



**THE ATTORNEY GENERAL
OF TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN, TEXAS

February 27, 1947

Honorable Tom Martin, Chairman
Game and Fish Committee
House of Representatives
Fiftieth Legislature
Austin, Texas

Opinion V-55

Re: Constitutionality of
House Bill No. 223,
50th Legislature.

Dear Sir:

In your letter of February 5, 1947, you have requested an opinion from this office relative to the constitutionality of House Bill No. 223, 50th Legislature. Therewith, a copy of this bill was submitted, and inasmuch as you have undoubtedly retained a copy, this opinion need not be burdened with quotations therefrom.

In a consideration of the constitutionality of a bill which has not been challenged on some specific ground, some four well-settled constitutional principles are applicable and it should here be determined whether the bill (1) is sufficiently certain and definite in its terms, (2) pertains to only one subject which is properly expressed in the title, (3) the bill's provisions are within the scope of legislative authority and do not violate any express or implied prohibition of the Constitution of the State of Texas, and (4) if the bill is within such legislative authority, whether its terms constitute an undue delegation thereof. These will be specifically considered in the order named.

That laws must be certain and definite to be valid is fundamental and this rule is said to require that an act must be sufficiently plain in its language to be understood by those affected by it. *Baltimore & Ohio Ry. Co. vs. I. C. C.*, 221 U. S. 612; *State vs. International and G. N. Ry. Co.*, 179, S.W. 867; *Bradford v. State*, 180 S.W. 702, and authorities therein cited. It is not deemed necessary to elaborate on the application

of this rule to the bill presented. Suffice it to say that the terms of the bill should present no difficulty to the understanding of the Commission or of persons affected thereby, its provisions appearing sufficiently clear to enable the Commission to properly administer the act and to apprise persons interested in its subject matter of their rights and duties and the necessary procedures regarding their taking of wild-life in Texas as it is defined in Section 15 of the bill. It is noted that a line was apparently omitted in Section 2 between the second and third lines.

Regarding the object or subject of the bill, it is clear that, in accordance with the provisions of Article III, Sec. 35 of the Constitution of Texas, the provisions are limited to one general subject, namely, the preservation of wild-life resources in the State. Stated conversely, the bill includes no provision that would fall by reason of its not being relevant or germane to ultimate object of the act, even if not specifically mentioned in the title.

The title, however, is virtually a resume of the provisions of the bill. It is stated that the constitutional provisions (Article III, Section 35, supra) requiring that the subject of the bill be specified in its title, has a twofold purpose. First, it is designed to give notice to the Legislators and the public of the nature of the contents of the bill, and to avoid deception or surprise in legislation by preventing the inclusion of unrelated matter. Second, it is intended to avoid the bringing together into one bill subjects diverse in their nature with a view to combining in their favor the advocates of all. 39 Tex. Jur., Sec. 36, pp. 75-78, and cases cited. Horack's Sutherland Statutory Construction, Sec. 1701, pp. 283, 286, Section 1702, pp. 287-291; 50 Am. Jur., Sec. 160, p. 135, and cases cited. Only the general or ultimate object of an act is required to be stated in its title. It is not required that a title be an index or set forth in detail the contents, and it is sufficient if the subject is fairly stated in a manner that would direct a person of "ordinary, reasonably inquiring mind to the body of the act." See authorities this paragraph and Singleton v. State, 111 S.W. 737; Watts v. State, 135 S.W. 585; Polk v. State, 148 S.W. 311; Focke v. State, 144 S.W. 267, 39 Tex. Jur., Sec. 45, pp. 96, 98. Certainly, the title of this House Bill No. 223 satisfies the require-

ments of the rule and there is no question of the sufficiency of the title as written. It may be suggested, however, that an introductory phrase specifically stating the general object or subject of the act (such as "an act to regulate the preservation of wild-life in Texas") could well be added to the first of the present title and that this would obviate the necessity of finding the general subject of the bill through the interrelation of the various phrases. Strictly, the Constitution requires "one subject, which shall be expressed in its title."

Regarding the third factor above mentioned, the power of the Legislature to regulate the taking of wild-life in Texas is unquestionable. Not only is such regulation a proper exercise of the police power of the State to be used in the public interest, but there also appears in the Constitution a clear intent that the Legislature shall have a very broad power relating to this subject where in Article III, Section 56 (last paragraph) the authority for the enactment of special laws in lieu of general laws on the subject of the preservation of "the game and fish of the State" is given. Nor has there been found any express or implied prohibition in the Constitution which would prevent the Legislature from validly enacting the bill presented.

Since the act is deemed to be sufficiently certain and definite, limited to one subject and bearing a sufficient title, and within the scope of legislative authority, the only consideration remaining is whether in giving the Game, Fish and Oyster Commission the broad powers specified, the effect of the bill might be construed to be an undue delegation of legislative authority. There is no invariable test by which the delegation of authority by the Legislature and particularly the power to make rules and regulations (see Sections 1 and 2 of the bill) effectuating a statute may be determined. There is an ill-defined line between powers which are strictly legislative and those which are not. 9 Tex. Jur., Sec. 68, p. 494. In recent years the power of delegation has broadened with an increase in complex and technical matters regarding which legislation has been necessary. It appears well-settled in Texas that the Legislature may grant to Boards and Commissions power to make rules for effectuating general statutes, power to find facts on the ascertainment of which a complete law shall become applicable, and power which

the Legislature cannot itself practically and efficiently exercise. *Trimmier v. Carlton*, 296 S.W. 1070; *Rhodes v. Tatum*, 206 S.W. 115, *O'Brien v. Ammerman*, 233 S.W. 1019, *Burgess v. American Rio Grand Land & Irrigation Co.*, 295 S.W. 649; *Williams vs. State*, 176 S.W. (2) 177; *Corzelius v. Harrell*, 186 S.W. (2) 961; *Treewitt v. City of Dallas*, 242 S.W. 1073. Citing numerous authorities the Court of Criminal Appeals of Texas in *Williams v. State*, 176 S.W. (2) 177, stated the rule as to the delegating of legislative authority very clearly as follows:

"The question of this delegation of authority has been much before the courts, and especially is that true in recent years by the enlarged powers conferred upon administrative boards and tribunals. The generally accepted rule governing such matters now appears to be that a legislative body may, after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the power to fill up the details, by prescribing rules and regulations to promote the purpose and spirit of the legislation and to carry it into effect. In such cases the action of the Legislature in giving such rules and regulations the force of laws does not violate the constitutional inhibition against delegating the legislative function. The rule finds support in *Field (Marshall) v. Clark*, 143 U.S. 649, 12 S. Ct. 495, 505, 36 L. Ed. 294, wherein the Supreme Court said: 'The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and must therefore be a subject of inquiry and determination outside of the halls of legislation.'"

Applying the above to the delegation of authority contained in the House Bill presented, there appears little question but that the delegation therein contained

is valid. The rule-making power given to the Commission is for the purpose of "filling in the details" in the accomplishment of the conservation of wild-life in Texas or preventing its depletion. The fact-finding power given the Commission is ample, and there is no constitutional objection to the law becoming applicable on the basis of the findings of fact that are provided for in Sections 2 and 3. In consonance with the above quotation, ample primary standards are fixed for the Commission's carrying out the policy stated.

It should be understood that this opinion relates only to the constitutionality of the proposed delegation of authority to the Game, Fish and Oyster Commission and not to the necessity or advisability of such delegation. On this point it is wholly within the discretion of the Legislature to determine whether the conservation and preservation of Texas wild-life can best be accomplished by the Legislature's enactment of direct and specific rules and regulations in the form of law at two year intervals, or by giving the Commission the authority contemplated by House Bill 223.

All of the foregoing considered, it is the opinion of this office that the proposed House Bill 223 as submitted, is constitutional.

SUMMARY

The proposed House Bill 223 is valid and constitutional in its provisions, it being sufficiently certain and definite, it being limited to one subject which is properly expressed in the title, its subject matter being within the scope of legislative authority, and its provisions constituting no undue delegation of such authority.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

APPROVED FEB. 27, 1947

Price Daniel
ATTORNEY GENERAL

BY

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