

Opinion No. 485.**Water Conservation Board—Claims—
Expenses, Travelling and Maintenance
—Per Diem Expenses.**

HELD: Chapter 35, Laws of the Extraordinary Session, 1933, dealing with a particular group of persons and restricted to them, provides that the members of the Water Conservation Board shall receive "actual traveling and maintenance expenses."

March 7, 1934.

I have your request for an opinion concerning Claim No. 598708 executed by R. R. Purcell, a member of the Water Conservation Board. You ask two specific questions. "1. Did the same Legislative Assembly limit persons engaged in the service of the State, both elective and appointive, to \$4.00 per diem expense, but make an exception to the allowance in the case of the Water Conservation Board, which may do nothing further than spend \$100,000.00 of the taxpayers' money?" 2. "May a warrant be legally issued for expense items in excess of \$4.00 per day?"

If the first question be answered in the affirmative, it follows that a warrant may be legally issued for the items in excess of \$4.00 per day.

It is possible the legislature did make an exception in favor of the Water Conservation Board. The Act provides (Sec. 3, Ch. 35, Laws Extraordinary Session, Twenty-third assembly) that the members shall receive "actual traveling and maintenance expenses."

This Act deals especially with a particular group of persons and is restricted to them. Chapter 32 of the same session, amending a prior act in other particulars, is general in its scope. A provision for a limited expense is inconsistent with a provision for allowance of actual expense. The Water Conservation Act was passed and approved **after** Chapter 32.

In a majority of jurisdictions a special law, local or restricted in its operation, which is positively repugnant to a former general law, impliedly repeals and supersedes the former general law within the limits to which the special law applies, or at least creates an exception to the former general law. (59 C. J. 937, and cases cited in Note 25.)

It is not essential to determine this

question, however, for members of the Water Conservation Board are not persons affected by Chapter 32, as prescribed by the terms of the act itself.

You will note that Section 1 of Chapter 32, applies to two classes of persons: (1) Persons whose duties consist of full or partial time in traveling to perform any services for the state **under monthly or yearly salary**, including elective and appointive officers; (2) persons who are not the authorized executives of any department but who may be sent by any authorized executive of any department upon a special mission.

The Water Conservation Act fixes the compensation of an appointed member of the Board at \$10.00 per day for each day actually engaged in the performance of the duties of his office, so that Mr. Purcell does not come within the class of persons on monthly or yearly salaries. Neither does he come within the second class because he is not one sent by command of any executive of any department on a special mission. On the contrary, he is one of the executives of the department himself and is commanded by the law to attend meetings of the Board and not by any order of any executive.

For these reasons it is my opinion that the items may be paid.