

Holding that the Governor's action in vetoing 328 items in the appropriation for the State Highway Department in S. B. 427, 46th Legislature, removed such items from the bill.

Further holding that under the terms of special provisions in the bill, which were not vetoed, such employees as are necessary to the economical and efficient administration of the business of the Department in the construction and maintenance of highways may be employed, in addition to those itemized in the bill.

OFFICES OF THE ATTORNEY GENERAL

Hon. Brady Gentry
Chairman, State Highway Commission
Austin, Texas

Opinion No. 9-1212

Re: Effect of Governor's veto or attempted veto of various items or positions provided in biennial appropriation for Highway Department.

Dear Sir:

We received your letter of July 31, 1939, directing our attention to the following: Senate Bill No. 427, 46th Legislature, being the General Departmental Appropriation Bill for the Biennium beginning September 1, 1939, commences as follows:

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

"SECTION 1. That the several sums of money herein specified or so much thereof as may be necessary, are hereby appropriated out of any moneys in the State Treasury not otherwise appropriated, or out of special funds as may be shown, for the support and maintenance of the several departments and agencies of the State Government for the two-year period beginning September 1, 1939, and ending August 31, 1941."

Then comes the appropriation to the Adjutant General's Department followed by appropriations to the various other departments of the State Government. After the heading "Highway Department," under the sub-heading "Administration Division," are listed thirty-seven positions with the salaries attached to such positions being set opposite the same for each year of the biennium. The total of the salaries for each of the two years thus listed is \$74,048.00. Under the sub-heading "Accounting Division" are similarly listed forty-two positions with salaries fixed totalling \$78,815.00 per year. Other sub-headings follow, similarly arranged, viz: Registration Division, thirty positions, total salaries per year, \$41,910.00; Engineering Division, forty-eight positions, total salaries per year, \$122,944.00; Maintenance Division, eleven positions, total salaries per annum, \$22,916.00; Equipment and Requisition Division, twelve positions, total salaries each year, \$22,160.00; Traffic Division, nine positions, total salaries per year, \$19,170.00. We copy, in the form found in the bill the allocation for "Maintenance and Miscellaneous," as follows:

"Maintenance and Miscellaneous:

"1. Stationary and Office Supplies, Printing Forms, Rent on Tabulating Machines, Postage, Telephone and Telegraph, Machine Supplies and Repairs, Supplies for Janitors, Equipment, Printed Forms for County Tax Collectors, Express and Freight and Contingent Expenses	\$ 92,539.00	\$ 92,539.00
"2. Traveling Expenses	<u>12,000.00</u>	<u>12,000.00</u>
Total Maintenance and Miscellaneous	\$ 104,539.00	\$ 104,539.00"

In the bill as presented to the Governor there then followed an itemization of 327 positions, numbered accordingly, with salaries set opposite, in the following form:

"Department, and District Employees

"1. Administrative Assistant	\$ 4,200.00	\$ 4,200.00
2. Secretary to Administrative Assistant	1,500.00	1,500.00
3. Claims Adjuster	4,000.00	4,000.00
326. District Bookkeeper	2,100.00	2,100.00
327. District Bookkeeper	<u>2,100.00</u>	<u>2,100.00</u>
Total Salaries	\$ 518,870.00	\$ 518,870.00"

Immediately under the above there appeared the following:

"Maintenance and Miscellaneous:

"1. Traveling expenses	\$ <u>5,000.00</u>	\$ <u>5,000.00</u>
Total Maintenance and Miscellaneous	\$ <u>5,000.00</u>	\$ <u>5,000.00</u>
Total Department and District Employees	\$ <u>523,870.00</u>	\$ <u>523,870.00</u>
"Grand Total - State Highway Department	\$1,010,372.00	1,010,372.00

"HIGHWAY DEPARTMENT

"There is hereby appropriated out of the State Highway Fund a sufficient amount for the purpose of reimbursing the State Prison Board for the cost of manufacturing automobile license plates, as provided by House Bill 459, Chapter 178, General Laws of the Regular Session of the Forty-third Legislature. It is expressly provided that the State Prison Board shall prepare a statement of complete costs which shall be audited by the State Auditor before a price for the license plates is fixed by the Board of Control and that the audited statement provided for herein shall serve as the basis for the price charged the State Highway Department.

"There is hereby appropriated out of the State Highway Fund for each of the fiscal years ending August 31, 1940 and August 31, 1941, the sums of \$50,000.00 which amount shall be transferred from the State Highway Fund to the General Fund of the State of Texas, in order that the State Highway Fund will bear its just part of the expense incurred by other State Departments in serving the Highway Department, and also to cover the cost of furnishing heat, water and power to the State Highway Department. The State Comptroller and the State Treasurer are hereby authorized and directed to transfer the amounts herein appropriated from the State Highway Fund to the General Revenue Fund either annually or semi-annually at any time during each of the said fiscal years.

Hon. Brady Gentry, #3.

"Provided, that the above and foregoing amounts appropriated herein for the State Highway Department and for services rendered by other Agencies of the State Government to the Highway Department, shall be paid out of the State Highway Fund upon warrants issued by the State Comptroller, as provided by Chapter 1, Title 116, Revised Civil Statutes, 1925, and amendments thereto; provided further that all funds or balances of funds on hand September 1, 1939, and all funds coming into the State Highway Fund, and derived from registration fees or from other sources, after deducting the total of the specific appropriations herein made, are hereby appropriated to the State Highway Department for the establishment of a system of State Highways and the construction and maintenance thereof, as contemplated and set forth in said Chapter 1, Title 116, and Chapter 186, General Laws of the Regular Session of the Thirty-ninth Legislature, and amendments thereto.

"The State Highway Commission is hereby expressly authorized to purchase, through the Board of Control, any additional equipment, and motor vehicles necessary in the opinion of the State Highway Department, provided, however, that no moneys herein appropriated shall be spent for the purchase of a passenger car in excess of seven hundred and fifty dollars (\$750.00) including the trade-in value of a used car, and this limited price shall cover a car equipped with bumpers and extra rim or wheel, but not an extra casing or tube.

"Provided that no State Highway Funds shall be used or expended in the payment of full or partial salaries, or to participate in the supplementing of any salaries for any kind of work done for, by or under the supervision or direction of the State Highway Department, other than those amounts specifically provided in the above appropriations, where the total to be paid such additional respective employees from Federal, State, County, or other Funds, exceeds the respective amount below listed, to-wit: File clerks, and typists at not exceeding \$1,200.00 each per year; Bookkeepers at not exceeding \$2,100.00 each per year; registration, warrant, voucher, comptometer or tabulating clerks, stenographers \$1,350.00 each per year; those performing secretarial duties at not exceeding \$1,500.00 each per year; resident engineers and district engineers at an average salary of not to exceed \$3,672.00 each per year, none to exceed \$4,896.00 per year; assistant district engineers, at not exceeding \$3,600.00 per year; any other additional positions not herein listed in the above itemized appropriations, at not exceeding the amounts specifically appropriated therein for such similar positions. . . "

The Governor blue-pencilled the 327 positions listed under the sub-heading "Department, and District Employees," (among other positions not germane to this opinion), and the item of \$5,000.00 per year for traveling expenses, signed the bill, and issued a proclamation reading:

"I have signed and approved all of Senate Bill No. 427, An Act making appropriations for the support and maintenance of the executive and administrative departments and agencies of the State Government for the two-year period beginning September 1, 1939 and ending August 31, 1941, with exception of the items set out below which are hereby vetoed and disapproved for the reason that the large deficit of the general fund and the general unsatisfactory condition of the State finances makes it necessary for me to disapprove these items:"

Hon. Brady Gentry, 4.

You request our opinion in substance as to what effect, if any, the Governor's action had upon such 327 positions.

We will first point out that the provision in the general rider to the effect that unused funds should revert to the General Revenue Fund at the end of each year "unless otherwise provided by law, or unless otherwise provided" in the bill, does not apply to the Highway Department's appropriation. For, such reversion is otherwise prohibited by law. Article 6674e, Revised Civil Statutes; Johnson vs. Ferguson, 55 S. W. (2d) 153. Said Article 6674e reads as follows:

"All moneys now or hereafter deposited in the State Treasury to credit of the 'State Highway Fund,' including all Federal aid moneys deposited to the credit of said fund under the terms of the Federal Highway Act and all county aid moneys deposited to the credit of said fund under the terms of this Act shall be subject to appropriation for the specific purpose of the improvement of said system of State Highways by the State Highway Department."

Hence, there can be no reversion of any of these moneys to the General Revenue Fund.

In the bill under consideration there are appropriations for the payment of a large number of listed positions in the State Highway Department and certain other specified items. The balance of the State Highway Fund for the next biennium (after deducting the reimbursements to the Prison Board and the General Fund) is then appropriated to the Department for the establishment, construction and maintenance of a system of State Highways. There is no limitation placed on this "balance." It is governed only by the size of the fund. Giving all the effect to the Governor's action that can be given, the elimination of the 327 positions listed under the "Department, and District Employees" sub-division, and of the \$5,000.00 traveling expense item, had the effect of increasing by \$523,870.00 the amount appropriated for the establishment, construction and maintenance of the highways.

The appropriation of the whole of this balance was not disturbed by the Governor. Accompanied as it was by a schedule of salaries governing the employment of additional men, it is plain that the Legislature and the Governor intended that such additional employees as might be necessary in the economical and efficient use of the State Highway Fund might be paid out of such balance.

Actually, there were two appropriations of such \$523,870.00. With the first of such appropriations thereof vetoed, it falls into and automatically becomes a part of the fund appropriated for the construction, establishment and maintenance of a system of highways, including the use of necessary parts thereof for the payment of salaries.

Many of the appropriations to the various departments do not contain any such riders, or special provisions, as those appended to the Highway Appropriation. Where such riders appear and their provisions are plain, as they are in this case, and are not vetoed, effect must be given to them.

With the 327 positions marked out, this bill is so far as the Highway appropriation is concerned is almost identical with the appropriations to that Department in 1931, 1933, 1935 and 1937. Under these same riders during all this time the Department has employed such men as were deemed necessary, additional to those positions listed in the appropriation bills, and so far as we know the validity of such special provisions and the power of the Department to employ additional men under them has never been questioned. Knowing the construction thus placed upon its legislation, knowing that effect was thus being given

Hon. Brady Gentry, 45.

to such special provisions, or riders, the Legislature has re-enacted the same time and again, and has done so this time. Presumably it was done with the intention that the same effect would continue to be given. Article 6674, Revised Civil Statutes, is only directory in so far as the matter of numbering employees is concerned, and has never been considered otherwise.

Article 6674s, Revised Civil Statutes, enacted in 1937, sets up a system of Workmen's Compensation Insurance for employees of the State Highway Department and by its express terms covers only those employees whose positions are not itemized in appropriation bills. Sub-section 2 of Section 2, Article 6674s, defining the employees of the Highway Department covered by such compensation reads:

"2. 'Employee' shall mean every person in the service of the State Highway Department under any appointment or express contract of hire, oral or written, whose name appears upon the pay roll of the State Highway Department, except officials appointed by the Governor with the advice and consent of the Senate, except clerical and office employees not required by their duties to travel or work away from their office, and except all positions for which itemized appropriations are made by the Legislature. No person in the service of the State Highway Department who is paid on a piecework basis, or on any basis other than by the hour, day, week, month, or year, shall be considered an employee and entitled to compensation under the terms and provisions of this Act. Provided further, that no person shall be classified as an 'employee' nor be eligible to any compensation benefits under the terms and provisions of this Act until he shall have submitted himself first to a physical examination by a regularly licensed physician or surgeon designated by the State Highway Department to make such examination and thereafter been certified by the State Highway Department to be placed on the pay roll of the State Highway Department."

The above is express general legislative recognition of the validity of employments not itemized in the bill.

Giving effect to the Governor's action the blue-pencilled items must go out of the bill. The special provisions referred to, however, furnish ample authority for the employment of such men as may be necessary in the economical and efficient administration of the purposes of the Department, in the establishment, construction and maintenance of a system of State Highways, as contemplated and set forth in Chapter 1, Title 116, Revised Civil Statutes, and Chapter 186, General Laws, Regular Session, 39th Legislature, and amendments thereto, in addition to those itemized in the bill. If it is necessary to fill a part or all of the 327 positions in question for such purposes it may be done.

Yours very truly
ATTORNEY GENERAL OF TEXAS
By /s/ Glenn R. Lewis
Glenn R. Lewis, Assistant

GEL:N:wb

This opinion has been considered in conference, approved, and ordered recorded.

/s/ Gerald C. Mann
GERALD C. MANN
ATTORNEY GENERAL OF TEXAS