



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

August 24, 1962

Affirmed by C-397

Honorable Byron L. McClellan
District Attorney
52nd Judicial District
Box 46
Gatesville, Texas

Opinion No. WW-1422

Re: Whether a retired district judge, as defined by Section 5a, Article 200a of Vernon's Civil Statutes, as amended, is entitled to receive the per diem allowance authorized in Section 2a (4) of said Article 200a.

Dear Mr. McClellan:

You have asked for an opinion of this office regarding the applicability to retired district judges of the per diem allowance provided for in the 1961 amendment to the Administrative Judicial Districts Act, Article 200a. Your request includes a statement of facts of an actual case situation from which we can assume the judge in question is properly within the jurisdiction of this Act.

Section 2a (4) of Article 200a of Vernon's Civil Statutes, is as follows:

"In addition to, and cumulative of, all other compensation and expenses authorized by law and this Act, judges who are required to hold court outside their own districts and out of their own counties under the provisions of this Act, shall receive a per diem of Twenty-five (\$25.00) Dollars for each day, or fraction thereof, which they spend outside their said districts and counties in the performance of their duties; such additional compensation to be paid in the same manner as their salaries are paid by the State upon certificates of approval by the Chief Justice or by the Presiding Judge of the Administrative Judicial District in which they reside."

Two questions must be answered to determine the intent of this Section: (1) Does the term "judges" as used in Section 2a (4) comprehend both regular district judges and retired district judges; and, if it does, (2) Where is the retired district judge's district and county for the purpose

of determining when he is entitled to the per diem provided in Section 2a (4)?

The first mention of "retired district judges" in the entire Act appears in Section 5a, the first paragraph of which is as follows:

"Sec. 5a. Both retired district judges, as defined by Article 6228 (b) of the Revised Civil Statutes of Texas, as amended, who have consented to be subject to assignment, and all regular district judges in this state may be assigned under the provisions of this Act by the presiding judge of the administrative judicial district wherein such assigned judge resides. When such district judge is so assigned by the presiding judge of an administrative judicial district to a court in the same administrative district, or to a court in another administrative district upon call of the presiding judge of such other administrative district and then reassigned as provided for in Section 6 of this Act, as amended, it shall be the duty of such judge so assigned or reassigned to serve in such court or administrative district to which he may be assigned, or reassigned unless for good cause presented by him in writing to the presiding judge of his administrative district, he shall be relieved of such assignment by such presiding judge; provided, however, after the presentation of a written statement declining such duty for good cause by such district judge if the presiding judge refuses to relieve the district judge from the assignment, the district judge may, within five days after such refusal, petition the Chief Justice of the Supreme Court of the State of Texas to be relieved from such assignment for good cause, which said Chief Justice may at his discretion grant or refuse."

The barest sentence structure of the first sentence of the section would be: "Both. . . may be assigned. . . by the presiding judge of the. . . district wherein such assigned judge resides. . . ." The second sentence begins: "When

such district judge is so assigned . . ." (Emphasis added). Thereafter, the Section, and other portions of the Act use the terms "judge," "judges," and "district judges" indiscriminately, without further distinction--with only one exception. That exception occurs in the second paragraph of Section 5a, and only because it is necessary to set forth the method of determining the salary of the retired judge. It is clear that all other references to "judges" in this Act include both retired and regular district judges.

Application of one of the oldest fundamental rules of statutory construction supports our conclusion. It is the maxim noscitur a sociis, meaning it is known by its associates. The principle, as stated in 39 Tex.Jur. p. 204, Sec. 109, Ejusdem Generis--Noscitur a Sociis, is:

" . . .the meaning of a doubtful word may be ascertained by reference to the words associated with it. . . ."

The per diem allowance to judges provided in Section 2a (4), quoted in full on page 1 hereof, was added to the Act in 1961 without any amendment to the remainder thereof and without any distinction or exception to those judges governed by the Act who are retired judges. Moreover, we see no valid reason why a retired judge, now actively performing the identical functions of the regular judge, should not receive the same compensation.

There remains only to dispose of the second question. Section 2a (4) authorizes the per diem allowance for each day, or fraction thereof, which they spend "outside their said districts and counties. . ." A retired judge has no official district or county; however, having once determined that the intent of the Act is to pay retired judges the per diem allowance, we can and must supply this technical omission. Texas Jurisprudence announces our authority for this as follows:

" . . .Interpretation by implication is permitted, out of the necessity of the case, to supply an obvious intention not expressly stated. When a statute commands or grants anything, it impliedly authorizes whatever is necessary for executing its commands or whatever is indispensable to the enjoyment or exercise of the grant. . . ." 39 Tex. Jur. p. 186, Implications and Incidents--in General, Sec. 99.

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It is not necessary in this Act for the interpreter to use pure conjecture, for the answer is readily supplied in the first sentence of Section 5a, the pertinent parts thereof being:

"...retired district judges...may be assigned...by the presiding district judge of the administrative judicial district wherein such assigned judge resides...."

No violence is done to the Act by holding that the phrase "outside their own districts and out of their own counties" as used in Section 2a (4) is synonymous with the district and county wherein the retired judge resides for the purpose of determining when per diem is due.

S U M M A R Y

A retired district judge, as defined in Section 5a, of Article 200a, Vernon's Civil Statutes, who, under the provisions of said Article is required to hold court outside the district and out of the county wherein he resides, is entitled to the per diem allowance as provided in Section 2a (4) of said Article.

Yours very truly,

WILL WILSON
Attorney General of Texas

By:

Scranton Jones
Scranton Jones
Assistant

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APPROVED:
OPINION COMMITTEE

Morgan Nesbitt, Chairman
Milton Richardson
Joe Trimble
Charles Lind

REVIEWED FOR THE ATTORNEY GENERAL
BY: Leonard Passmore