



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

October 25, 1972

Honorable Robert S. Calvert
Comptroller of Public Accounts
State Finance Building
Austin, Texas 78774

Opinion No. M-1246

Re: Whether judges, including retired judges, may be paid actual travel expense while serving in the City of Austin under appointment, and related questions.

Dear Mr. Calvert:

Your request for an opinion reads as follows:

"This department has been requested by the Honorable John Onion, Jr., presiding Judge of the Court of Criminal Appeals to ask the following questions regarding Article 1811e, R.C.S. in order for the provisions of this Article to be put into effect in an orderly manner.

"The Questions are:

"1. Can a Judge, including a retired Judge, legally be paid his actual travel expense while in the city of Austin under an appointment?

"2. Can a Judge, including a retired Judge, legally be paid the \$25.00 per day for any period of time that he is not in Austin on that day under an appointment?

"3. Can a Judge, including a retired Judge, legally be paid the \$25.00 per day when said Judge resides in Austin under an appointment?

"4. Can a Judge, including a retired Judge, legally receive actual expenses when he resides away from Austin for returning to his residence nightly or on weekends while under an appointment as a commissioner either on a case or cases basis or for a period of time?

"5. Can an active District Judge be paid the

difference between his salary as District Judge and the amount allowed as a commissioner for each days service as a commissioner or must the District Judge be paid the amount allowed as a commissioner 'in lieu of' his salary as District Judge?"

Subdivision (d) of Section 1 of Article 1811e, Vernon's Civil Statutes, as amended by Senate Bill 529, Acts 62nd Leg., R.S. 1971, Ch. 462, p. 1646, provides:

"(d) The compensation of a judge while sitting as a commissioner of the court shall be paid out of moneys appropriated from the General Revenue Fund for such purpose in an amount equal to the salary of the judges of the Court of Criminal Appeals, in lieu of retirement allowance or in lieu of the compensation he receives as an active judge of another court. A judge sitting as a commissioner of the court also shall receive his actual travel expense to and from Austin, Texas, and per diem of \$25 per day while he is assigned to the Court of Criminal Appeals in Austin." (Emphasis added.)

It was held in Attorney General's Opinion M-1225 (1972):

"Senate Bill 529, Acts 62nd Leg., R.S. 1971, Ch. 462, p. 1646 (Article 1811e, Vernon's Civil Statutes), authorizing the designation and appointment of a retired appellate or district judge or an active appellate judge or district judge to sit as a commissioner of the Court of Criminal Appeals, does not create an 'office', but merely provides additional duties on members of the Judiciary and is therefore valid. The appointee may be compensated."

An appointee as commissioner is entitled to receive his actual travel expenses to and from Austin. Such appointee is also entitled to receive a per diem of \$25.00 per day "while he is assigned."

Your questions are accordingly answered as follows:

1. A judge, including a retired judge, appointed as commissioner, is legally entitled to his actual travel expenses "to and from Austin, Texas." Therefore he does not receive any "travel expense" while in the City of Austin under an appointment.

2. A judge, including a retired judge, is entitled to receive a per diem of \$25.00 per day "while he is assigned". Therefore such judge may legally be paid the \$25.00 per day for any day he is under an appointment, whether he is in Austin or not.

3. The \$25.00 per diem provided for in Article 1811e, Vernon's Civil Statutes, applies to all appointees whether the appointee resides in Austin or elsewhere. Therefore a judge, including a retired judge, may legally be paid the \$25.00 per day when said judge resides in Austin under an appointment.

4. An appointee is entitled to his actual travel expenses "to and from Austin." Therefore a judge, including a retired judge, may legally receive his actual travel expenses when he resides away from Austin for returning to his residence nightly or on weekends while under an appointment as a commissioner either on a case or cases basis or for a period of time.

5. Subdivision (d) of Section 1 of Article 1811e, Vernon's Civil Statutes, specifically provides that the compensation of said appointee shall be an amount equal to the salary of the judges of the Court of Criminal Appeals in lieu of the compensation he receives as an active judge of another court.

This provision is substantially identical with the provisions of Section 7 of Article 6228b, Vernon's Civil Statutes, relating to assignment of retired judges. Section 7 provides: "While assigned to said court such judges shall be paid an amount equal to the salary of judges of said court in lieu of retirement allowance."

The Employees Retirement System of Texas has construed the provisions above quoted of Article 6228b to authorize the Retirement System to continue to pay retired judges the retirement allowance of said judges during the time of assignment and said retired judges receive the difference between the amount of such retirement allowance and the amount of salary authorized under Section 7 of Article 6228b, Vernon's Civil Statutes. Under such construction the Employees Retirement System in budgeting their request for an appropriation to meet the obligation of retirement allowances is based on the assumption that all retired judges will remain on the retirement payroll and the Legislature has acquiesced in this construction. It is therefore our opinion that such construction should be followed and a similar construction should be placed on the provisions of Subdivision (d) of Section 1 of Article 1811e, Vernon's Civil Statutes. This construction is consistent

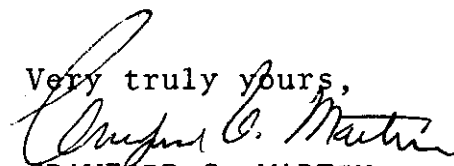
with the pattern for the payment of retired judges assigned to active duty prescribed by the Legislature in Article 200a, Vernon's Civil Statutes.

You are therefore advised that an active judge may be paid the difference between his salary as district judge and the amount allowed as a commissioner for each day's service as a commissioner.

S U M M A R Y

The compensation of an appointee under the provisions of Article 1811e, Vernon's Civil Statutes, is paid from the General Revenue Fund in an amount equal to the salary of the judges of the Court of Criminal Appeals. Said appointee is also entitled to his travel expenses to and from Austin and a per diem of \$25.00 per day while he is assigned and serves.

Very truly yours,



CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by John Reeves
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
W. E. Allen, Co-Chairman
Jack Sparks
Fisher Tyler
James Hackney
Scott Garrison

SAMUEL D. McDANIEL
Staff Legal Assistant

ALFRED WALKER
Executive Assistant

NOLA WHITE
First Assistant