



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

March 10, 1961

Honorable George L. Preston, Chairman
Municipal and Private Corporations
House of Representatives
Austin, Texas

Opinion No. WW-1012

Re: *Constitutionality of House Bill
14 of the 57th Legislature per-
taining to settlement of griev-
ances and disputes concerning
firemen's salary, hours of
work and other emoluments.*

Dear Mr. Preston:

You have requested an opinion on the constitutionality of House Bill 14 of the 57th Legislature.

Section 1 of House Bill 14 declares a public policy that firemen are prohibited from striking or engaging in collective bargaining while claiming the right to strike as against the public policy of the State of Texas, and that grievances and disputes shall be submitted to arbitration as provided by the Bill.

Sections 2, 3, 4, 5, 6, and 7 prescribe the method and procedure of such arbitration. Section 8 makes it a penal offense for any city official in any city covered by the Bill to willfully violate the provisions and terms of any decision made pursuant to the Bill. Section 9 is a severability clause, Section 10 is a cumulative clause and Section 11 is the emergency clause.

Briefly, the Bill provides the procedure for submitting a grievance or dispute to a Commission of Arbitration or to a Firemen's Hearing Commission and provides for the approval of the decision or recommendation of such Commission by

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adoption of a city ordinance pursuant thereto or rejection of such decision or recommendation by the governing body of the city and an election to be submitted to qualified voters of the city to determine whether to approve or adopt such decision or recommendations and ordinance pursuant thereto.

House Bill 14 contains but one subject, which is expressed in its title and the body of the Bill conforms to the caption and is, therefore, in compliance with the provisions of Section 35 of Article III of the Constitution of Texas.

Article XVI, Section 13 of the Constitution, provides:

"It shall be the duty of the Legislature to pass such laws as may be necessary and proper to decide differences by arbitration when the parties shall elect the method of trial."

Section 3 of House Bill 14 provides that upon receipt of an appropriate request, the governing body of the city "may elect to participate in an arbitration proceeding . . ." The proposed legislation is accordingly authorized by the above quoted provision of our Constitution.

We presume that a constitutional question may also have arisen as to whether this act would take from the governing body of a city one of its governmental functions and in effect transfer the city's duties and responsibilities concerning wages and working conditions to some other agency or group. The authority of the Legislature with reference to municipal matters was well stated in Hunt v. Atkinson, 18 S. W. 2d 594 (Tex. Comm. App. 1929), as follows:

"Their (city) charters must be 'subject to such limitations as may be prescribed by the Legislature.' This clearly shows that the legislative power is in all things supreme; that the power of the municipality is subject in all respects to 'such limitations' as may be prescribed by the Legislature, without distinction as to those

limitations then existing or arising through subsequent legislative enactments. We take it to be that the power of the municipality of home rule cities is not supreme in matters of legislation, but is at all times subject to any and all limitations that may be prescribed by the Legislature. "

In House Bill 14 if is not mandatory that the city officials accept the recommendations of either the Arbitration Commission or the Hearing Commission and such recommendations, not being binding on the city, cannot, therefore, be considered an invalid delegation of a governmental function. The authority of the Legislature to provide that issues relating to salaries of firement and policemen be submitted to the vote of the qualified electors at an election, as is provided in Article 1583-2, Vernon's Penal Code, is well established and clearly constitutional. City of Wichita Falls v. Cox, 300 S. W. 2d 317 (Civ. App. 1957, error ref., n. r. e.) and cases cited therein. The authority of the Legislature to establish the Firemen's and Policemen's Civil Service, Article 1269m, Vernon's Civil Statutes, dealing with working conditions and related matters has similarly been held constitutional in numerous cases. City of Wichita Falls v. Cox, supra, The authority of the Legislature in this field has in fact been consistently upheld by the Courts.

Article 1583, Vernon's Penal Code, providing a wage and hour law for members of any fire department or police department in certain cities and making it a penal offense for the city official having charge of the fire department or police department to violate any provision of Article 1583, was held to be constitutional in Dry v. Davidson, 115 S. W. 2d 689 (Civ. App., 1938, error ref.) and McGuire v. City of Dallas, 141 Tex. 170, 170 S. W. 2d 722 (1943). In Dry v. Davidson it was held that under Section 5 of Article XI of the Constitution of Texas:

"Thus upon its face the provision of giving such cities the right to adopt or amend their own charters accords that privilege only with these two strings tied to it: (1) They may do so 'subject to such limitations as may be prescribed by the Legislature;' and (2) provided no charter 'shall

contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature;' this phrase, 'as may be prescribed' can only mean that future legislation may also limit whatever action a city may take, as well as that existing at the time it first takes out or amends its charter. "

The Court further pointed out that Article 1583, 'classifies cities according to their population at the preceding census and makes the salary provision here involved applicable to cities of more than 75,000, to which group Houston belongs' and held that the classification constitutes a general law and not a special one within the meaning of Section 56 of Article III of the Constitution of Texas.

In construing the provisions of Article 1583 of the Penal Code, the Court in McGuire v. City of Dallas, supra, pointed out:

"It is clear therefore that the legislature by the grant of additional compensation to those who were required or permitted to work overtime hours did not intend to render the prohibited work void, but rather to prevent it. The statute does not undertake to penalize the firemen but penalizes the municipality by the exaction of time and one-half for overtime for the overtime hours required or permitted. The penal offense provided by the statute is applicable to 'the city official having charge of the fire department * * *' and not to the municipality or firemen. . . ."

On the constitutional question, the Supreme Court stated:

"The city attacks the quoted statute, particularly Section 7 thereof, on constitutional grounds. This court settled that question by the refusal of the writ of error in

the case of *Dry v. Davidson*, Tex. Civ. App., 115 S. W. 2d 689, writ refused. "

The Court further pointed out:

" . . . There is no relation between the pension law and Article 1583. They are separate and independent legislative enactments. A comprehensive pension system for incorporated cities and towns has been authorized by statute. Articles 6229-6243; 6243a as amended, 44th Legislature, Vernon's Ann. Civ. Sts. arts. 6229-6243, 6243a. The constitutionality of the act was sustained by this court in the case of *Byrd v. City of Dallas, et al.*, 118 Tex. 28, 6 S. W. 2d 738, upon the theory that contributions made by the municipality and the employee to the pension fund were a part of the agreed compensation, hence, not a grant of public funds to private purposes, etc. as prohibited by our state constitution. "

The case of *Congress of Industrial Organizations v. City of Dallas*, 198 S. W. 2d 143 (Civ. App. 1946, error ref., n. r. e.) involved the validity of a city ordinance prohibiting any city employee from organizing or becoming a member of a labor union, In sustaining the validity of such ordinance, the Court pointed out that the status of government employees is radically different from that of employees in private business in industry, and quoted with approval the following from *Railway Mail Ass'n. v. Murphy*, 180 Misc. 868, 44 N. Y. S. 2d 601:

" . . . 'Much as we all recognize the value and the necessity of collective bargaining in industrial and social life, nonetheless, such bargaining is impossible between the Government and its employees, by reason of the very nature of Government itself. The formidable and familiar weapon in industrial strike and warfare -- the strike -- is without justification when used against the Government.

When so used, it is rebellion against constituted authority. * * * The Court then concluded, as follows: 'To hold otherwise would be to sanction control of governmental functions not by laws but by men. Such policy if followed to its logical conclusion would inevitably lead to chaos, dictators and the annihilation of representative government.'

After a thorough review of the authorities in this State and numerous authorities in other jurisdictions, the Court concluded:

"Appellants' main contention seems to be that the ordinance in question is unconstitutional and void because it would deprive them of certain freedoms, rights and privileges granted by both the Federal and State Constitutions. We do not think so; these rights and privileges are purely personal and may be waived. Appellants overlook the fact that by voluntarily accepting employment with the City of Dallas, they assumed the obligations incident to such employment; impliedly agreed to accept same under the conditions as they existed; agreed to accept the employment and compensation therefor as regulated and controlled by existing laws; especially did they obligate themselves not to organize a labor union or affiliate with one. These employees of the City may assert their constitutional rights and privileges if they choose to do so, but it is quite clear that to assert them under the circumstances would be inconsistent with the duty as employees of the City, and subject them to discharge from the service. While they have the right to these constitutional privileges and freedoms, they have no constitutional right to remain in the service of the City."

Since government employees, such as city firemen, do not have the authority to strike, the Legislature has the authority

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to prescribe the method whereby peaceable settlements of grievances and disputes involving city firemen may be accomplished without the governmental operations of the city being interfered with.

Summarizing the foregoing authorities and the authorities contained in such cases, it is not settled that the Legislature has the authority to prescribe by general law salary, wages, compensation, emoluments, hours of employment and working conditions of city employees and to prescribe penalties for violation of such acts by city officials.

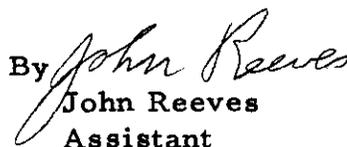
It is our opinion that House Bill 14 as submitted with your request is a general law prescribing the conditions of employment of firemen in cities of 10,000 inhabitants or more and it is, therefore, constitutional. Dry v. Davidson, 115 S. W. 2d 689 (Civ. App. 1938, error ref.); McGuire v. City of Dallas, 141 Tex. 170, 170 S. W. 2d 722 (1943); Congress of Industrial Organizations v. City of Dallas, 198 S. W. 2d 143 (Civ. App. 1946, error ref., n. r. e.).

SUMMARY

House Bill 14 of the 57th Legislature, as submitted with your request, pertaining to settlement of grievances and disputes concerning firemen's salary, hours of work, conditions of work and other emoluments, is constitutional. Dry v. Davidson, 115 S. W. 2d 689 (Civ. App. 1938, error ref.); McGuire v. City of Dallas, 141 Tex. 170, 170 S. W. 2d 722 (1943); Congress of Industrial Organizations v. City of Dallas, 198 S. W. 2d 143 (Civ. App. 1946, error ref., n. r. e.).

Yours very truly,

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By 
John Reeves
Assistant

JR:mfh

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APPROVED:

OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL

BY: MORGAN NESBITT