



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

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May 15, 1975

The Honorable D. R. "Tom" Uher
Chairman, State Affairs Committee
House of Representatives
P. O. Box 2910
Austin, Texas 78767

Letter Advisory No. 104

Re: Constitutionality of
proposed change in state
fiscal year.

Dear Representative Uher:

You have requested our opinion concerning the constitutionality of several methods by which the Legislature may appropriate funds so as to allow the beginning of the state's fiscal year to be changed from September 1 to October 1. You note in your request that the Legislature is considering a bill which would enact such a change by general law. Specifically, your questions are:

1. May the legislature appropriate money for a two-year period beginning on any date of its choice?
2. Assuming that the 64th Legislature enacts a general appropriations act for the biennium ending August 31, 1977, may the 65th Legislature enact a supplemental appropriations act to cover the cost of state government for the month of September, 1977, and also enact a general appropriations act to cover the fiscal biennium beginning on October 1, 1977?
3. May the 65th Legislature amend the general appropriations act covering the biennium ending August 31, 1977, to extend its effect through September, 1977?

In our view the relevant constitutional provisions are article 3, section 39 and article 8, section 6. Article 3, section 39 provides in part:

No law passed by the Legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted. . .

Article 8, section 6 provides in part:

. . . nor shall any appropriation of money be made for a longer term than two years.

To our knowledge article 3, section 39 is the only constitutional provision which concerns the effective date of legislation, and general appropriations acts are excepted from its operation. So long as the provisions of section 39 are not violated, the Legislature may choose any date desired upon which an act is to become effective. See Norton v. Kleberg County, 231 S. W. 2d 716 (Tex. Sup. 1950). Past opinions of this Office have concerned appropriations which became effective on a variety of different dates. See e. g. Attorney General Opinions M-31 (1967)(Feb. 20); V-316 (1947)(June 11); O-5356 (1943)(Oct. 1); O-320 (1939)(June 3). We therefore answer your first question in the affirmative; the Legislature may appropriate money for a two year term beginning on any date of its choice.

In response to your second question, we have discovered no authority which necessarily would limit the number of appropriations acts which a Legislature may enact. The purpose of the article 8, section 6, limitation on the period of time during which appropriations may be effective is explained in Attorney General Opinion O-3651 (1941) written by the Honorable Zollie Steakley. That opinion indicates that:

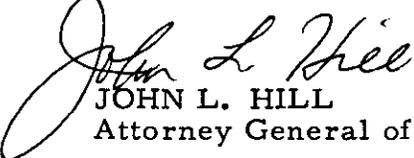
The Constitution prohibits an appropriation for a longer period than two years to prevent one Legislature from directing and controlling the expenditure of State funds beyond the control of a subsequent Legislature. This is the fundamental principle involved. Constant vigilance over the finances of the State is thereby achieved. Mistakes of one Legislature in authorizing the expenditure of money may be corrected by the subsequent Legislature. Therefore it is not contrary to the Constitutional principle enunciated in Section 6 of Article VIII of the Constitution of Texas to hold that an appropriation by one Legislature of no fixed duration may be upheld for not longer than a two year period when the prerogatives of the forthcoming Legislature in respect to the expenditures of public moneys will not be transgressed.

In the action you propose one Legislature would enact two separate bills which together would provide for twenty-five months of appropriations. Neither bill alone would appropriate funds for more than two years. Since, in the specific situation you describe, there would be no appropriation for a period exceeding two years and since in our view the one month supplemental appropriation would not violate the spirit or purpose of article 8, section 6 of the Texas Constitution, it is our opinion that a single Legislature could enact a one month general appropriations bill and a subsequent twenty-four month general appropriations bill as an incident to compliance with general legislation changing the date on which the State's fiscal year begins.

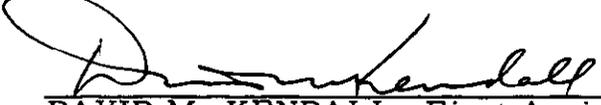
Your third question is whether the 65th Legislature may amend the general appropriations act covering the bienium ending August 31, 1977 to extend its effect through September, 1977.

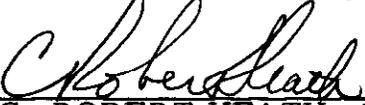
In our view such an amendment would have the effect of making an appropriation of money for a longer term than two years, for the month of September 1977 would be financed from the same appropriation as the previous 24 months. Accordingly, we answer your third question in the negative.

Very truly yours,


JOHN L. HILL
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APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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