



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

May 12, 1955

Honorable Allan Shivers
Governor of Texas
Capitol Station
Austin, Texas

Opinion No. MS-211
Re: Constitutionality of Senate Bill 261, 54th Legislature, fixing minimum salaries of firemen and policemen in certain cities.

Dear Governor Shivers:

You have requested an opinion on the constitutionality of Senate Bill 261 of the 54th Legislature, fixing minimum salaries of firemen and policemen in certain cities.

At the present time Senate Bill 261 applies only to the City of San Antonio. Under the general law the Legislature has not prescribed a minimum salary to be paid firemen and policemen. Articles 998, 1015, 1269m Vernon's Civil Statutes. Section 56 of Article III of the Constitution of Texas prohibits the enactment of local or special laws regulating the affairs of cities.

The primary and ultimate test of whether a law is general or special is whether there is a reasonable basis for the classification made by the law and whether the law operates equally on all within the class. Rodriguez v. Gonzales, 148 Tex. 537, 227 S.W. 2d 791 (1950); Bexar County v. Tynan, 128 Tex. 223, 97 S.W. 2d 467 (1936); Miller v. El Paso County, 136 Tex. 370, 150, S.W. 2d 1000 (1941).

In Miller v. El Paso County, supra, the court stated:

"The peculiar limitations employed by the Legislature in this instance to segregate the class to be affected by the legislation not only bears no substantial relation to the objects sought to be accomplished by the Act, but the purported class attempted to be so segregated is, in fact, not a class distinct in any substantial manner from others in this State. There is nothing peculiar about a county having a population of less than 125,000 nor more than 175,000 inhabitants and containing a city with a population of not less than 90,000 inhabitants that marks it a suitable and peculiar field for the expending of public funds for advertising and promoting the growth and development of the county

and its county seat, as distinguished from other counties having substantially the same population or cities of similar size. The slight variation between the population of El Paso County and its principal city and other counties and cities in the State does not distinguish it in any manner that is germane to the purpose of this particular legislation. In other words, whatever difference there is in population does not appear to be material to the objects sought to be accomplished. After having carefully considered the matter, we are convinced that the attempted classification is unreasonable and bears no relation to the objects sought to be accomplished by the Act, and that as a consequence the Act is void."

In view of the foregoing authorities, it is our opinion that Senate Bill 261 of the 54th Legislature is unconstitutional.

Yours very truly,

APPROVED:

JOHN BEN SHEPPERD
Attorney General

J. C. Davis, Jr.
County Affairs Division

By *John Reeves*
John Reeves
Assistant

Robert O. Fagg
Reviewer

J. A. Amis, Jr.
Reviewer

Robert S. Trotti
First Assistant

John Ben Shepperd
Attorney General

JR:pj:zt