



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

June 24, 1957

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Capitol Station  
Austin, Texas

Opinion WW-171.

Re: Whether or not one per cent (1%) of the total value of the Permanent School Fund may be transferred to the Available School Fund for the support of public schools between August 15 and August 31, 1957, as directed in Section 1, House Bill #103, 55th Legislature.

Dear Mr. Calvert:

You have requested an opinion as to whether you can make the transfer provided for in House Bill No. 103, Acts of the 55th Legislature, Regular Session, 1957, between August 15, and August 31, 1957, as directed in Section 1 of House Bill 103.

House Bill 103 provides as follows:

"Section 1. The State Comptroller of Public Accounts is hereby directed to transfer one per cent (1%) of the total value of the Permanent School Fund to the Available School Fund for the support of public schools. Such transfer shall be made between August 15 and August 31 of the fiscal years ending August 31, 1957, August 31, 1958, and August 31, 1959, respectively, provided that the total amount transferred for the three (3) years shall not exceed the income from annual delay rentals on oil, gas and other mineral leases accruing to the Permanent School Fund from September 1, 1953, to August 31, 1959.

"Sec. 2. The importance of this legislation to the people of the State of Texas, and the crowded conditions of the calendars in both Houses of the Legislature, create an emergency and an imperative public necessity that the Constitutional

Rule requiring bills to be read on three several days in each House be suspended; and said Rule is hereby suspended, and this Act shall take effect and be in force from and after September 1, 1957."

Under the provisions of House Bill 103, the Comptroller of Public Accounts is directed to make the transfers provided therein between August 15, and August 31, for the fiscal years ending on August 31, 1957, August 31, 1958 and August 31, 1959. The emergency clause of the Bill provides that the Act shall take effect and be in force from and after September 1, 1957.

Section 39 of Article III of the Constitution of Texas provides:

"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 an 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."

House Bill 103 did not receive a two-thirds vote of all Members elected to each House of the Legislature.

In construing emergency clauses of bills, it was stated in Missouri-Kansas-Texas R. Co. of Texas v. Thomason, 280 S.W. 325 (Civ.App. 1926, error ref.):

"Emergency clauses on bills . . . are not added for the purpose of clarifying or declaring the intention of the Legislature, nor to explain the express language of the act; but only for the purpose of setting forth the reasons for the suspension of the constitutional rule requiring the bill to be read on three separate days, and for putting into immediate effect such act, whatever be its scope and terms."

In passing on a similar question, it was stated in Attorney General's Opinion S-90 (1953):

"Such House Bill No. 11 did not receive a two-thirds vote of all members elected to each House of

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the Legislature. Consequently, under the above quoted constitutional prohibition, the provisions of the emergency clause attempting to fix an effective date prior to the expiration of ninety days after adjournment are of no force or effect. Copus v. Chorn, 136 Tex. 209, 150 S.W. 2d 70 (1941).

"While the courts have recognized that even when an emergency clause is ineffective because lacking the necessary two-thirds vote, it may be looked to as an aid in determining Legislative intent, as in Popham v. Patterson, 121 Tex. 615, 51 S.W.2d 680 (1932), it is believed that it should be looked to as an aid only, and only to determine intent where provisions are ambiguous, and not to create or read into the act effective terms or provisions not found elsewhere therein. . . ."

Likewise, in Attorney General's Opinion O-5471 (1943), it was held:

"Since Senate action on final passage was not taken by a record vote showing that two-thirds of all members elected to the Senate approved the Act, its emergency clause was of no effect, and it did not go into force until ninety days after adjournment of the Legislature. . . ."

Therefore, since House Bill 103 did not receive a two-thirds vote of all members elected to each House of the Legislature, Section 2 is of no effect and did not create or read into the act effective terms or provisions not found elsewhere. There are no other provisions in House Bill 103 providing for any effective date.

In view of the provisions of Section 39, Article III of the Constitution of Texas, the effective date of House Bill 103 is ninety (90) days after the adjournment of the 55th Legislature (August 22, 1957).

You are therefore advised that you are authorized to make the transfer described in Section 1 of House Bill 103 between August 22nd, and August 31st, 1957.

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SUMMARY

Since House Bill 103 of the 55th Legislature is effective on August 22, 1957, the Comptroller of Public Accounts is authorized to transfer one per cent (1%) of the total value of the Permanent School Fund to the Available School Fund for the support of public schools and to make such transfer between August 22, and August 31, 1957.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
John Reeves  
Assistant

JR:pf:wb

APPROVED:

OPINION COMMITTEE:

H. Grady Chandler, Chairman  
Wm. E. Allen  
Byron Fullerton

REVIEWED FOR THE ATTORNEY GENERAL

BY: Geo. P. Blackburn