



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CARR
ATTORNEY GENERAL

May 27, 1965

Overruled by 17-1199

where conflict

Honorable Dorsey B. Hardeman
Chairman, Finance Committee
State Senate
Austin, Texas

Opinion No. C-449

Re: Validity of a "rider" contained in Article V of House Bill 12, General Appropriation Act.

Dear Senator Hardeman:

You have requested an opinion on the validity of the following language contained in a "rider" in Article V of House Bill 12 of the 59th Legislature, General Appropriation Bill:

"Interpretation of Legislative intent as it relates to the funds appropriated in this Act and the conditions, limitations and procedures relating thereto shall be the responsibility of the Attorney General. In the event of controversies or conflicts of interpretation, final determination of Legislative intent shall be made through opinions or rulings by the Attorney General and the Comptroller of Public Accounts is directed to follow such opinions or rulings in the payment of claims from the funds appropriated in this Act."

In determining the validity of the above-quoted language of a "rider" in the General Appropriation Bill, we are governed by the principles of law announced in the authorities cited in Attorney General's Opinions C-443 and C-447. These principles are as follows: General legislation cannot be included within a general appropriation bill - Moore v. Sheppard, 144 Tex. 537, 192 S.W.2d 599 (1946); a "rider" in a general appropriation bill cannot repeal, modify or amend an existing general law - Conley v. Daughters of the Republic, 106 Tex. 80, 156 S.W. 197 (1913); Linden v. Finley, 92 Tex. 451, 49 S.W. 578 (1899); State v. Steele, 57 Tex. 203 (1882).

It is the duty of the Attorney General as the chief legal officer of the State to give legal advice in the form of opinions to the Governor, heads of the various departments, boards and commissions and State institutions, and committees of the Legislature, and to represent the State and the various State boards, departments and commissions in civil actions. Article IV, Section 22 of the Constitution of Texas; Chapter 4, Title 70, Revised Civil Statutes of Texas, 1925 (Articles 4394-4413, V.C.S.); Terrell v. Sparks, 104 Tex. 191, 135 S.W. 519 (1911); Brady v. Brooks, 99 Tex. 366, 89 S.W. 1053 (1905).

The various State departments, boards and commissions, when performing their official duties, act as agencies of the State. Therefore, such agencies do not have such a justiciable interest as would authorize one State agency to maintain a suit against another State agency, since such a suit would, in effect, constitute the State of Texas maintaining a suit against itself. See Dallas Independent School District v. Edgar, 255 F.2d 455 (5th Circuit, 1958); Dallas Independent School District v. Edgar, 328 S.W.2d 201 (Tex.Civ.App. 1959).

In recognizing the responsibility of the Attorney General to advise county officials regarding their duties, the Court in Wichita County v. Robinson, 155 Tex. 1, 276 S.W.2d 509, held that a county was not entitled to recover from a county official compensation which had been paid such county official under an invalid act where the compensation had been paid him in reliance upon the advice of the Attorney General.

In view of the foregoing, it is the established law in this State that it is the responsibility of the Attorney General to settle controversies between agencies of the State. The language of the "rider" involved in your request differs, therefore, from the "rider" involved in Attorney General's Opinion C-447. The "rider" construed in Attorney General's Opinion C-447 modified the existing law by making the Comptroller of Public Accounts the fact finding agency for all expenditures of State funds. On the other hand, the "rider" involved in your request merely makes a declaration of the responsibility of the Attorney General, which responsibility has heretofore been established by the constitutional and statutory provisions of the State, and judicially determined by the courts of this State. Therefore, the "rider" involved in this request does not attempt to amend, modify or repeal any existing State law. Since the "rider" constitutes merely a declaration of existing law, you are advised that no change in the existing law will occur by either the exclusion or inclusion of the provisions of the "rider" involved in your request. Therefore, it is within the sound discretion of the Legislature to determine whether such a

declaration should or should not be made.

SUMMARY

A "rider" declaring that in the event of controversies or conflicts between agencies of the State as they relate to expenditure of funds appropriated by a general appropriation bill, it is the responsibility of the Attorney General to determine the legislative intent, does not modify, amend or repeal any existing legislation and is consistent with the present general law. Such language constitutes merely a declaration by the Legislature of the already existing law. Whether such harmless declaration should or should not be made is within the sound discretion of the Legislature.

Yours very truly,

WAGGONER CARR
Attorney General

By 
John Reeves
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman
J. C. Davis
Pat Bailey
Jack Goodman
W. O. Shultz

APPROVED FOR THE ATTORNEY GENERAL
By: Stanton Stone