



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

September 8, 1964

Honorable Byron Tunnell
Speaker
House of Representatives
Austin, Texas

Opinion No. C-307

Re: Compensation of a member of
the House of Representatives
who has a contractual agree-
ment with the High Plains
Underground Water Conserva-
tion District No. 1.

Dear Mr. Tunnell:

Your request for an opinion reads as follows:

"I request that you advise me whether or not I can legally authorize expenditures of monies to and for a member of the House of Representatives under the facts set out.

"The Honorable H. G. Wells of Tulia, Texas, Representative, District 89, consisting of Briscoe, Hale, Swisher and Floyd Counties, entered into a contract with the High Plains Underground Water Conservation District No. 1, to render legal services to the District. A copy of the contract is attached hereto for your information and consideration.

"At that time, September 30, 1963, in an abundance of caution, Representative Wells requested that he be taken off the monthly House of Representative Member's payroll and since that time he has not received any compensation as a member of the House of Representatives.

"I request that you advise me:

- "1. Does the relationship between Representative Wells and the High Plains Underground Water Conservation District No. 1, as evidenced by the contract preclude him from receiving the Constitutional salary as a member of the House of Representatives?
- "2. If the answer to question no. 1 is in the negative, can I now authorize Representative

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Wells to be paid for the months he has not received such salary and if so, can he be paid in a lump sum?"

We have carefully examined the contractual agreement entered into by and between the High Plains Underground Water Conservation District No. 1 and Representative Wells. Under this agreement, Representative Wells became an independent contractor with the Conservation District and cannot be considered an employee of the District nor an officer of the District. Therefore, Section 40 of Article XVI of the Constitution of Texas prohibiting a person from holding or exercising at the same time more than one civil office of emolument is not applicable to Representative Wells, under the facts submitted. Likewise, Section 33 of Article XVI of the Constitution of Texas prohibiting the Accounting Officers of this State from paying a warrant in favor of any person for salary or compensation as agent, officer, or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, is not applicable.

While Attorney General's Opinion C-221 (1964) held that a member of the Legislature is not eligible to receive his salary as a member of the Legislature while he is employed by a governmental agency of the State, such holding is not applicable to the facts submitted in your request, for the reason that the agreement between the Conservation District and Representative Wells creates the relationship of independent contractor rather than constituting a contract of employment.

In view of the foregoing, you are advised in answer to question no. 1 that the relationship between Representative Wells and the High Plains Underground Water Conservation District No. 1 does not preclude Representative Wells from receiving the constitutional salary as a member of the House of Representatives.

In answer to your second question, you are advised that since his constitutional salary for the months he has not received is now due and payable, such salary may be paid in a lump sum.

SUMMARY


An agreement between an agency of the State and a member of the Legislature which creates the relationship of an independent contractor, rather than constituting a contract of employment, does not violate the provisions of Sections 33 or 40 of Article XVI of the Constitution of Texas and, therefore does not preclude the payment of

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the constitutional salary to such
member of the Legislature.

Yours very truly,

WAGGONER CARR
Attorney General

By 
John Reeves
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman
Robert Smith
Brady Coleman
Roy Johnson

APPROVED FOR THE ATTORNEY GENERAL
By: Roger Tyler