

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

28872

FILE: B-214863**DATE:** July 23, 1984**MATTER OF:** Texas State Court Juror Fees**DIGEST:**

By a 1979 amendment to the Texas statute which authorizes pay of jurors, the term "per diem" was substituted for the term "compensation," which was used in the derivative statute. In spite of this change in the statutory terminology, federal employees who are entitled to leave for jury duty while serving as jurors in Texas state courts may not retain any amount received for such jury service under the relevant Texas statute, because there is no indication in that statute that the fees, or any portion thereof, are intended to be an expense allowance or reimbursement for travel.

This action is in response to a request for a decision as to whether employees of the Treasury Department who reside in the State of Texas may, under the provisions of 5 U.S.C. § 5515, retain jury fees received for service in Texas state courts, in view of a 1979 amendment to the Texas statute authorizing pay for jurors.¹ Employees may not retain jury fees paid under this Texas statute.

Article 2122 of the Texas Revised Civil Statutes Annotated, which provides for the pay of jurors, formerly characterized this pay as "compensation," and pursuant to 5 U.S.C. § 5515 it has been the policy of the Treasury Department to require Treasury employees who reside in Texas to remit to the federal government any fees received for jury service in Texas state courts. In 1979, Tex. Rev. Civ. Stat. Ann. art. 2122 was amended for the purpose of increasing the amount of fees payable under that statute. However, in the amended statute the term "per diem" is used instead of the term "compensation," in the sentence relating to establishing rates. As a result we are asked whether our decisions holding that certain jury fees may be retained by

¹ This request for this decision was submitted by Mrs. Carole Jones Dineen, Fiscal Assistant Secretary, Department of the Treasury, Washington, D.C.

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the employee are applicable. Those jury fees which may be retained by an employee are those which are classified in a statute as reimbursement for travel and subsistence expenses.

The relevant portion of the amended Texas statute provides:

"Art. 2122. [5218-19-20] Pay of jurors

"(a) Each grand juror and each petit juror in a civil or criminal case in a district or criminal district court, county court, county court at law, or justice court is entitled to receive not less than \$6 nor more than \$30 for each day or fraction of a day that he serves as a juror. The commissioners court of each county shall determine annually, within the minimum and maximum prescribed in this subsection, the amount of per diem for jurors, which shall be paid out of the jury fund of the county. * * *"

Prior to the 1979 amendment of Tex. Rev. Civ. Stat. Ann. art. 2122, that statute provided, in relevant part:

"Each Juror in the district or county court or county court at law shall receive not less than Four Dollars (\$4) and not more than Five Dollars (\$5) for each day or fraction of a day that he attends court as such juror, to be paid out of the jury fund of the county. The amount of compensation shall be determined by the commissioners court of each county annually within the minimum and maximum prescribed herein. * * * The same per diem shall be paid to all persons responding to the process of the court but who are excused by the court from jury service for any cause, after being tested on their voir dire."

When a government employee is entitled to leave for jury duty under 5 U.S.C. § 6322, the amount received from a state as a fee for jury duty is required by 5 U.S.C. § 5515 to be credited against the amount of compensation payable to

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the employee by the Government. We have consistently held that under this law, federal employees who serve as jurors in state courts are required to remit all jury fees to the government. However, if it is clear that part of the jury service compensation received is intended to cover traveling expenses, it may be retained by the employee. 52 Comp. Gen. 325 (1972), and James F. Murdock, B-192043, August 11, 1978. We have also considered the question whether compensation received in connection with jury service and referred to by statute as "per diem" was required to be considered compensation in the nature of a salary or an expense allowance. See, for example, B-183711, October 21, 1975. In making determinations in this area we have looked at whether the prima facie intent of the state statute authorizing the payment is "merely to reimburse the jurors for out-of-pocket expense" and is, therefore, an expense allowance, or whether the fees are to compensate the jurors for service. B-183711, Oct. 21, 1975.

Unless jury fees are specifically designated as travel expenses, or the prima facie intent of the statute is to reimburse a juror for expenses, and the amount prescribed is reasonable in amount, any amount received for jury service by a government employee who is entitled to leave for jury duty must be credited against the employee's compensation payable by the federal government. 5 U.S.C. § 5515. William A. Lamb, B-183711, August 23, 1977.

Although the 1979 Texas statute refers to jury fees as per diem, in the caption of the statute the fees are referred to as "Pay of jurors." Additionally, in the absence of any indication in the statute that the fees or any portion thereof are intended as an expense allowance or a travel expense reimbursement, the words "per diem" should be given their ordinary preferred meaning "by the day," rather than a specialized meaning of reimbursement for expenses. Webster's Third New International Dictionary, 1676 (1966).

Regarding the fact that the Attorney General of Texas has held that jury fees are not salaries or wages when paid to county employees who serve as jurors, we note that the Attorney General held that the jury fee was more in the nature of a gratuity or allowance. This holding permitted county employees to serve as jurors without being placed

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on leave without pay during jury service under the provisions of the Texas state constitution prohibiting an individual from holding more than one office. Tex. Const. Ann. art. 16 sec. 40 (Vernon 1972). The Attorney General's view that jury pay is in the nature of a gratuity or an allowance would not provide the basis for allowance here since under our prior decisions only jury fees which are specifically intended as reimbursement for expenses may be retained by the employee.

Accordingly, we conclude that Federal employees are not entitled to retain jury fees paid under Tex. Rev. Civ. Stat. Ann. art. 2122, as amended in 1979.

for Shilton J. Foster
Comptroller General
of the United States