



TEXAS HOUSE OF REPRESENTATIVES

Committee on Environmental Regulation

73rd Texas Legislature

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AUG 05 1993

Warren Chisum  
Chairman

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Vice Chairman

August 3, 1993

The Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711

Attention, Opinions Committee

MBJ  
FILE # ~~ML 21638 RS~~  
I.D.# 21635

RQ-595

Dear General Morales:

Article III, Section 35, of the Texas Constitution states that a general law may not be changed by provisions in an appropriations bill. Explanatory notes in the Rules of the Texas House of Representatives (Rule 8, Section 4) state that there are many holdings by courts, the attorney general and presiding officers that a rider to an appropriations bill may detail, restrict or limit the expenditure of appropriated funds, but may not enact or amend general law. [See Op. Tex. Att'y Gen. Nos. MW-51 (1979), MW-389 (1981) and Moore v. Sheppard, 192 S.W. 2d 559 (Tex. 1946).]

An opinion regarding the constitutionality relating to certain riders to Senate Bill 5, Article V, is requested. Specifically, the riders in question are found in Article V, Section 154, ARTICLE II Contingency Reductions, on pages V-101 through V-104.

The Legislature used the appropriations bill as a vehicle to implement some of the recommendations by the Comptroller found in the Texas Performance Review's publication *Against the Grain*. Some of these recommendations deal exclusively with appropriations and are not being questioned in this request for an opinion. However, some of the recommendations go beyond making an appropriations and/or shifting moneys, but create and require the implementation of new programs that were not passed by the Legislature.

Derek Seal, Committee Clerk

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The two riders in Section 154 of the appropriations bill being questioned are:

**6. Texas Performance Review (TPR) Recommendation HHS 14.** In order to implement TPR recommendations HHS 14, the Department of Health, in cooperation with the Department of Protective and Regulatory Services and public hospitals, shall implement a child welfare program modeled after Hawaii's Healthy Start Program. Legislation to implement a pilot program modeled after Hawaii's Health Start Program was introduced by Rep. Diana Davila (HB 2485). This bill was not passed by the Legislature. The establishment of this program will require additional personnel and a sizable expenditure of money. Since this program failed to pass the legislative process, its implementation through the appropriations bill is questioned as to its constitutionality.

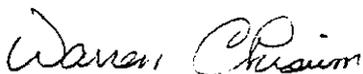
**15. Texas Performance Review (TPR) Recommendation HHS 14.** In order to implement TPR recommendations HHS 14, the Department of Protective and Regulatory Services, in cooperation with other agencies that refer children to foster care, shall implement a child welfare program modeled after Washington's Homebuilders program. Legislation to implement this program was not introduced during the 73rd Regular Session. It is assumed that this program is at least as expansive as the Healthy Start Program detailed in Rep. Davila's HB 2485. Again, this recommendation goes beyond a mere appropriation for an existing program and/or a shifting of funds, but actually creates a program that was not passed by the Legislature in the normal legislative process. This rider is questioned as to its constitutionality.

During the 70th Legislature, 2nd Called Session, the House was considering SB 1, the General Appropriations Bill. Rep. Bill Hammond raised a point of order against a rider on the grounds that it was attempting to change general law in the appropriations bill in violation of Rule 8, Section 4, of the House Rules of Procedure and Article III, Section 35, of the Texas Constitution. The chair sustained the point of order stating, "...While a rider may detail, limit, or restrict the expenditure of funds, these two sentences do not do so but, rather, have the effect of general law." The rider was stricken from the bill [70 H.J. 2d C.S. 147(1987)].

Please issue an opinion regarding the constitutionality for the two riders detailed above (Article V, Sec. 154, 6 and 16) based on Article III, Section 35, of the Texas Constitution.

I would appreciate your guidance in this matter as soon as possible. If you require any further information, please contact me at 463-0736.

Sincerely,



Warren Chisum  
Chairman, House Committee on Environmental Regulation