



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. E.S. Foreman
County Auditor
Beaumont, Texas

Jefferson Co

Dear Sir:

Opinion No. O-2389

Re: House Bill No. 596, 43rd Leg., (Acts 1935, 43rd Leg., p. 110, ch. 55) as amended by House Bill No. 970, 45th Leg., (Acts 1937, 45th Leg., p. 599 ch. 501).

We are in receipt of your letter of recent date, in which you request the opinion of this department touching two questions stated by you as follows:

"1. If it has been determined that a purchase has been made by a County official upon proper requisition and such requisition has been ratified by the Purchasing Agent and approved by the County Judge, does the County Auditor have authority to refuse to acknowledge such requisition because he is aware of the fact that purchase was not actually made by the Purchasing Agent as outlined in House Bill No. 535?"

"2. In case a requisition is issued by a County employee or official and ratified by the Purchasing Agent and approved by the County Judge and the material purchased thereunder and used and it is later determined by the County Auditor that such purchase was not in conformity with House Bill No. 596, is the County liable for payment of such material purchased?"

You further state "for your information I am enclosing herewith a copy of House Bill No. 596, under which Jefferson County is operating its purchasing department."

Section 1 of House Bill No. 970, 45th Leg., (Acts

Honorable E. S. Foreman, page 2

1937, 45th Leg., p. 559, ch. 301), which amended House Bill No. 596 (in particulars not material to this opinion), provides:

H.B. No. 970.

"Section 1. In all counties in this state having a population of more than one hundred thousand (100,000) inhabitants and less than one hundred fifty thousand (150,000) inhabitants, as shown by the latest United States Census, and containing two (2) cities of fifty thousand (50,000) inhabitants, or more, each, as shown by the latest United States Census, the Commissioners Court of such county shall appoint a suitable person who shall act as County Purchasing Agent for such county, who shall hold his office at the pleasure of the Commissioners Court or a majority thereof; it shall be the duty of such agent to make all purchases for such county of all supplies, materials, and equipment required or used by such county or by a subdivision, officer or employee thereof excepting such purchases as may by law be required to be made by competitive bids, and to contract for all repairs to property used by such county, its subdivisions, officers, and employees, except such as by law are required to be contracted for by competitive bids. All purchases made by such agent shall be paid for by warrants drawn by the County Auditor on the County Treasurer of such county as in the manner now provided by law. It shall be unlawful for any person, firm, or corporation, other than such purchasing agent, to purchase any supplies, materials, and equipment for, or to contract for any repairs to property used by such county or any subdivision, officer, or employee thereof, and no warrant shall be drawn by the County Auditor or honored by the County Treasurer of any such county for any purchases except by such agent and those made by competitive bid as now provided by law. On the 1st day of July of each year such purchasing agent shall file with the Commissioners court of such county an inventory of all property of the county and of each subdivi-

Honorable E.S. Foreman, page 3

sion, officer, or employee thereof then on hand, and it shall be the duty of the County Auditor to carefully examine such inventory and to make an accounting for all property purchased or previously inventoried and not appearing in such inventory. In order to prevent unnecessary purchases, such agent shall have authority and it shall be his duty to transfer county supplies, materials, and equipment from any subdivision, department, officer or employee of the county when such supplies, materials, or equipment are not actually needed or used by such subdivision, department, officer, or employee to any such subdivision, department, officer or employee that may require such supplies, and materials, or the use of such equipment; and such agent shall furnish to the County Auditor a list of such supplies, materials, and equipment so transferred. Such agent shall receive, as compensation for his services, a salary not to exceed Three Thousand Dollars (\$3,000) per year, payable in equal monthly installments. Eighty (80) per cent of such salary shall be paid out of the Road and Bridge Fund and twenty (20) per cent thereof out of the General Fund of such county by warrants drawn on the County Treasurer by the County Auditor."

After careful consideration we have concluded that this Act is a local and special law violating the provisions of Article 3, Section 56, of the Constitution of Texas, and is therefore unconstitutional and void.

Article 3, Section 56, of the Texas Constitution, provides as follows:

"The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, * * * regulating the affairs of counties, cities, towns, wards or school districts; * * * creating offices or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts; * * *"

It is manifest that the law under consideration regulates the affairs of the counties to which it applies, creates an office, and prescribes the powers and duties of

Honorable E. S. Foreman, page 4

such officer. *Altgelt v. Gutzeit*, 109 Tex. 123, 201 S.W. 400; *Commissioners Court of Limestone County et al v. Garrett et al* 233 S.W. 970. It applies only to counties in this state having a population of more than 100,000 inhabitants and less than 150,000 inhabitants, and containing two cities of 50,000 inhabitants, or more, each, as shown by the latest United States Census. The only county in the state of Texas within this population bracket at the time of the enactment of this law and the amendment thereto, was Jefferson County.

In the case of *CLARK, SHERIFF, v FINLEY, COMPTROLLER*, 93 Tex. 171, 54 S.W. 343, the Supreme Court of Texas speaking through Mr. Chief Justice Gaines, declared:

" *** If it is meant by this that the Legislature cannot evade the prohibition of the Constitution as to special laws by making a law applicable to a pretended class which is, in fact, no class, we concur in the proposition. Such was the law passed upon in the case of *Commonwealth v. Patton*, 33 Penn. 253. That statute was made applicable to all counties in which there was a population of more than 60,000 and an incorporated city with a population exceeding 8,000 'situate at a distance from the county seat of more than 27 miles by the usually travelled public road.' There was but one city in the state which came within the pretended class. The court held this a covert attempt at special legislation and that the Act was a nullity. * * * Insofar as the courts which undertake to define the basis upon which the classification must rest hold that the Legislature cannot, by a pretended classification, evade a constitutional restriction, we fully concur with them. * * *

Subsequently in the case of *COUNTY OF BEXAR v. TYNAN* 123 Tex. 323, 97 S.W. (2d) 467, the Supreme Court of Texas announced the principles which control the matter at hand, as follows:

"Notwithstanding it is true that the Legislature may classify counties upon a basis of population for the purpose of fixing compensation of county and precinct officers, yet in doing so the

Honorable E.S. Foreman, page 5

classification must be based upon a real distinction, and must not be arbitrary or a device to give what is in substance a local or special law the form of a general law. It is well recognized that 'in determining whether a law is public, general, special or local the courts will look to its substance and practical operation rather than to its title, form and phraseology, because otherwise prohibitions of the fundamental law against special legislation would be nugatory.' 25 R.C.L., 215, and authorities cited. We need not go into a lengthy discussion of what is a proper basis of classification in a matter of this kind. It is more appropriate to state in general terms what must be present to justify the placing of one county in a very limited and restricted classification, as in this instance. This has been concisely stated in numerous cases in language quoted with approval in the case of Leonard v. Road Maintenance District No. 1, 137 Ark., 599, 61 S.W.(2d) 70, by the Supreme Court of Arkansas.

"The rule is that a classification cannot be adopted arbitrarily upon a ground which has no foundation in difference of situation or circumstances of the municipalities placed in the different classes. There must be some reasonable relation between the situation of municipalities classified and the purposes and objects to be attained. There must be something * * * which in some reasonable degree accounts for the division into classes.'

"When we look to the practical operation of the Act in question we are led to the conclusion that the attempted classification is unreasonable and arbitrary to such degree as to indicate beyond doubt that the purpose of the Legislature was to single out one county and to attempt to legislate upon the question of the compensation of its officers, and not upon the subject generally, and therefore the Act was void as being a special law."

A law which applies only to a part of a natural class of

Honorable E. S. Foreman, page 6

persons or things must predicate its inclusion of a part and exclusion of the balance upon characteristics peculiar to the part which, considering the objects and purposes of the law, afford reasonable ground for restricting the application of the law to the part. Classification must be reasonable and natural, not arbitrary and capricious. Arbitrary designation is not classification. The vice of local or special laws is that they rest on arbitrary designation; that they do not embrace and affect all of the class to which they are naturally related. 25 R.C.L., p.p. 815-816; 12 Am. Jr., p. 146; SMITH v. STATE, (Ct. Cr. App.), 49 S.W. (2d) 739; RANDOLPH v. STATE, (Ct. Cr. App.) 38 S.W. (2d) 484; CITY OF FORT WORTH v. SCBITT, 121 Tex. 14, 36 S.W. (2d) 470, 41 S.W. (2d) 223.

The Act under consideration represents arbitrary designation, rather than valid classification. It attempts to regulate the affairs of counties within a fixed population bracket which can only apply to Jefferson County. The number of inhabitants residing within a county, and the population of two cities within such county, does not, in any reasonable and natural manner, indicate the necessity, propriety, or desirability of regulating the affairs of such county in the manner attempted by this Act. The purpose of Article 3, Section 56 of our Constitution, in part, is to secure uniformity in our system of county government, insofar as possible; to prevent the enactment or enforcement of laws which discriminate between the counties of this State without adequate and substantial differences which would rationally indicate the necessity for such classification. The Act under consideration clearly violates the quoted provisions of Article 3, Section 56, of our Constitution, and it is therefore unconstitutional and void.

The Act under consideration being a nullity, an opinion from this department construing its provisions would serve no useful purpose.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Zollie C. Steakley*
Zollie C. Steakley
Assistant

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APPROVED MAY 29, 1940

E. S. Foreman
ATTORNEY GENERAL OF TEXAS

