



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

February 11, 1966

M. H. Crabb, M.D., Secretary
Texas State Board of Medical Examiners
1714 Medical Arts Building
Fort Worth, Texas

Opinion No. C- 606

Re: Authority to pay the traveling expenses of an out of state witness appearing before the Texas State Board of Medical Examiners, in obedience to a subpoena.

Dear Dr. Crabb:

You have requested an opinion as to whether an out of state witness who was subpoenaed by the Texas State Board of Medical Examiners to appear before it may be paid his traveling expenses out of monies appropriated to the Texas State Board of Medical Examiners.

The Texas State Board of Medical Examiners has the power "to issue subpoenas, and subpoenas duces tecum to compel the attendance of witnesses, the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction." Article 4509, Vernon's Civil Statutes.

Article 4506, Vernon's Civil Statutes, provides in part as follows:

"The Texas State Board of Medical Examiners shall have the right to cancel, revoke, or suspend the license of any practitioner of medicine upon proof of the violation of the law in any respect with regard thereto, or for any cause for which the Board shall be authorized to refuse to admit persons to its examination, as provided in Article 4505 of the Revised Civil Statutes of Texas, 1925, as amended.

"Proceedings under this Article shall be begun by filing charges with the Texas State Board of Medical Examiners in writing and under oath. Said charges may be made by any person or persons. The President of the Texas State Board of Medical Examiners shall set a time and place for hearing, and shall cause a copy of the charges together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel at least ten (10) days prior thereto. . . . The Board shall thereupon determine the charges upon their merits."

Item 3 of the current appropriation to the Texas State Board of Medical Examiners reads as follows:

"For the Years Ending
August 31, 1966 August 31, 1967

<p>"3. Consumable supplies, and materials, current and recurring operating expense (excluding Board and Staff travel), contingent expenses, expenses for enforcement purposes and court costs (<u>including travel expense for witnesses, publication of notices, purchase of evidence, and legal fees</u>), and capital outlay</p> <p>(Emphasis added).</p>	23,900	23,900"
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The presence of the witness in question was necessary in order for the Board to carry out its duties prescribed by law. Therefore, the Legislature has specifically authorized the payment of travel expense for necessary witnesses and, since such expenditure is a necessary expense to the performance of the duties provided by law for the Texas State Board of Medical Examiners, it is our opinion that such expenditure does not constitute a gift or donation within the meaning of Section 51 of Article III of the Constitution of Texas. You are therefore advised that the travel voucher submitted with your request is due and payable.

SUMMARY

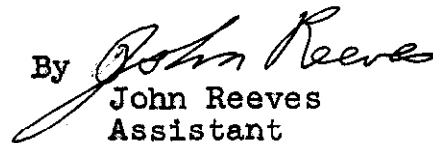
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Medical Examiners in obedience to a subpoena is payable by virtue of the provisions of Articles 4506 and 4509, Vernon's Civil Statutes, and Item 3 of the current appropriation to the Texas State Board of Medical Examiners.

Yours very truly,

WAGGONER CARR
Attorney General

By 
John Reeves
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman
Pat Bailey
H. Grady Chandler
Phillip Crawford
Ben Harrison

APPROVED FOR THE ATTORNEY GENERAL
By: T. B. Wright