



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

May 28, 1959

Honorable Price Daniel
Governor of Texas
Capitol Station
Austin 11, Texas

Opinion No. WW-632

Re: Whether H. B. 51 and
H. B. 612 require
certification by the
Comptroller of Public
Accounts pursuant to
Sec. 49a, Article III
of the State Consti-
tution.

Dear Governor Daniel:

You have requested an opinion on the following question:

Whether House Bill 51 and House Bill 612 require certification by the Comptroller of Public Accounts, pursuant to Section 49a, Article III, of the State Constitution.

Sections 1, 2 and 3 of House Bill 51, provide for the creation by the Central Education Agency of a special program for non-English speaking children.

Section 4 provides for the cost of operating the special program and provides as follows:

"Sec. 4. The cost of operating the special program for non-English speaking children shall be borne by the State and each participating district on the same percentage basis that applies to financing the Minimum Foundation Program within that respective district. The cost of the program shall include a salary not to exceed Two Hundred Dollars (\$200) per month and a maintenance and operational allotment of not to exceed Fifty Dollars (\$50) per month for each teacher. The State's share of the cost shall be paid from the Minimum Foundation Program Fund, and this cost shall be considered by the Foundation Program Committee in estimating the funds needed for Foundation Program purposes; provided, however, that said program shall not be set up in

any school district or combination of school districts unless a minimum of fifteen (15) children qualify for same and the extent to which any said school district shall participate in the Minimum Foundation Fund over and above the first unit shall be based on an A D A of twenty (20) qualified pupils. No State funds provided for herein shall be used for any purpose other than for the non-English speaking program herein referred to."

Section 5 provides a severability clause; and Section 6 provides an emergency clause.

It is noted that Section 4, providing for the cost of operating the special program, does nothing more than provide the pre-existing law for future appropriations and does not itself contain an appropriation. Attorney General's Opinions WW-93 (1957), WW-102 (1957) and WW-132 (1957).

Section 49a of Article III of the Constitution of Texas requires the Comptroller of Public Accounts to certify that the amount appropriated in any bill containing an appropriation is within the amount estimated to be available in the affected funds. Since House Bill 51 does not contain an appropriation, but merely constitutes the pre-existing law for future appropriations, you are advised that House Bill 51 does not require certification by the Comptroller.

House Bill 612 provides for the creation of a special program for pre-school children by the Central Education Agency. Section 4 thereof provides for the cost of operating the special program; Section 5 contains a severability clause and Section 6 contains an emergency clause.

Section 4, providing for the cost of the program, provides as follows:

"Sec. 4. The cost of operating the special program for preschool children who have a hearing loss shall be borne by the State and each participating district on the same percentage basis that applies to financing the Minimum Foundation Program within that respective district. The cost of the program shall include a salary not to exceed the prevailing local salary scale and a maintenance and operational allotment of Fifty Dollars (\$50) per month for each teacher. The State's

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share of the cost shall be paid from the Minimum Foundation Program Fund, and this cost shall be considered by the Foundation Program Committee in estimating the funds needed for Foundation Program purposes."

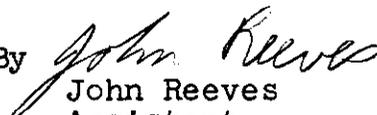
It is noted that Section 4, providing for the cost of operating the special program, does nothing more than provide the pre-existing law for future appropriations and does not itself contain an appropriation. Attorney General's Opinions WW-93 (1957), WW-102 (1957) and WW-132 (1957).

SUMMARY

Neither House Bill 51 nor House Bill 612 contain an appropriation and, therefore, neither requires certification of the Comptroller of Public Accounts pursuant to Section 49a of Article III of the Constitution of Texas.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant

JR:zt

APPROVED:

OPINION COMMITTEE
Geo. P. Blackburn, Chairman

C. K. Richards

J. Arthur Sandlin

J. Milton Richardson

REVIEWED FOR THE ATTORNEY GENERAL
BY: W. V. Geppert