



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

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April 5, 1954

Hon. A. M. Aikin, Jr., Chairman
Senate Committee on Education
Fifty-third Legislature, First
Called Session
Austin, Texas

Letter Opinion No. MS-126

Re: Constitutionality of the
form of Senate Bill No. 1
as amended by the House
Committee on Appropriations.

Dear Senator Aikin:

You have asked whether the changes in form which are made in Senate Bill No. 1 by the committee amendments thereto adopted by the Committee on Appropriations of the House of Representatives on March 31, 1954, raise any constitutional problems serious enough to warrant further change in the form of this legislation. We do not understand that the purpose of your request is to ask whether this legislation could be successfully defended against a constitutional attack in either the original form or in the form in which it was favorably reported by the House Committee. So far as that question is concerned, we have not been able, in the short time available, to make a sufficiently thorough analysis of the decisions to express an opinion on whether the legislation could be finally sustained in the courts in either form. But we understand that your committee is seeking to determine the safest form in which to frame the legislation on these subjects for the purpose of avoiding constitutional problems altogether, if that is possible.

As you point out, Senate Bill No. 1 as amended by the House Committee on Appropriations incorporates into one act the original contents of Senate Bills Nos. 1, 2 and 7. Original Senate Bill No. 1 plus a section making an appropriation, supplemental to the appropriation made at the Regular Session of the Fifty-third Legislature, to pay the State's part of the Foundation School Program for the fiscal year 1954-1955 is Article I of the House Committee version; Senate Bill No. 2, an appropriation bill for a cost-of-living pay increase for state employees, is Article II; and Senate Bill No. 7, a series of appropriations for building purposes at several state institutions, is Article III. The subjects dealt with in Articles II and III are clearly appropriation items and nothing more. But the contents of Article I, while designated to bring about an increase in teachers' salaries and containing a specific appropriation item, is obviously something more than an appropriation item. If passed, it will substantially amend numerous parts of the Foundation School Program laws which constitute general legislation, not appropriation riders, and which will permanently affect the local financing of the Program by school districts as well as the State's part in financing the Program.

After as thorough a study as the circumstances permitted, we have concluded that the changes in form which are made in Senate Bill No. 1 by the House Committee on Appropriations do create at least one constitutional problem of sufficient seriousness to warrant our recommending a change from the House Committee's form. Article III, Section 35 of the Constitution states that

"No bill, (except general appropriation bills, which may embrace various subjects and amounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title . . ." (Emphasis added).

By including the contents of Article I in one bill along with two appropriation items, the House Committee's draft of Senate Bill No. 1, if passed, would in our opinion be subject to attack on the ground that it contains more than one "subject" within the above-quoted constitutional restriction, whereas, if the contents of Article I were enacted as a separate bill, this possible objection can be avoided altogether.

As indicated previously, the subject matter of Article I cannot be regarded as an appropriation bill rider because it would amend general law and this cannot be done by such a rider. Att'y. Gen. Op. V-1254 (1951). Further, those who might challenge the constitutionality of the provisions of Article I, if the House Committee's version were enacted, would undoubtedly urge that Article I was a separate subject and was combined with other parts of the bill in order to force acceptance of the whole program. Hence it would be argued that the Act was void because the combination of diverse subjects into one bill as a means for gaining support for a measure was the very thing Section 34 of Article III was intended to prevent. Stone v. Brown, 54 Tex. 330, 342 (1881) (concurring opinion) contains this statement of the purpose of Section 35, which has been frequently repeated in other cases:

"The principal object of this constitutional provision is to advise the legislature and the people of the nature of each particular bill . . . and also to prevent combinations, whereby would be concentrated the votes of the friends of different measures, none of which could pass singly: thus causing each bill to stand on its own merits."

We do not intend to imply that the motive in combining the three bills into one was to gain support for any one part of the bill. In all probability the House Committee did this to expedite consideration of the measures with a view to completing the work of the special session within the time remaining. But, whatever the motive prompting this action, it could not obviate the constitutional problem created by combining these three bills into one.

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The title of the House Committee's version states that it is "an Act to provide for the emergency financing of certain functions of the State Government," and continues by enumerating the parts of the Foundation School Program Act which are being amended and by noting the several appropriations which are made in the three articles. The emergency clause of the bill also states that "the purpose of this Act is to make provision for the emergency financing of certain functions of the State government." It is apparent that an attempt has been made to state a single constitutional "subject" broad enough to include all the various parts of the combined bill. But, as stated above, this attempt may be insufficient because it assumes that "emergency financing" is a proper subject capable of withstanding the objection that the present House bill frustrates a constitutional purpose to prevent "combinations" of subjects constituting both general law and appropriation bill riders.

Yours very truly,

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