OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable R. A. Barton
County Attorney
Calhoun County
Port Lavaca, Texas

Dear Sir:

Opinion No. O-4117
Re: Constitutionality of H. B. 7, 47th Legislature, Regular Session.

We acknowledge receipt of your request for an opinion of this Department on the constitutionality of House Bill 7 of the 47th Legislature, Regular Session.

Your request contains two questions which we have worded as follows:

1. Is House Bill 7 unconstitutional?

2. Does the inclusion of word "harbors" in House Bill 7 render said bill unconstitutional because Article 11, Section 8 of the Constitution of Texas only requires donations to construct "seawall or breakwaters"?

We shall not attempt to quote the whole of House Bill 7, supra, but for the purposes of clarity of this opinion, we quote the caption as follows:

"An Act making a donation of all of the net amount of State ad valorem taxes collected on property situated in and from rolling stock of railroads apportioned to Calhoun County, Texas, to the City of Port Lavaca, Texas, to enable the City to construct, repair, and

improve seawalls, breakwaters, and harbors, to prevent continuing and recurring calamitous overflows; providing for reports by the assessor and collector of taxes to Comptroller and providing for disposition of moneys collected by him; authorizing said city to issue bonds subject to the provisions and limitations contained in this act; prescribing a penalty for diversion of such state donated funds; enacting other provisions relating to the subject, and declaring an emergency." (Emphasis ours)

Article 11, Section 8 of the Constitution of Texas reads as follows:

"The counties and cities on the Gulf Coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities. The Legislature is especially authorized to aid by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of seawalls, or breakwaters, such aid to be proportioned to the extent and value of the works constructed or to be constructed, in any locality."

We will discuss the questions in their reverse order.

House Bill 7, supra, provides that the taxes are to be remitted for the purposes of constructing, repairing, and improving "seawalls, breakwaters and harbors." Article 11, Section 8 of the Constitution of Texas only authorizes remission to construct "seawalls or breakwaters." In construing the meaning of the words "seawalls" or "breakwaters" as used in the Constitution, we must give them their ordinary significance for there is nothing in the context to indicate that the framers of the Constitution meant thatthey should be used otherwise. Ex parte Rodriquez, 39 Tex. 705.

Webster's International Dictionary defines the term "breakwaters" as being:

"A structure for breaking the force of waves, or to protect a harbor or beach."

The same authority defines "seawall" as being:

"A wall, or embankment, to resist encroachment of the sea."

The term "harbor" is defined by the same authority as being:

"A portion of a sea, a lake, or other body of water, either landlocked or artificially protected so as to be a place of safety for vessels in stormy weather."

In the case of The Cuzco, 225 Fed. 176, the court defined harbors as places of refuge in which protection and shelter are sought within the enclosures and protection of land.

We are of the opinion that by no stretch of the imagination could the term "harbor" be included within the meaning of the words "seawall" and "breakwaters" as above defined.

We are, therefore, of the opinion that House Bill 7, supra, is more comprehensive than is authorized under Article 11, Section 8 of the Constitution of Texas.

However, this does not necessarily mean that the whole of said bill must fall.

In the case of Zwernemann vs. Von Rosenberg, 13 S. W. 485, 488, the Supreme Court of Texas announced the following rule:

"The Rule for the construction of statutes in partial conflict with the Constitution is that if the portion repugnant to the fundamental law can be stricken out, and that which remains is complete in itself, and 'capable of being executed in accordance with the apparent legislative intent. . . it must be sustained.' Ex parte Towles, 48 Tex. 421, quoting Cooley, Const. Lim. 178. If the unconstitutional provision be but incidental to the main purpose, and be not essential to give effect to the statute, such part may be rejected, leaving the remainder to stand. The provisions we have quoted clearly show, we think, that it was the legislative intent to utterly exempt the homestead from

the claims of the general creditors of the estate, provided a constituent of the family survived the decendent, and, in case the estate was insolvent, to remove it beyond the pale of administration. This is in accordance with all previous legislation, and is not repugnant to the constitution. So much of the statute as attempts to make the homestead of an insolvent to descend in a manner different from other real property is prohibited by the Constitution, and is void. But the other provisions of the statute are not dependent upon this. They can have effect without it, and should therefore stand."

As above stated we must ascertain whether or not the repugnant portion can be stricken out and leave a complete enactment which is capable of being executed in accordance with the legislative intent. In ascertaining the legislative intent, it is our duty to look at the whole bill. In the case of Texarkana & Ft. Smith Ry. Co., et al vs. Houston Gas & Fuel Co., 51 S. W. (2d) 284, the court stated:

"In construing statutes enacted by the legislature, it is the duty of the court to look to the entire act, including the caption, the body of the act, and even the emergency clause, to determine the legislative intent. When the legislative intent is once determined, it is the law."

An examination of the entire bill reveals that the purpose of the bill is to prevent calamitous overflows, and it sets up the machinery with which to accomplish that purpose. In fact the emergency clause expressly states that:

"This Act is designed to protect a locality situated on the Gulf Coast from calamitous overflows. . ."

It is readily apparent that the intention of the Legislature to provide the means with which to prevent such overflows will not be hampered by the striking out of the word "harbor," and that a complete enactment which will accomplish the legislative intent and purpose will remain.

Enactments of the Legislature which are substantially the same as House Bill 7, supra, after the word "harbors" has been stricken out, have been before our courts a number of

times. We consider the case of City of Aransas Pass vs. Keeling, 247 S. W. 818, controlling in this matter, and in that case the Supreme Court of Texas upheld the constitutionality of the bill authorizing the remission of taxes to the City of Aransas Pass. We do not think a detailed discussion of House Bill 7 is, therefore, necessary.

We are, therefore, of the opinion that House Bill 7, supra, wherein it seeks to remit taxes to construct seawalls or breakwaters is not violative of the Constitution of Texas, but that it is unconstitutional insofar as it seeks to remit taxes to construct harbors. We further hold that the striking of the word "harbors" from the bill does not invalidate the balance thereof.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Richard H. Cocke
Richard H. Cocke
Assistant

APPROVED OCT 28, 1941

Gerald C. Mann
FIRST ASSISTANT
ATTORNEY GENERAL

RHC:N

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN