



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

November 27, 1990

Honorable Bob Bullock  
Comptroller of Public Accounts  
L.B.J. State Office Bldg.  
Austin, Texas 78774

LO-90-96

Dear Mr. Bullock:

You have requested our opinion regarding the compensation and emoluments due to certain state officials who are called into active military service by the federal government. Article 6829a, V.T.C.S., provides:

Sec. 1. Any person holding a State or District office in the State of Texas, whether as a member of the executive, legislative or judicial departments, when called into the military service of either the State or National Governments, is hereby authorized to file with the Comptroller of Public Accounts of the State, a statement or certificate in writing, to the effect that he waives the payment of his salary or pay or the emoluments of his said office during the period of his military service and authorizing the payment of such salary, pay or emoluments of his office to any other person, who, under the provisions of any law of this State is appointed or elected to temporarily fill such civil office during the absence of such officer, such waiver or assignment to terminate immediately upon the release or discharge of said officer from such military service.

Sec. 2. Such waiver or assignment shall be sufficient authority for the Comptroller of Public Accounts of the State of Texas to issue State warrants and to pay such person so holding such officer's position during his absence in military service out of appropriations made by the Legislature for such office.

Sec. 3. The filing with the Comptroller of Public Accounts of the State of Texas of such waiver or assignment provided for in this Act shall never be construed by any Court of this State to be a resignation from his office by the person entering the military service of the State or National Governments or that his office is vacant by reason thereof.

This statute, enacted in 1943 and never amended, is limited in its application to state and district officers. It does not address the status of employees called into military service.

You express concern about a possible conflict between article 6829a and section 431.005 of the Government Code, which provides:

(a) A person who is an officer or employee of the state, a municipality, a county, or another political subdivision of the state and who is a member of the state military forces or a reserve component of the armed forces is entitled to leave of absence from the person's duties on a day on which the person is engaged in authorized training or duty ordered or authorized by proper authority. During a leave of absence the person may not be subjected to loss of time, efficiency rating, vacation time, or salary.

(b) Leaves of absence under Subsection (a) may not exceed 15 days in a federal fiscal year, except that a member of the legislature is entitled to pay for all days that the member is absent from a session of the legislature and engaged in training and duty as provided by Subsection (a).

(c) A state employee who is a member of the state military forces or a reserve component of the armed forces and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty.

This statute was first enacted in 1949. Acts 1949, 51st Leg., ch. 523, at 954. It was amended in 1953; Acts 1953, 53d Leg., ch. 227, at 584, and again in 1965; Acts 1965.

59th Leg., ch. 690, section 7, at 1601, before being codified in its present form.

We perceive no conflict between article 6829a and section 431.005. Article 6829a merely codifies the common law rule that an emolument of an office is an incident to the title of that office. See Markwell v. Galveston County, 186 S.W.2d 273 (Tex. Civ. App. - Galveston 1945, writ ref'd). The incumbent of an office is entitled to its emoluments during the term for which he is elected or appointed. Bastrop County v. Hearn, 8 S.W. 302 (Tex. 1888). See also, Attorney General Opinion JM-704 (1987); JM-333 (1985).

We need not address here the question of whether section 431.005 applies to individuals called into federal, as opposed to state, military service. Even if that provision applies to federal military service, article 6829a would prevail as to officers, since it deals only with state and district officers, and hence is the more specific enactment. Hidalgo County Water Control & Improv. Dist. v. Hidalgo County, 134 S.W.2d 464 (Tex. Civ. App. - San Antonio 1939, writ ref'd); City of Marshall v. State Bank of Marshall, 127 S.W. 1083 (Tex. Civ. App. 1910, writ ref'd); Harris County Drainage Dist. v. Houston, 35 S.W.2d 118 (Tex. Comm'n App. 1931, no writ).

Accordingly, a state or district officer called into the military service of the United States may waive his salary and emoluments and authorize their payment to any person temporarily serving in his office, if applicable, but he is not required to do so.

Very truly yours,



Sarah Woelk, Chief  
Letter Opinion Section



Rick Gilpin, Chairman  
Opinion Committee

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APPROVED: OPINION COMMITTEE

RG/SW/lcd

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