does not elsewhere detail the manner in which distance is computed as was done in Senate Bill 272, and the subject sentence similarly avoids an express recapitulation of the situations wherein Farm-to-Market roads are to be used in computing distance. The sentence thus reveals a consistent generality rather than a specific limitation.

Accordingly, we are of the opinion that under the quoted portion of House Bill 4, in determining the amounts of reimbursement for travel by personal auto in this State, the computation of distances in excess of fifty (50) miles is to be based on the shortest practical route using State and Federal highways and not Farm-to-Market roads.

The question of what is the "shortest practical route" in a particular situation involves a determination of fact which this department is not authorized to make, our function being to set forth the legal principles by which the Comptroller and the claimant are to be governed in determining the "shortest practical route."

It is clear that directness is not the sole criterion in determining the "shortest practical route." Such factors as time and road conditions must be considered along with directness in determining the practicability of a route.

From both of the acts, it is manifest that the route for which reimbursement is sought must be shown on the latest official highway map as published and released by the Texas Highway Department. The most recent annual official highway map as published by the State Highway Department is, in our opinion, the only authority upon which the Comptroller is authorized to rely in computing mileage for purposes of reimbursement. Neither of the acts considered here mention any other book, map or reference which the Comptroller might use to establish mileage. On the contrary, both of the acts are quite explicit in providing that the Comptroller shall use the State Highway Department map. By so providing, these acts restricted the Comptroller to such map in light of the "Expressio Unius" rule of statutory construction. 39 Tex.Jur. 188, Statutes, Sec. 100.

SUMMARY

Under Subsection c of Section 6 of Senate Bill 272, Acts of the 56th Legislature,

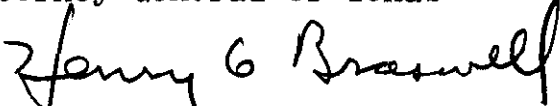
Mr. John H. Winters, page 7 (WW-739)

Regular Session, and Section 32 of Article V of House Bill 4, Acts of the 56th Legislature, Third Called Session, the computation of distances in excess of fifty (50) miles, in determining the amounts of reimbursements for travel by personal auto in this State, shall be based on the shortest practical route using State and Federal highways and not Farm-to-Market roads. The question of what is the shortest practical route in a particular situation involves a fact determination which this department is not authorized to make. Under said acts the computation of mileage shall be based only on the latest official highway map as published and released by the Texas Highway Department.

Very truly yours,

WILL WILSON
Attorney General of Texas

By


Henry G. Braswell
Assistant

HGB:mg:mfh

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

Dean C. Davis
Robert G. Scofield
Marietta Payne

REVIEWED FOR THE ATTORNEY GENERAL
BY: Leonard Passmore