



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

May 4, 1960

The Honorable K. L. Berry
Major General
The Adjutant General of Texas
Austin, Texas

Opinion No. WW-836

Re: Can a Commissioners Court and the Council or Commission of a city or town appropriate money to pay the necessary expenses of the administrative units of the National Guard and the Texas State Guard Reserve Corps located in their respective counties or in or near their respective cities or towns, under the provisions of Articles 5885 and 5819c, Vernon's Civil Statutes.

Dear General Berry:

By your opinion request of March 14, 1960, you ask the following questions:

"1. Can a Commissioners Court and the Council or Commission of a city or town in this State appropriate money to pay the necessary expenses of the administrative units of the National Guard of this State located in their respective counties or in or near their respective cities or towns, under the provisions of Article 5885 of the Revised Civil Statutes of the State of Texas? If the answer to the above question is in the negative, can such appropriations be legally made under any other laws of the State of Texas?

"2. Can a Commissioners Court and the Council or Commission of a city or town in this State

appropriate money to pay the necessary expenses of the administrative units of the Texas State Guard Reserve Corps located in their respective counties, or in or near their respective cities or towns under the provisions of Article 5891c, of the Revised Civil Statutes of the State of Texas? If the answer to the above question number 2 is in the negative, can such appropriation be made under any other laws of the State of Texas?"

Article 5885, Vernon's Civil Statutes, which follows, provides that:

"Each Commissioners' Court and the Council or Commission of each City or Town in this State is hereby authorized in their discretion, to appropriate a sufficient sum, not otherwise appropriated, to pay the necessary expenses of the administrative units of the National Guard of this State located in their respective Counties and in or near their respective Cities or Towns, not to exceed the sum of One Hundred (\$100.00) Dollars per month for such expenses from any one such Court, Council or Commission for any one organization; and in addition, in behalf of their respective Counties, Cities or Towns, to donate, either in fee simple or otherwise, to the Texas National Guard Armory Board, or to any one or more of said units for conveyance to said Board, one or more tracts of land as sites upon which to construct Armories and other buildings suitable for use by such units; and any and all such donations heretofore made to said Board are hereby validated and any such donation heretofore made to any such administrative unit, either as a corporation or otherwise, and conveyed or to be conveyed to said Board, is hereby validated."

Under the above quoted provisions, the Commissioners' Court of a county and the Council or Commission of a city or town are legally authorized to pay, within the limits prescribed, the necessary expenses of the administrative units of the Texas National Guard.

Section 5(a), Article 5891c, provides that:

"The Commissioners Court of each county and the Council or Commission of each city

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or town in this State is hereby authorized, in the discretion of each, to appropriate a sufficient sum not to exceed One Hundred Dollars (\$100) per month, not otherwise appropriated, to assist in paying the necessary expenses for the administration of any unit of the Texas State Guard Reserve Corps located in their respective counties and in or near their respective cities or towns; and any and all such donations heretofore made by any Commissioners Court or any Council or Commission of any city or town to any such unit or units of the Texas State Guard Reserve Corps, is hereby validated."

Under the above quoted provisions, the Commissioners' Court of each county and the Council or Commission of each city or town are legally authorized to pay, within the limits prescribed, the necessary expenses of the administrative units of the Texas State Guard Reserve Corps.

By your letter, you state that in one city payments have been placed in abeyance because of the doubted constitutionality of these statutes in view of Section 52 of Article III of the Texas Constitution which provides:

"Sec. 52. The Legislature shall have no power to authorize any county, city, town or other political subdivision of the State to lend its credit or to grant money or thing of value in aid of, or to any individual, association or corporation whatsoever . . ."

We have examined these statutes with relation to the Constitution and other legislation, and we are of the opinion that the said statutes are constitutional. The National Guard and the State Guard Reserve Corps are arms of the State and were created for the public generally.

In King v. Sheppard, 157 S.W.2d 682 (Civ.App. 1941, writ ref., w.o.m.), the holding of the Court was that the State is not an individual, association or corporation within the meaning of Section 52 of Article III.

We, therefore, respectfully advise you that your questions are to be answered in the affirmative.

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SUMMARY

Under Articles 5885 and 5891c, Vernon's Civil Statutes, the Commissioners' Court of each county and the Council or Commission of each city or town are legally authorized to pay the necessary expenses of the administrative units of the Texas National Guard and the Texas State Guard Reserve Corps.

Yours very truly,

WILL WILSON
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By



William H. Pool, Jr.
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WHPjr:ms:mfh

APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL
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