



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

August 13, 1954

Hon. Weldon Hart, Chairman
Texas Employment Commission
Austin, Texas

Letter Opinion No. MS 148

Re: Payment of per diem,
travel expenses and
subsistence as reim-
bursement to members
of the State Advis-
ory Council of the
Texas Employment Com-
mission.

Dear Mr. Hart:

You have requested the opinion of this office concerning whether members of the State Advisory Council of the Texas Employment Commission can be paid per diem, travel expenses and subsistence as reimbursement in connection with their attendance at meetings of the Council.

All of the funds for operating costs of the Texas Unemployment Compensation Act are provided by the Federal Government under the provisions of the Wagner-Peyser Act, 48 Stat. 113, now codified as 29 U.S.C.A., Sections 49 through 49(1), and Title III of the Social Security Act, now codified as 42 U.S.C.A., Sections 501-503. Federal funds received by this State under the provisions of these Federal Acts are deposited in the State Treasury in the Unemployment Administration Fund under the provisions of Art. 5221b-11, V.C.S. These funds then become State funds and are appropriated by the Legislature. However, in order to be, and remain, eligible to receive monies under the provisions of the Federal Acts, the State is required to conform to the terms, conditions, and requirements thereof as a condition precedent to the grant of such Federal funds.

The provisions of 29 U.S.C.A., Section 49j, require that the Federal Security Administrator establish a Federal Advisory Council and, also, that he require that those States receiving funds under the Wagner-Peyser Act organize a similar State advisory council.

In 1936 the Texas Legislature passed the Texas Unemployment Compensation Act, now codified as Articles 5221b-1 to 5221b-22b, Vernon's Civil Statutes, under which

this State accepted the terms and conditions of the Wagner-Peyser Act.

Article 5221b-9(a) makes it the duty of the Texas Employment Commission to administer the Act and further provides that "it shall have power and authority to adopt, amend, or rescind such rules and regulations, to . . . make such expenditures . . . and take such other action as it deems necessary or suitable to that end. . . ."

That portion of the general appropriations act for the current biennium (H.B. 111, Acts 53rd Leg., R.S. 1953, ch. 81, p. 127) as pertains to the Texas Employment Commission, provides on pages 200-201, in part, as follows:

"All moneys granted to this State by the Federal Government for the administration of the Unemployment Compensation Act or which are now on deposit to the credit of any funds maintained by the State Treasurer for the Texas Employment Commission and any moneys received for the credit of such funds are hereby appropriated for the purposes authorized by the provisions of the Texas Unemployment Compensation Act and/or for the purposes for which such moneys were granted.

"In order to comply and conform with the terms of Federal Laws and regulations and standards under which such moneys are granted, notwithstanding any other provisions of this Act, moneys granted for administration shall be expended in accordance with the terms of the Texas Unemployment Compensation Act, the standards of the Bureau of Employment Security, and/or United States Employment Service or successors, and the rules or regulations adopted by the Texas Employment Commission to meet such standards; . . ." (Emphasis added.)

Part IV, Section 1001, Employment Security Manual, reads as follows:

"EXPENDITURES FOR SPECIAL PURPOSES

Advisory Councils

"1001 Governing Conditions. Funds granted by the Social Security Administration are available for expenditure in connection with the functions of advisory councils, under the following conditions:

- A. Compensation, if any, of members of the advisory council does not exceed the amount or rate prescribed by State statute, generally applicable to similar bodies in the State, or, where no such rate or basis is prescribed by statute, does not exceed \$15 per day for periods of actual attendance at formal meetings of the council or of duly constituted committees thereof and for periods of necessary travel from places of residence of members to and from places of meeting.
- B. Reimbursement of members of the advisory council for travel expenses from places of residence to places of formal meetings of the council, or of duly constituted committees thereof, does not exceed the limits provided by the regulations applicable to employees of the State agency.
- C. Reimbursement of members of the advisory council for subsistence expenses while attending formal meetings of the council, or of duly constituted committees thereof, does not exceed the limits provided by the regulations applicable to employees of the State agency."

The currently effective travel regulation of the Texas Employment Commission provides, in Sec. 4, as follows:

"Persons Eligible for Reimbursement of Travel Expense.

"a. . . .

"b. Specified classes or groups who incur travel expense in accordance with these regulations, but only when the Bureau of Employment Security has approved such reimbursement." (Emphasis added.)

In Opinion No. S-100 (1953) this office answered several questions concerning the travel expense allowance of officers and employees of the Texas Employment Commission, and held that the travel expense reimbursement paid from the appropriation of the Unemployment Compensation Administration Fund was an "exception" to the general travel expense limitations imposed by Section 8, Article VI, House Bill 111 (now Chapter 81), Acts 53rd Legislature, Regular Session, 1953 (the General Appropriations Act). That opinion also held:

"Thus, it is the opinion of this office that if the rules or regulations adopted by the Texas Employment Commission to govern reimbursement for travel expense are 'in accordance' with agreements made between the Commission, the Bureau of Employment Security and/or the United States Employment Service or successors, and have been approved by the appropriate federal authority as complying with the terms of Federal legislation or regulations under which moneys are granted to the Commission, then such rules are controlling on all matters covered by them, and to that extent the general travel expense regulations of Article VI, Section 8 do not apply."

The standard which has been established by the Federal Government relative to the State Advisory Council is indicated in a letter dated October 15, 1953, from Mr. Ed McDonald, Regional Director, U. S. Department of Labor, to Mr. W. H. Farmer, Administrator of Texas Employment Commission. Mr. McDonald pointed out the requirement for the establishment of a State Advisory Council and authorized the reimbursement of travel expenses incurred by members of the Advisory Council of this State who attended the meeting held in October, 1953. The reimbursement was authorized to be made out of administrative funds and was to include \$10 per diem plus subsistence, mileage and other travel expenses allowable under the terms of the travel regulations of the Texas Employment Commission.

It is quite clear that the federal funds received by this State are appropriated by the Legislature for the purpose of conforming and complying with the terms, conditions

Hon. Weldon Hart, page 5 (MS 148)

and standards established by the Federal Government, that the Federal Government requires that this State establish an Advisory Council, and that the Federal Government has authorized the payment of per diem, subsistence, mileage and other travel expenses to members of the State Advisory Council.

Our opinion is that the payment of per diem, together with subsistence, mileage and other authorized travel expenses to members of the Advisory Councils which are established by the Texas Employment Commission in accordance with the provisions of the Wagner-Peyser Act is authorized by provisions of Federal and State statutes, rules, and regulations, and by provisions of the current Appropriations Act, which have been heretofore set out, and should be paid, subject, of course, to the limitations established therein.

It is also our opinion that members of the State Advisory Council are not employees of this State; therefore, the provisions of House Bill 21, Acts 53rd Legislature, R.S. 1953, are not applicable to them. Opinion No. S-32 (1953).

Yours very truly,

JOHN BEN SHEPPERD
Attorney General of Texas

By


James N. Castleberry, Jr.
Assistant

JNC/wb/rt

15633