



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Mortimer Brown
Executive Secretary
Teacher Retirement System of Texas
Austin, Texas

Travis Co

Dear Sir:

Opinion No. 0-2900
Re: Constitutionality of proposed method for providing for the State's contribution to the Teacher Retirement System.

In your letter of November 15, 1940, you request the opinion of this department upon the following questions:

"1. Is there any provision in the Constitution of the State of Texas that would prohibit the Legislature from providing for the State's contribution to the Teacher Retirement System by making it a preferred claim on the General Revenue Fund of the State as contemplated in the enclosed bill?

"2. If your answer to the above question is in the affirmative, is there any provision in the Constitution of the State of Texas that would prohibit the Legislature from making a direct appropriation from the General Revenue Fund of the State to provide for the State's contribution to the Teacher Retirement System?"

As we understand it, the bill which you attach to your letter contemplates the establishment of a special fund in the State Treasury, from which special fund the

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State's contributions to the Teachers' Retirement System are to be appropriated by the Legislature biennially in accordance with the provisions of Constitution Article 8, Section 6. In order to insure that there shall be built up in such fund a balance available for appropriation and sufficient to discharge the State's obligation to the Teacher Retirement System, the State Treasurer is directed to deposit to the credit of such special fund a certain sum of money out of the first taxes collected for the benefit of and which would otherwise go into the General Revenue Fund. The effect of this is to allocate certain tax monies for deposit to the credit of a special fund, rather than to establish a "preferred claim" against the General Revenue Fund. We find no constitutional provision inhibiting this. It is well to observe, however, that the bill which you enclosed is not entirely clear in its announcement of the purpose which we gather is intended to be accomplished. As drawn, the bill is susceptible of the construction that the Legislature, in violation of the provisions of Article 8, Section 6, of the Constitution, limiting appropriations to two year periods, is attempting to make an appropriation unlimited in time to the State accumulation fund of the Teacher Retirement System. The bill may be redrafted so as to make it clear that the creation of a special fund subject to appropriation by the Legislature is contemplated, not an appropriation.

With respect to your second question, you are advised that we find no provision in the Constitution prohibiting the Legislature from appropriating directly from the General Revenue Fund to provide the State's contribution to the Teacher Retirement System. Article 2922, Section 8, Vernon's Civil Statutes, it is true, provides that "No appropriation shall be made by the legislature out of the General funds of the State of Texas for the payment of benefits as herein provided. Payments can only be made out of special taxes levied as authorized in the Constitutional amendment for the retirement of teachers." However, Article 3, Section 48a merely provides:

"In addition to the powers given to the Legislature, under Section 48 of Article 3, it shall have the right to levy taxes to provide a retirement fund . . ."

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The effect of this Constitutional provision is merely to add the fund for the retirement of teachers to the public purposes for which taxes generally may be levied and expended by the Legislature under Article 3, Section 48. Section 48a neither expressly nor by implication requires the levy of a special tax or taxes exclusively for the benefit of the Teacher Retirement Fund. The effect of the provision found in Article 2922, Section 8, above quoted is simply to announce a Legislative policy that the financing of teachers' retirement contributions by the State shall be by the levy of special taxes for that purpose. This provision, as other purely legislative pronouncements, is subject to repeal or modification by subsequent legislative action. In fact, this right is especially recognized and preserved by the Legislature, with respect to every provision of the Act, in Article 2922, Section 13.

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY *Richard W. Fairchild*
Richard W. Fairchild
Assistant

RWF:ew

APPROVED NOV 20, 1940

George B. Mann
ATTORNEY GENERAL OF TEXAS

