



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

October 11, 1957

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

Opinion No. WW-276

Re: May the money remaining in the appropriation made by Senate Bill No. 1 of the 55th Legislature, Regular Session, be used to pay mileage and per diem of members, salaries of officers and employees, and other contingent expenses of the special called session without further legislation, and related question?

Dear Mr. Calvert:

You have requested an opinion of this office concerning the use of the money remaining in the appropriation provided for by Senate Bill No.1 of the Regular Session of the 55th Legislature. In your letter you present the following propositions:

(1) "Will you, therefore, please advise me whether the remaining money in the appropriation made by Senate Bill No. 1 of the Regular Session can be used to pay mileage and per diem of members, salaries of officers and employees, and other contingent expenses of the Special Called Session without further legislation.

(2) "In the event additional legislation is necessary, could the unexpended balance remaining in monies appropriated by Senate Bill No. 1 be made available for expenditure to pay the mileage and per diem of members, salaries of officers and employees, and other contingent expenses of the Special Called Session by legislation of the First Called Session which legislation would not require the certification of this department under the provisions of Section 49a of Article III of the Constitution of Texas?"

We shall answer your questions in the order presented.

Section 1 of Senate Bill No. 1, Acts of the 55th Legislature, Regular Session, 1957, Chapter 1, page 1, provides in part, as follows:

"Section 1. There is hereby appropriated out of any funds in the State Treasury not otherwise appropriated, the sum of Two Million, Three Hundred Thousand (\$2,300,000) Dollars or so much thereof as may be necessary, to pay the contingent expenses and to pay the mileage and per diem of members and the per diem of officers and employees of the Regular Session of the 55th Legislature, . . ."

The Court in Ferguson v. Maddox, 114 Tex. 93, 263 S.W. 888 (1924) held:

"At the end of a legislative session the House does not cease to exist. . . . Like the House, it Senate does not cease to exist at the expiration of the legislative session."

The above language was cited by the Court in Terrell v. King, 118 Tex. 237, 14 S.W.2d 786 (1929) in upholding the power of the Comptroller to issue warrants in payment of the compensation and expenses of an interim committee of the 40th Legislature.

It would therefore seem to be clearly established that though the power of the Legislature to enact laws may cease upon the adjournment of a particular session of that Legislature, it does not follow that the Legislature is divested of such interim powers of planning, investigation and house keeping as are necessary to allow it to carry out its law-making functions when in session. Thus, we are of the opinion that when Senate Bill No. 1 of the 55th Legislature, Regular Session, speaks of an appropriation to cover the expenses of the Regular Session of the 55th Legislature, it is the intent of the Legislature that this appropriation should continue beyond the sine die adjournment of the Regular Session of the 55th Legislature, insofar as the interim requirements should demand, and within the limits of the amount appropriated.

We, therefore, believe that any unexpended balance of this appropriation will continue to exist so long as funds are available, and is subject to such use as the Legislature shall choose to make of it during the two-year period following the effective date of Senate Bill No. 1. Section 6 of Article VIII, Constitution of Texas. This position is further substantiated

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by the fact that we have been informed that your office has operated upon a like construction for many years.

However, we are of the opinion that the appropriation provided for in Section 1 of Senate Bill No. 1 of the 55th Legislature is clearly limited to the payment of the contingent expenses and to pay the mileage and per diem of members and the per diem of officers and employees of the Regular Session of the 55th Legislature, plus such expenses as are required in the effective operation of the interim activities of the Legislature.

We must, therefore, advise you that the money remaining in the appropriation made by Senate Bill No. 1 of the Regular Session of the 55th Legislature may not be used to pay mileage and per diem of members, salaries of officers and employees, and other contingent expenses of the Special Called Session without further legislation. For this reason, we must answer your first question in the negative.

In as much as we are of the opinion that additional legislation will be necessary, we shall answer your second question in the manner set forth below.

We are of the opinion that the 55th Legislature may, upon the convening of the First Called Session, amend Senate Bill No. 1 of the 55th Legislature, Regular Session, to authorize the expenditure of the unexpended balance of monies appropriated by Senate Bill No. 1 for the additional purpose of paying the expenses of the First Called Session of the 55th Legislature. Furthermore, it would not be necessary for the Comptroller to certify as to the availability of these funds in that such action on the part of the Legislature amounts to but an authorization for the expenditure for additional purposes of monies previously appropriated. Attorney General's Opinion No. WW-275 (1957) and Attorney General's Opinion No. O-6193 (1945). We, therefore, answer your second question in the affirmative.

S U M M A R Y

The money remaining in the appropriation made by Senate Bill No. 1 of the Regular Session of the 55th Legislature may not be used to pay mileage and per diem of members, salaries of officers and employees, and other contingent expenses of a Special Called Session without

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further legislation, but the Legislature may, upon convening, amend Senate Bill No. 1 of the 55th Legislature, Regular Session, to authorize the expenditure, for additional purposes, of monies previously appropriated. Such amendment would not require the certification of the Comptroller under the provisions of Section 49a of Article III of the Constitution of Texas.

Yours very truly,

WILL WILSON
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APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL

BY: C. K. Richards