



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

August 16, 1971

Honorable John Lawhon
District and County Attorney
County Courthouse
Denton, Texas 76201

Opinion No. M-932

Re: Construction of H.B. 1754,
Acts 62nd Leg., R.S. 1971,
Ch. 583, p. 1927, relating
to the allowances for travel-
ing expenses of members of
the commissioners court in
certain counties.

Dear Mr. Lawhon:

You have requested the opinion of this office concerning the effective date of House Bill 1754, Acts 62nd Legislature, R.S. 1971, Ch. 583, page 1927. You have further asked our opinion as to whether House Bill 1754 allows the commissioners court to set "travel expenses and depreciation" of one or more of the commissioners at a different sum from that set for the county judge or from that set for another commissioner.

For the reasons which follow, we hold that House Bill 1754 is unconstitutional and therefore never became a valid and effective law. It is therefore unnecessary to answer your questions.

The relevant portions of House Bill 1754 read as follows:

"Section 1. In any county having a population of not less than 73,000 nor more than 75,750 according to the last preceding federal census, the commissioners court may allow each member of the commissioners court not more than \$150 per month for traveling expenses and depreciation on his automobile while on official business within the county. Each member of the commissioners court shall pay all expenses in the operation of his automobile and keep it in repair free of any other charge to the county.

"Sec. 2. As used in this Act, 'members of the commissioners court' means the county commissioners

and the county judge.

"Sec. 3. This Act applies only to counties not furnishing an automobile or truck or by other means providing for the traveling expenses of members of their commissioners courts while on official business within the county.

"Sec. 4. In any county in this state having a population of not less than 11,870 and not more than 12,000, according to the last preceding federal census, the commissioners court is hereby authorized to allow each member of the court the sum of not exceeding \$125 per month for traveling expenses and depreciation on his automobile while on official business within the county. Each member of the court shall pay all expenses in the operation of such automobile and keep the automobile in repair free of any other charge to the county.

"Sec. 5. As used in this Act, 'the last preceding federal census' means the 1970 census or any future decennial federal census. This is despite any legislation that has been or may be enacted during any session of the 62nd Legislature delaying the effectiveness of the 1970 census for general state and local governmental purposes."

Section 56 of Article III of the Texas Constitution prohibits the Legislature from passing any local or special law where a general law can be made applicable. The purpose of this constitutional provision has been very ably explained in Miller v. El Paso County, 136 Tex. 370, 150 S.W.2d 1000 (1941) at page 1001-1002:

"The purpose of this constitutional inhibition against the enactment of local or special laws is a wholesome one. It is intended to prevent the granting of special privileges and to secure uniformity of law throughout the State as far as possible. It is said that at an early period in many of the states the practice of enacting special and local laws became 'an efficient means for the easy enactment of laws for the advancement of personal rather

than public interests, and encouraged the reprehensible practice of trading and "log-rolling." It was for the suppression of such practices that such a provision was adopted in this and many of the other states of the Union. 25 R.C.L., p. 820, §68.

"Notwithstanding the above constitutional provision, the courts recognize in the Legislature a rather broad power to make classifications for legislative purposes and to enact laws for the regulation thereof, even though such legislation may be applicable only to a particular class or, in fact, affect only the inhabitants of a particular locality; but such legislation must be intended to apply uniformly to all who may come within the classification designated in the Act, and the classification must be broad enough to include a substantial class and must be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished by the proposed legislation. In other words, there must be a substantial reason for the classification. It must not be a mere arbitrary device resorted to for the purpose of giving what is, in fact, a local law the appearance of a general law. *City of Fort Worth v. Bobbitt*, 121 Tex. 14, 36 S.W.2d 470, 41 S.W.2d 228; *Bexar County v. Tynan*, 128 Tex. 223, 97 S.W.2d 467; *Clark v. Finley, Comptroller*, 93 Tex. 171, 178, 54 S.W. 343; *Supreme Lodge United Benevolent Ass'n v. Johnson*, 98 Tex. 1, 81 S.W. 18; *Smith v. State*, 120 Tex.Cr.R. 431, 49 S.W.2d 739; *Randolph v. State*, 117 Tex.Cr.R. 80, 36 S.W.2d 484; *Fritter v. West*, Tex.Civ.App., 65 S.W.2d 414, writ refused; *State v. Hall*, Tex.Civ.App., 76 S.W.2d 880; *Wood v. Marfa Ind. School Dist.*, Tex.Civ.App., 123 S.W.2d 429. As said in *Leonard v. Road Maintenance District No. 1*, 187 Ark. 599, 61 S.W.2d 70, 71: 'The rule is that a classification cannot be adopted arbitrarily upon a ground which has no foundation in difference of situation or circumstances of the municipalities placed in the different classes. There must be some reasonable relation

between the situation of municipalities classified and the purposes and objects to be attained. There must be something * * * which in some reasonable degree accounts for the division into classes.'"

Because population as a basis for classification has been sustained by the courts with respect to legislation on certain subjects, City of Ft. Worth v. Bobbitt, 121 Tex. 14, 41 S.W.2d 228 (1931); Clark v. Finley, 93 Tex. 171, 54 S.W. 343 (1899) 7, it has been widely, and erroneously, assumed that population brackets may be resorted to in all instances to avoid the prohibition of Section 56 of Article III of the Texas Constitution. This erroneous assumption emanates from a lack of appreciation for the fact that population has been sustained as a basis for classification only in those instances where population bears a reasonable relation to the objects and purposes of the law and the chosen population bracket was founded upon rational differences in the conditions, status, duties or circumstances of the groups included and excluded from the operable effect of the law. Bexar County v. Tynan, 128 Tex. 223, 97 S.W.2d 467 (1936). Where it has been determined that, considering the objects and purposes of the law, differences in population afford no rational basis for discriminating between groups of the same natural class, classification has been termed arbitrary selection, and the law has been held to be special and local within the prohibition of Section 56 of Article III. Smith v. Decker, 158 Tex. 416, 312 S.W.2d 632 (1958); San Antonio Retail Grocers v. Lafferty, 156 Tex. 574, 297 S.W.2d 813 (1957); Rodriguez v. Gonzales, 148 Tex. 537, 227 S.W.2d 791 (1950); Anderson v. Wood, 137 Tex. 201, 152 S.W.2d 1084 (1941).

Reference to House Bill 1754 shows that it creates two categories of counties for the purpose of the allowance of traveling expenses and automobile depreciation for county judges and county commissioners. One category is those counties having a population of not less than 73,000 nor more than 75,750. In these counties the allowance may be set at any sum up to \$150.00 per month. The second category is counties having a population of not less than 11,870 and not more than 12,000. In these counties the allowance may be set at a sum not exceeding \$125.00 per month. These provisions must be construed in light of the provisions of Article 2350o of Vernon's Civil Statutes, which is the general statutory provision pertaining to the allowance for travel expenses and automobile depreciation for the members of the commissioners court. The provisions of that act read as follows:

"Section 1. In any county in this State having a population of not more than twenty-one thousand, five hundred (21,500), according to the last preceding or any future Federal Census, the Commissioners Court is hereby authorized to allow each member of such Commissioners Court the sum of not exceeding Seventy-five Dollars (\$75.) per month for traveling expenses and depreciation on his automobile while on official business within the county. Each member of such Commissioners Court shall pay all expenses in the operation of such automobile and keep same in repair free of any other charge to the county.

"Sec. 2. In any county in this State having a population in excess of twenty-one thousand, five hundred (21,500) but not in excess of one hundred twenty-four thousand (124,000), according to the last preceding or any future Federal Census, the Commissioners Court is hereby authorized to allow each member of the Commissioners Court the sum of not exceeding One Hundred Dollars (\$100) per month for traveling expenses and depreciation on his automobile while on official business within the county. Each member of such Commissioners Court shall pay all expenses in the operation of such automobile and keep same in repair free of any other charge to the county.

"Sec. 3. In any county in this State having a population in excess of one hundred twenty-four thousand (124,000) but not in excess of six hundred thousand (600,000), according to the last preceding or any future Federal Census, the Commissioners Court is hereby authorized to allow each member of the Commissioners Court the sum of not exceeding One Hundred and Twenty-five Dollars (\$125) per month for traveling expenses and depreciation on his automobile while on official business within the county. Each member of such Commissioners Court shall pay all expenses in the operation of such automobile and keep same in repair free of any other charge to the county.

"Sec. 4. In any county of this State having a population in excess of six hundred thousand

(600,000), according to the last preceding or any future Federal Census, the Commissioners Court is hereby authorized to allow each member of the Commissioners Court the sum of not exceeding One Hundred and Fifty Dollars (\$150) per month for traveling expenses and depreciation on his automobile while on official business within the county. Each member of such Commissioners Court shall pay all expenses in the operation of such automobile and keep same in repair free of any other charge to the county.

"Sec. 5. The term 'members of the Commissioners Court' when used herein means the County Commissioners and the County Judge.

"Sec. 6. The provisions of this bill shall apply only to those counties not furnishing an automobile, truck, or by other means providing for the traveling expenses of its commissioners, while on official business within the county."

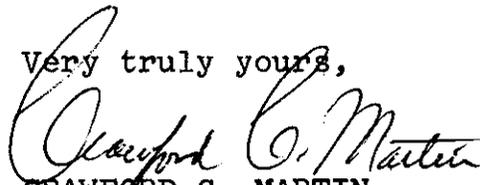
A comparison of the two acts makes it readily apparent that the sole purpose of House Bill 1754 is to create two very narrow exceptions to the provisions of Section 1 and Section 2 of Article 2350o. According to the 1970 census figures, Section 1 of House Bill 1754 could apply only to Denton County, Texas, and Section 4 could apply only to Comanche County, Texas. Under the provisions of Article 2350o, Denton County is in a classification of counties where the maximum sum allowable for travel expenses and automobile depreciation is \$100.00. House Bill 1754 would place Denton County in a category of counties now limited to those having a population in excess of 600,000, thus, in effect, jumping Denton County over that category of counties specified in Section 3 of Article 2350o. Section 4 of House Bill 1754 removes Comanche County from that classification of counties established by Section 1 of Article 2350o, and places it in the category established by Section 3 of that Article, which applies to counties having a population in excess of 124,000, but not in excess of 600,000. We are aware of no unique circumstance or situation which exists in Denton and Comanche Counties which would warrant their removal from the general classification already established by Article 2350o, Vernon's Civil Statutes, and place them on a par with counties having much larger population for the purposes of travel expense and automobile depreciation allowance for the members of the commissioners court. For this reason, and upon the rationale of Miller v. El Paso County, supra, we hold that House Bill 1754

is a local or special law within the meaning of Section 56 of Article III of the Texas Constitution and is therefore invalid.

S U M M A R Y

House Bill 1754, Acts 62nd Leg., R.S. 1971, Ch. 583, p. 1927, is a local or special law within the meaning of Section 56 of Article III of the Texas Constitution and is therefore unconstitutional.

Very truly yours,


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Prepared by W. O. Shultz
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