



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Ennis Favors
Chairman of the Committee of
Privileges, Suffrage and Elections
House of Representatives,
Forty-eighth Legislature,
Austin, Texas

Dear Mr. Favors:

Opinion No. O-5067

Re: Payment of witness before
Legislative Committee.

We quote your letter of January 27, 1943:

"The Committee on Privileges, Suffrage and Elections has before it a challenge by the Honorable Lawrence Bruhl as to the qualifications of the Honorable Harry Davis, this challenge being in the nature of a contest and of which committee I am chairman.

"Several witnesses have been subpoenaed to appear before the aforesaid committee and plans are being made to subpoena others, and the question has been raised in said committee as to the authority of it or its chairman to pay said witnesses their witness fees as provided in Section 1, Rule XXVII of the Forty-Eighth Legislature.

"We cite first Senate Bill No. 1, making an appropriation of Three Hundred and Fifty Thousand Dollars, which passed the House and has been signed by the Governor:

"An Act making an appropriation of the sum of Three Hundred and Fifty Thousand Dollars (\$50,000.00), or so much thereof as may be necessary, out the any funds in the State Treasury not other-

wise appropriated, to pay the contingent expenses, and to pay the mileage and per diem of members and the per diem of officers and employees of the Regular Session of the Forty-eighth Legislature, and to pay any unpaid accounts or expenses of the Forty-seventh Legislature; and declaring an emergency.'

"We quote Section 1, House Rule XXVII of the Forty-eighth Legislature:

"The rule for paying witnesses summoned to appear before the House, or any of its committees, shall be as follows: For each calendar day a witness shall attend, the sum of three (\$3.00) dollars; and for coming to or going from the place of examination he shall receive actual and necessary expenses, and two (\$2.00) dollars for each calendar day which is necessarily consumed in going to and returning from said place of examination: but nothing shall be paid for traveling home when the witness was at the place of trial when summoned. The certificate of the chairman of the committee before which a witness is summoned, of the amount due such witness, shall be sufficient authority for the same to be paid.'

"We quote Section 18, House Rule VII of the Forty-Eighth Legislature:

"Five members, with full control under direction of the House, over the expenditures of the House out of the contingent fund; and it is expressly provided that no claim or bills against the House shall be paid out of the contingent fund, unless the same shall have been previously authorized, and a bill therefore subsequently approved by the Committee on Contingent Expenses, or unless otherwise provided by a vote of the House. The Committee on Contingent Expenses shall have assigned to it a committee clerk who is a bookkeeper and a stenographer, and who shall, under the direction of the Committee, keep an itemized account of all

the supplies and merchandise of whatsoever kind or description, or other expenditures authorized by the Committee, from whom ordered, and the price paid therefor. This statement shall at all times be open to the inspection of any Member of the House, and the minutes of the meetings shall be kept in a well-bound book, and at the close of the session of the Legislature shall be delivered by the chairman of the Committee on Contingent Expenses to the Secretary of State, with the request that it be preserved in the archives of his office.'

"We also cite for your consideration Article 3065, of the R.C.S., of Texas and quote the same:

"The house in which the contest is pending shall, as soon as practicable after the report of the committee has been received, fix a day for the trial of the contest, and shall proceed to determine whether the contestant or contestee, or either of them is entitled to the contestant's seat; provided the said house may hold the election void after full consideration of all the evidence and for the reasons prescribed in Article 3054, and in such case the Governor shall at once be notified of the vacancy. Such fees shall be paid to the witnesses and the officers serving the process as shall be prescribed by the rules of the house in which said contest is pending, and no mileage or per diem shall be paid to either of the parties to said contest until said case is determined, and in no case shall any mileage or per diem be paid to any party against whom any contest is decided.'

"Question No. 1: Is a certificate by me as chairman of the Privileges, Suffrage and Elections Committee, certifying the amount due a witness, sufficient authority to authorize the Speaker and chairman of the Contingent Expense Committee to pay such witness and his actual and necessary expenses and witness fees?

"Question No. 2: Or, in the alternative, is it necessary for the House, by resolution, to appropriate a sum or sums for this purpose before subpoenas are issued and witnesses are brought before such committee, and before such actual and necessary expenses and witness fees are paid?"

Article 3065 specifically provides that "Such fees shall be paid to the witnesses * * * as shall be prescribed by the rules of the house in which the contest is pending. * * *." Section 1 of House Rule XXVII fixes the fees to be paid witnesses before committees of the House. Section 18, House Rule VII, requires previous authorization and subsequent approval by the Committee on Contingent Expenses of expenditures out of the contingent fund "unless otherwise provided by a vote of the House." Section 1, House Rule XXVII otherwise provides in respect to witness fees and expenses, by stating that "the certificate of the chairman of the committee before which a witness is summoned, of the amount due such witness, shall be sufficient authority for the same to be paid."

The certificate provided by Section 1, House Rule XXVII, is therefore sufficient authority for the Chairman of the Committee on Contingent Expenses and the Speaker to furnish the certificate to the Comptroller required by the terms of Senate Bill No. 1.

Senate Bill No. 1 furnishes the necessary appropriation by law required by the terms of Article 8, Section 6, of the Constitution. The incurring of obligations to be paid out of the contingent fund for expenses thus provided must be pursuant to authority given in advance by the House, else the want of "pre-existing law" to authorize the incurring of the obligation will prevent its payment, under the terms of Article 3, Section 44, of the Constitution; but in the case of witnesses, such authority is given by the terms of Section 1, House Rule XXVII.

Very truly yours
ATTORNEY GENERAL OF TEXAS
By (s) R. W. Fairchild
Assistant

RWF-MR
RWF-jp
APPROVED FEB 2, 1943
(s) Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED
Opinion Committee
By B. W. B., Chairman