Honorable Allen Place
Chairman
Committee on Criminal Jurisprudence
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Dear Representative Place:

You have requested our opinion regarding whether the City of Marshall may grant a "fixed monthly expense allowance," in the amount of $150.00, to its commissioners. You indicate that, because the city charter requires that "[c]ity [c]ommissioners . . . serve without compensation," an expense allotment that is made "without regard to the actual expenses incurred by each commissioner, and without the necessity of documentation," is at variance with the city charter and therefore invalid.

This office does not construe municipal ordinances, charters, or policies, except to the extent that they may conflict with state or federal statutory or constitutional provisions. See Attorney General Opinion JM-846 (1988) at 1. Such inquiries may be answered by the appropriate city attorney. Furthermore, the question of whether a payment designated as an "expense allowance" constitutes, in reality, an invalid attempt to award compensation for services rendered would require the determination of factual issues which cannot be addressed in the opinion process.

You also ask about the applicability of article XVI, section 40, TEXAS CONSTITUTION, which prohibits, with certain exceptions, a single individual from simultaneously holding more than one office of emolument. Under the circumstances you have presented, if the commissioner is a state employee, or if he otherwise receives all or part of his compensation from state funds,1 he would be barred from accepting any remuneration for his service on the city commission. In that case, it would be necessary to determine whether the monthly expense allowance consists entirely of reimbursement for expenses, or whether a portion of it is in fact a disguised form of compensation. Once again, however, factual determinations would be necessary.

1For example, a public school teacher or a district attorney.
SUMMARY

Unless an individual otherwise receives all or part of his compensation from funds of the state, he is not prohibited from accepting a "fixed monthly expense allowance," without regard to expenses actually incurred, for service on a city commission.

Yours very truly,

Rick Gilpin
Deputy Chief
Opinion Committee