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OPINION COMMITTEE

FILE # AL-41891-01

I.D. # 041891



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STATE SENATOR

February 13, 2001

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The Honorable John Cornyn  
Attorney General of Texas  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

RQ-0351-JC

OFFICE OF THE ATTORNEY GENERAL  
EXECUTIVE ADMINISTRATION

1879

Re: Per diem compensation under Article XVI, Section 40 of the Texas Constitution

Dear General Cornyn:

I am writing to request an Attorney General opinion on the application of the Article XVI, Section 40 of the Texas Constitution ("Section 40") prohibition of per diem compensation to a Municipal Utility District (a "MUD") director who works for a private employer that receives all of its revenue from a state government contract. I have reviewed prior Attorney General opinions on point and, while I understand that state employees who are not state officers may serve as MUD directors as long as they are not compensated beyond their expense reimbursement, I think the scope of Section 40's language which includes within this per diem exception "other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas" is unclear.

Background

The MUD is a conservation and reclamation district created pursuant to the authority of Article XVI, Section 59, of the Texas Constitution, and operates under the provisions of Chapters 49 and 54, Texas Water Code. Section 49.060 of the Texas Water Code provides that, "instead of the fees of office and reimbursement of actual expenses, a director may elect to receive a per diem of \$100 for each day the director actually spends performing the duties of a director." However, Section 40 of the Texas Constitution disallows this per diem compensation in certain situations. In an effort to avoid the violation of dual office holding provisions, Section 40 explains that "State employees or other individuals who receive all or a part of their compensation either directly or indirectly from funds of the State of Texas, and who are not state officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts; provided, however, that such state employees or other individuals shall receive no salary for serving as members of such governing bodies" (emphasis added).

The director in question (the "Director") is employed by a company (the "Company") that receives its revenue from a contract with the Texas Department of Criminal Justice ("TDCJ"). The contract is awarded by public bid. The bid resulted in a three year contract that is renewed annually. The contract is re-bid by TDJC every three years. The TDJC is the only contract that the Company has. The Director is strictly an employee and owns no part or portion of the Company. His job title is "Support Specialist" and his

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The Honorable John Cornyn  
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work entails trouble shooting problems with computers in the prisons and at parole offices' desks and installing new computer equipment. He also gives support to the help desk. He receives compensation in the form of a salary from the Company.

**Request for Opinion**

I am requesting an opinion on whether Article XVI, Section 40 of the Texas Constitution prevents this Director from receiving per diem compensation for his work on behalf of the MUD since he appears to be an "individual who receives all or a part of his compensation either directly or indirectly from funds of the State of Texas."

Thank you very much for your attention to this request. Presently, the Director is serving on the MUD Board and, out of an abundance of caution, is being reimbursed solely for his expenses, thus forgoing any additional per diem compensation. Therefore, your earliest consideration of this matter would be appreciated. If you have any questions or require any further information, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Matthew Moore". The signature is written in a cursive style with a large initial "G" and a horizontal line at the end.

JEB:sc