



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 1, 1962

Affirmed by C-397

Honorable Robert B. McLeaish, Jr.
County Auditor
Hidalgo County
Edinburg, Texas

Opinion No. WW-1466

Re: Questions relative to proper funds to be used to pay the traveling expense of a presiding judge and his court reporter under the stated facts.

Dear Mr. McLeaish:

Your request for an opinion reads as follows:

"As you are well aware, citizens of the Lower Rio Grande Valley have for a number of years been involved in litigation of the now famous 'water suit,' Cause No. B-20576 and styled THE STATE OF TEXAS vs. HIDALGO COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 18, ET AL. This suit has become a good bit more complex as the years have gone by and at the present time is complicated by a number of factors. Among those factors which make the 'water suit' unique are the following:

"1. The suit is one in which there are numerous litigants hailing from four counties: Hidalgo, Cameron, Starr and Willacy Counties.

"2. The presiding judge of the 93rd Judicial District of the State of Texas, which court is trying the water suit, was disqualified by both the Court of Appeals and the Supreme Court of Texas.

"3. Chief Justice Calvert, rather than the administrative judge of the Fifth Judicial Administrative District, appointed

a judge to try this case. Judge J. H. Starley, of Pecos, was appointed by Chief Justice Calvert to preside over the water suit. Judge Starley has found it necessary to bring this court reporter with him when traveling to this county in connection with his judicial duties here.

"4. Administrative as well as judicial problems are involved in the trial of the water suit.

"5. To aid in administration of the water use from time to time, a fund has been created by contribution of the water users which enables them to pay for the services of a water master, various employees under the water master, various professional fees and other expenses. The users are charged as follows: Farmers pay 3¢ per acre quarterly or 5¢ per acre foot used quarterly, whichever is greater; each city has a specific weekly water allotment and pays 65¢ per acre foot quarterly on this weekly water allotment or 5¢ per acre foot on the water used during the quarter, whichever is greater.

"As a result of these unique features of the water case that is now being tried in the 93rd Judicial District Court of the State of Texas, which Court is located in Hidalgo County, Texas, several questions have arisen:

"1. Since the presiding judge of the water suit, Judge Starley, finds it necessary to travel great distances and live away from home for extended periods of time, is it legal to pay Judge Starley from the fund that has been created by contributions from the various users? If it is legal to pay Judge Starley's expenses and the expenses of his reporter from this fund, exactly what procedure would be followed in providing for these expenses?

"2. If it is not legal to pay Judge Starley and his reporter from the water

users' fund, must Hidalgo County bear the entire cost of travel expenses of Judge Starley and his reporter? If it is not necessary for Hidalgo County to bear this entire cost and the cost can be spread among the other counties involved in the water suit, what procedure and what basis of proration must be made to allow the other counties to pay their prorated share of the cost of the water suit?"

Subdivisions 3 and 4 of Section 2a and Section 10 of Article 200a, Vernon's Civil Statutes, provide as follows:

"(3) In addition to the method set forth in this Act for the assignment of judges by the Presiding Judges of the Administrative Judicial Districts, the Chief Justice shall have the power to designate and assign judges of one or more Administrative Judicial Districts for service in other Administrative Judicial Districts whenever he deems such assignment necessary to the prompt and efficient administration of justice. Judges so assigned by the Chief Justice shall perform all the duties and functions authorized in this Act the same as if they had been so designated and assigned by the Presiding Judges of the Administrative Judicial Districts.

"(4) In addition to, and cumulative of, all other compensation and expenses authorized by law and this Act, judges who are required to hold court outside their own districts and out of their own counties under the provisions of this Act, shall receive a per diem of Twenty-five (\$25.00) Dollars for each day, or fraction thereof, which they spend outside their said districts and counties in the performance of their duties; such additional compensation to be paid in the same manner as their salaries are paid by the State upon certificates of approval by the Chief Justice or by the Presiding Judge of the Administrative Judicial District in which they reside."

"Sec. 10. When the district judges are assigned under the provisions of this Act to districts other than their own district, and out of their own counties, they shall, in addition

to all other compensation permitted or authorized by law, receive their actual expenses in going to and returning from their several assignments, and their actual living expenses while in the performance of their duties under assignments, which expenses shall be paid out of the General Fund of the county in which their duties under assignments are performed, upon accounts certified and approved by the Presiding Judge of the Administrative District."

In view of the foregoing provisions and under the facts submitted, the presiding judge is entitled to \$25.00 per day for each day or fraction thereof spent outside of his district, in addition to and cumulative of all other compensation and expenses authorized by law, and is entitled to his actual expenses in going to and returning from and his actual living expenses while in the performance of his duties under the assignment.

We know of no constitutional or statutory authorization which would permit a judge hearing a case to be paid from a fund consisting of contributions made by parties interested in the outcome of a particular suit. You are therefore advised in answer to your first question that the presiding judge cannot be paid traveling expenses or compensation from the fund which has been created by contributions of various water users. In answer to your second question, the presiding judge is to be paid his actual expenses outlined above from the General Fund of Hidalgo County (Section 10 of Article 200a, V.C.S.), and is to be paid the \$25.00 per diem by the State (Section 2a of Article 200a).

We know of no provision either in the Constitution or statutes of this State which authorizes the payment of traveling expenses of a court reporter. His compensation consists of salary and fees for the preparation of statements of fact. You are therefore advised that the traveling expenses incurred by the court reporter may not be paid by the State or County. The preceding sentence is not to be construed as passing on the authority of the parties to contract with the court reporter to perform services for the use and benefit of parties seeking the services of a court reporter.

SUMMARY


A judge on an assignment to hold court outside his own district pursuant to the

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provisions of Article 200a, Vernon's Civil Statutes, is entitled to receive a per diem of \$25.00 for each day or fraction thereof which he spends outside his district and his actual living expenses, together with his actual traveling expenses going to and returning from his assignment. All of the foregoing is in addition to and cumulative of all other compensation authorized by law.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL
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