



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

R-588

June 28, 1947

Honorable Joe Nelson, Chief Accountant
Board of County & District Road Indebtedness
Austin, Texas

Opinion No. V-277

Re: Effective date of House Bill No. 21,
50th Legislature relative to al-
location of surplus funds by Board
of County and District Road Indebted-
ness.

Dear Sir:

We refer to your letter of June 12, 1947, in which you submit the following:

"During the past session of the Legislature House Bill 21 passed, which provides for a different method of allocating our surplus funds to the State Highway Department and the several counties. This bill containing an emergency clause was passed by the House on April 8, 1947, by a vote of 95 ayes and 34 noes. It was passed by the Senate with amendments on May 7, 1947, by a vote of 17 ayes to 5 noes. The House concurred in the Senate amendments on May 13, 1947, by a vote of 86 to 35, and this bill was signed by the Governor on May 31, 1947.

"In view of this information we ask that you please advise us the date that House Bill 21 will become a law. It is on September 1 of each year that we are required to allocate our surplus funds to the counties, and we ask that you please advise us if we should make this allocation as provided in Article 6674Q, or if this allocation should be made as provided for by House Bill 21."

Section 39 of Article III of the State Constitution reads:

"No law passed by the Legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of emergency, which emergency must be expressed in a preamble or in the body of the act, the Legislature shall, by a vote of two-thirds of all the members elected to each house, otherwise direct:

said vote to be taken by yeas and nays, and entered upon the journals."

When the last vote on House Bill No. 21 was taken in the Senate on May 7, 1947, there were 30 elected members of the Senate. The vote was 17 yeas and 5 nays. On May 13, 1947, when the last vote was taken in the House on that said Bill, there were 147 elected members of the House of Representatives. The vote in the House was 86 yeas and 35 nays. That law was not passed by a vote of two-thirds of the elected members of each House, by reason of which it will take effect 90 days after adjournment of the 50th Legislature on June 6, 1947.

We are assuming that your reference to Article 6674q really means Article 6674q-7 of Vernon's Civil Statutes and to sub-section h of that section, which will remain in effect and serve as your guide until House Bill No. 21 supersedes. That sub-section requires that:

"(h) On September 1st of each year after the Board has paid off and discharged all eligible obligations maturing during the preceding fiscal year, together with the interest on such obligations and the sinking fund requirements accruing thereon and of the County and Road District Highway Fund, any surplus remaining in said fund over and above Three Million (\$3,000,000.00) shall be set aside and credited." . . . " one-half to the State Highway Fund and one-half to the Lateral Road Account

"Not later than September 15th of each year the said Board shall ascertain the exact amount of money which has been allocated to the said Lateral Road Account for such fiscal year and which at that time is available. The Board shall allocate to each county its proportionate part of the moneys in said Lateral Road Account, which allocation shall be determined in the following manner": Then the method of distribution is set out, but is not material to your inquiry.

Summarized, the law requires that the Board make the division between the State Highway Fund and the Lateral Road Account on September 1st, and make the allocations to the counties not later than September 15th of each year. If such allocations be made by the Board before September 5, 1947, sub-section h of Article 6974g-7 applies to such action; if made on or after September 5, 1947, when House Bill No. 21 becomes effective, the provisions of that law must be applied to such allotments.

SUMMARY

House Bill No. 21 passed by the 50th Legislature relative to allocation of surplus in the County and Road District Highway Fund not having passed the Legislature by vote of two-thirds of the elected members of each House, will not become effective until 90 days after adjournment of the Legislature on June 6, 1947. If allocations such surplus funds be made before September 5, 1947, sub-section (h) of Article 6674g-7 controls such allocation; if made after September 5, 1947, House Bill No. 21 controls such allocations.

Yours very truly

ATTORNEY GENERAL OF TEXAS

s/ W. T. Williams

By

W. T. Williams
Assistant

APPROVED
s/ Price Daniel
ATTORNEY GENERAL

WTW: t:jrb:ldw