



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTON
ATTORNEY GENERAL**

August 25, 1988

Honorable Henry B. Keene
Chairman
Texas Board of Pardons and Paroles
8610 Shoal Creek Blvd.
P. O. Box 13401, Capitol Station
Austin, Texas 78711

LO-88-99

Dear Mr. Keene:

You ask about the interpretation of Rider No. 11 to the appropriation for the Board of Pardons and Paroles for the 1988 and 1989 fiscal years. General Appropriations Act for 1989-89 biennium, Acts 1987, 70th Leg., 2d C.S., ch. 78, art. I, at 437. That rider provides:

None of the funds appropriated above may be expended for pre-parole services in pre-release residential centers established, relocated or contracted for since the effective date of Senate Bill No. 215, 70th Legislature, Regular Session, 1987, unless sufficient notice and opportunity for a public hearing in the community regarding the establishment or relocation of the facility has been given to the community in which the center would be located prior to the opening of the establishment.

You do not ask about the constitutionality of the rider. See generally *Jessen Associates, Inc. v. Bullock*, 531 S.W.2d 593, 600 (Tex. 1975) (rider may not conflict with general law). Rather, you ask about the applicability of the rider to a pre-release facility that began operation at a particular location in Houston in June 1987.

The current appropriations act appropriates money for the period from September 1, 1987, to August 31, 1989. Both the House and Senate adopted the Conference Committee Report on the appropriations act on July 21, 1987, and the governor signed the act on August 6, 1987. The rider set out above

applies to "pre-release residential centers established, relocated or contracted for since the effective date of Senate Bill No. 215, 70th Legislature; Regular Session, 1987." The effective date of S.B. 215 was February 20, except for section 13, which became effective on September 1, 1987. Acts 1987, 70th Leg., ch. 1, at 1. We will assume for purposes of this opinion that February 20, 1987, is the effective date of Senate Bill No. 215.

Because the rider applies to centers established "since the effective date of Senate Bill No. 215," it has been suggested that the rider prohibits expenditure of appropriated funds for a pre-release facility that began operation in June 1987 -- before the enactment of the appropriations act -- because no public hearing was held regarding the location of the facility before the facility began operation. In other words, it has been suggested that the rider cuts off appropriated funds to the facility even though the facility began operation at a time when there was no requirement of a public hearing.¹ Although the reference to the effective date of Senate Bill No. 215 allows such an interpretation, we do not think that such an interpretation was the intent of the legislature.

On its face, the rider in question appears to do nothing more than make a public hearing a condition precedent to funding. In any case, the rider does not appear to be an absolute prohibition on funding for a specific facility. If the legislature had intended to deny funding to a specific facility, it could have easily made a straightforward statement of such an intention. We do not think it is the usual practice of the legislature to prohibit funding for a certain project by creating a condition that is impossible to fulfill, and we do not think that legislators reading the rider in question would have understood it to do so. Therefore, we do not interpret the rider in question as barring the expenditure of appropriated funds for the facility in question.

Your question is whether the rider imposes any requirement on a specific facility that was open before the enactment of the rider in question. You provide the following information about the facility:

1. Again, we point out that we are not addressing the constitutionality of a rider that creates a public hearing requirement that is not provided for in the general law.

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The Board of Pardons and Paroles first contracted with Prigor, Inc. May 15, 1987 at a facility located at 4815 North Freeway, IH45, Harris County, although no clients were placed at this facility and it was subsequently relocated to 9051 South Main on or about June 26, 1987. The initial contract had a term extending from May 15, 1987 through August 31, 1987. This contract was extended for two months to October 31, 1987 temporarily to allow evaluations of bids opened in September.

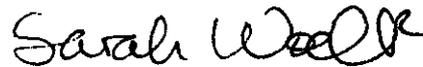
. . . .

Notice of public meeting was transmitted for posting 8-21-87 for a public meeting to be held August 31, 1987 at 6:30 P.M. at 3699 Norris, Houston.

The meeting was held as scheduled, was well attended and comments both 'pro' and 'con' were reported by speakers. A copy of the meeting proceedings is attached

At the very most, the rider in question conditions appropriated funds for the facility you ask about on the occurrence of notice and a public hearing before the facility "opened" during the 1988-89 fiscal years. That public hearing was held prior to the effective date of the rider, September 1, 1987. Because you inform us that the facility in question meets that condition, the rider set out above does not prohibit the expenditure of appropriated funds for that facility.

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section



Rick Gilpin, Chairman
Opinion Committee

APPROVED: OPINION COMMITTEE

SW/RG/bc
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