



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

November 1, 1971

Hon. Robert S. Calvert  
Comptroller of Public Accounts  
State Finance Building  
Austin, Texas

Opinion No. M-939-A

Re: Questions relating to  
certain travel expenses  
of State employees, as  
provided for in Art. V,  
Sec. 13(a) and (b), Senate  
Bill 11, 62nd Legislature,  
R.S., 1971, as amended --  
Supplemental Opinion.

Dear Mr. Calvert:

Since the release of our Opinion No. M-939 on August 19, 1971, certain questions have been raised concerning the third question set forth in your opinion request letter. That question involved the applicability, vel non, of the formula defining "day" in Sec. 13(b) of Article V of the current General Appropriation Bill (S.B. 11, Acts 62nd Leg., R.S., 1971, as amended by S.B. 7, 1st C.S., 62nd Leg., 1971) (at p. V-41).

In view of the questions raised, we consider it necessary to issue this supplemental opinion, clarifying our Opinion No. M-939 and modifying the same insofar as your third question is concerned.

In Opinion No. M-939 we held that the formula defining "day" in Section 13(b) was applicable to State employees traveling on both in-State and out-of-State business. On reconsideration of this holding, we are of the opinion that it was erroneous insofar as it held that State employees traveling on out-of-State business were subject to the formula.

We now hold that the question of whether the formula of Sec. 13(b) is applicable to State employees traveling on out-of-State business is determined by the provisions of subdivision (a) of that Sec. 13 which reads as follows:

"Rates of allowance.

Each employee traveling on State business inside the boundaries of the State of Texas shall be allowed, in lieu of actual expenses incurred for meals and lodging, a flat per diem rate of not to exceed sixteen dollars (\$16).

"Each employee traveling on State business outside of the boundaries of the State of Texas shall receive reimbursement for the actual cost of meals, lodging and incidental expenses, not to exceed thirty-five dollars (\$35.00) per day. When both in-state and out-of-state travel occur in the same calendar day, the rate of travel allowance for all travel in that day shall be in an amount not to exceed thirty-five dollars (\$35.00) per day." (emphasis added.)

The wording of Sec. 13(a) is clearly different when it concerns in-State and out-of-State travel. Employees on in-State travel are to be paid a flat, per diem rate in lieu of their actual expenses. This rate is determined by applying the "day" formula of Sec. 13(b).

However, Sec. 13(a) also states that employees on out-of-State travel are to be paid their actual expenses, not to exceed \$35.00 per day. This states the intent of the Legislature that State employees traveling on out-of-State business are to be reimbursed for their actual expenses, and are, therefore, not bound by the formula of Section 13(b).

Accordingly, our Opinion No. M-939 (and item 3 of the Summary thereto) is modified, and we hold that the formula of Sec. 13(b) defining "day" is applicable only to employees traveling on in-State business, and that the formula is not applicable to em-

ployees traveling on out-of-State business. When both in-State and out-of-State travel occur during the same calendar day, the formula of Sec. 13(b) is not applicable, and the employee's expense allowance shall be computed in accordance with Sec. 13(a) as if his entire day had been spent on out-of-State travel.

S U M M A R Y

(1) Our Opinion No. M-939 is modified insofar as that Opinion deals with the applicability of the formula defining "day" found in Sec. 13(b) of Article V of the current General Appropriation Bill (S.B. 11, Acts 62nd Leg., R.S., 1971, as amended by S.B. 7, 1st C.S., 62nd Leg., 1971) to employees traveling on out-of-State business.

(2) State employees traveling on out-of-State business are not subject to the formula of Sec. 13(b) defining "day". They are to be reimbursed for their actual travel expenses, not to exceed \$35.00 per day, in accordance with Sec. 13(a).

(3) State employees traveling on in-State business are subject to the formula of Sec. 13(b) defining "day" and, in lieu of their actual expenses, are to receive a flat, per diem rate not to exceed \$16.00 per day, to be computed in consonance with the formula of Sec. 13 (b).

(4) State employees engaging in both in-State and out-of-State travel on the same calendar day are not subject to the formula of Sec. 13(b). Their expenses are to be computed as if they had been on out-of-State travel the entire day.

Very truly yours,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

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