



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

May 22, 1973

Honorable H. J. "Doc" Blanchard
Chairman, Senate Legislative Property
Tax Committee
State Capitol
Austin, Texas 78711

Letter Advisory No. 46

Re: May an appropriation
be made by providing
that appropriation for
one biennium shall be
renewed automatically
unless the subsequent
Legislature directs
otherwise?

Dear Senator Blanchard:

You have requested for the Legislative Property Tax Committee that we review Senate Bill 414 of the 62nd Legislature, Regular Session (now Art. 7100, V.A.T.S.), Section 4 under "Powers of Committee," particularly the sentence reading, "This appropriation is made for a two-year period beginning June 1, 1971, and shall be renewed automatically for an additional two year period beginning June 1, 1973, unless the 63rd Legislature shall direct otherwise." You pose this question: "Is this method of appropriating funds for a second two-year period constitutional?"

Article 7100 establishes the Legislative Property Tax Committee, and sets out its duties and powers. Section 4 thereof reads in pertinent part (with emphasis added):

"Sec. 4. In addition to [certain fees] each County Tax Assessor-Collector shall collect and remit to the Comptroller [a special fee], the proceeds of this additional fee to be deposited in the State Treasury as a special fund for the use of the Property Tax Committee herein created.

" . . . All moneys deposited in this special fund shall be and the same are hereby appropriated to the use of the Property Tax Committee in carrying out the tasks assigned under this Act This

appropriation is made for a two-year period beginning June 1, 1971, and shall be renewed automatically for an additional two-year period beginning June 1, 1973, unless the 63rd Legislature shall otherwise direct."

It is one thing to devote funds to a particular use by "earmarking;" it is another to appropriate them to a particular purpose. Article 8, Section 6 of the Constitution provides:

"No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years"

The provision of Article 7100 setting up a special fund to receive the additional fees clearly "earmarked" such receipts for the use of the committee. Just as clearly, the last quoted paragraph of Section 4 thereof appropriates such funds to its use. Earmarking is not subject to the Constitutional limitations of Article 8, Section 6, but appropriations made pursuant thereto are. Pickle v. Finley, 44 S. W. 480 (Tex. 1898).

In our opinion, the "automatic" re-appropriation of the funds for the additional two-year period beginning June 1, 1973, is ineffective. In the interpretive commentary on Section 6, Article 8, accompanying Vernon's Constitution of the State of Texas Annotated, it is stated:

"This section defines for the legislature the manner of disbursement of state funds, namely that no money shall ever be paid out of funds of this state except in pursuance of an appropriation by law, and unless such payment shall be made within two years after the passage of such appropriation act." (emphasis added)

It is perhaps arguable that Article 7100 does not make any appropriation "for a longer term than two years" because it makes two separate appropriations, each lasting only two years. It might also be said that such appropriations do not depart from a pay-as-you-go concept because specific funds are

appropriated to the use of the Committee which can be no more and no less than the actual receipts of the special fund established.

But such an approach would evade both the letter and the spirit of constitutional command. All statutes enacted by a Legislature are subject to disaffirmance by the next Legislature. It is elemental that a legislative body cannot bind its successors by diminishing or enlarging their delegated powers. Watts v. Mann, 187 S. W. 2d 917 (Tex. Civ. App., Austin, 1945, writ refused). Thus the provision that the appropriation would be automatically renewed unless the next Legislature repealed it does no more than state the status of all enactments not specifically limited to the life of the enacting body.

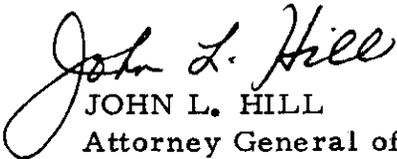
Our Constitution requires that appropriations acts be treated differently. Referring again to the interpretive commentary cited above, it is there noted:

"The object of this section is to prevent the legislature from pledging the revenues for more than two years in advance. The limitation of two years was considered advisable because the House of Representatives was to be a new body every two years, and thus obliged every legislature to see what object money went for. This section gives the legislature control over the expenditure by administrative officers of the state."

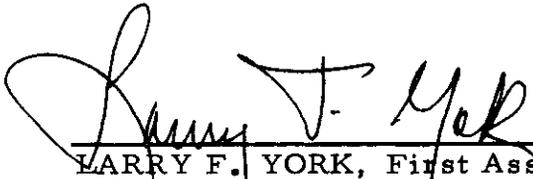
In our opinion Article 7100, V. A. T. S. attempts to appropriate money for a total period of four years and is violative of Article 8, Section 6 of the Constitution of Texas. Where the Legislature has made an appropriation in unmistakable terms which continues for a longer period than two years, such appropriation may be upheld for the first two years, but is inoperative thereafter. We believe such to be the situation here. Dallas County v. McCombo, 140 S. W. 2d 1109 (Tex. 1940); State v. Angelina County, 150 S. W. 2d 379 (Tex. 1941); Friedman v. American Surety Co. of New York, 151 S. W. 2d 570 (Tex. 1941); City of Beaumont v. Gulf States Utilities Co., 163 S. W. 2d 426 (Tex. 1942). Also see Gulf Insurance Co. v. Jones, 185 S. W. 2d 966 (Tex. 1945); Johnson v. Ferguson, 55 S. W. 2d 153 (Tex. Civ. App., Austin, 1932, writ dismiss.); Attorneys General Opinions O-320 (May 4, 1939), O-700 (May 5, 1939), V-412 (1947), and V-822 (1949).

Though the appropriation provision is limited to a two year life, it is separable and we do not believe the remainder of the act is affected. The 62nd Legislature specifically recognized that the 63rd Legislature might not choose to continue the pattern of appropriations made, and evidenced an intent that the remainder of the enactment should survive such a choice. 12 Tex. Jur. 2d Constitutional Law Sections 47, 48.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee