OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable C. H. Gilmer, Chairman
Committee on Judiciary and Uniform State Laws
House of Representatives
Austin, Texas

Dear Sir:

Opinion No. O-5661
Re: Is S. B. 288 (courthouse employees) a local or special bill?

Your letter of June 10, 1941, requesting the opinion of this Department upon the above stated question has been received.

We quote from your letter as follows:

"I hand you here copy of S. B. No. 288 by Senator Speers, which is pending in the House Committee on Judiciary and Uniform State Laws, and request that you advise me, as Chairman of this committee, whether or not this bill is unconstitutional as a local or special bill under the authority of the recent case of J. R. Miller, et al. v. the County of El Paso, Texas, et al."

Senate Bill No. 288 reads as follows:

"A bill to be entitled, an act providing that the Commissioners' Courts in counties of more than three hundred twenty-five thousand (325,000) and less than three hundred seventy-five thousand (375,000) inhabitants, according to the last preceding Federal Census, shall have the authority to direct, control, employ and discharge all building superintendents, telephone operators, elevator operators, janitors and all other employees necessary

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to the upkeep, maintenance and operation of the court houses in their counties, excepting jail guards, matrons and other employees directly engaged in the operation and maintenance of the jails and the safekeeping of prisoners in such counties, prescribing rules regarding such employees, and limitations upon the amount of salary to be paid, the method of employing and accounting, and the period for which such employment shall be made, and declaring an emergency.

"Be it enacted by the Legislature of the State of Texas:

"Section 1. In all counties in this State having a population of more than three hundred twenty-five thousand (325,000) and less than three hundred seventy-five thousand (375,000) inhabitants, according to the last preceding Federal Census, all employees necessary to the repair, maintenance, and operation of the court houses of such counties, shall be under the direction and control of the Commissioners' Court. The County judge shall designate a building superintendent, and the Commissioners' Court shall appoint all other necessary employees subject to confirmation by said Court. The Court shall have the right to discharge any such employee at any time for cause. Such appointments shall be in writing, shall be signed by the employee, state the nature of the duties to be performed, the period for which such employment is made, the hours to be worked, and the amount to be paid, and shall conform to the requirements of and be subject to the limitations provided by Section 19, Chapter 465, Acts of 1935, 44th Legislature, Second Called Session. Such employment shall in no event extend beyond January 1st of the year succeeding the appointment, but may be renewed from year to year. The number of persons to be employed and the amounts to be paid shall be fixed by the Commissioners' Court. All laws regulating the making of employments, the accounting of funds, and all budget laws and regulations applicable to the counties to which this Act applies, shall apply to such employments, except insofar as in conflict with this Act, in which event this Act shall control. All employees, including jail guards, matrons, elevator operators and other such employees engaged in the operation of the jails

In such counties shall continue to be employed and discharged by the Sheriff in the manner now provided by law, and all employees necessary for the proper conduct of the jails or the safekeeping of the prisoners shall be subject to the exclusive direction and control of the Sheriff of such county.

"Sec. 2. The fact that the Court of Civil Appeals at San Antonio has recently held that all court house maintenance employees are subject to the exclusive direction and control of the Sheriff, and may be employed and discharged only by the Sheriff, and the further fact that it has been the custom, policy and established rule that all such employees have been employed and discharged by the Commissioners' Court as employees of the county, and that the holding of the Court of Civil Appeals creates confusion with respect to the repair, maintenance, operation and upkeep of public buildings in the larger counties, and increases the cost of operation therein, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted."

It is stated in effect in Section 2 of the above mentioned bill that the holding of the Court of Civil Appeals, San Antonio, Texas, creates confusion with respect to the repair, maintenance, operation and upkeep of public buildings in the large counties, etc. In this connection, we wish to call your attention to the case of Charles W. Anderson, County Judge, et al, plaintiff in error v. Will W. Wood, Sheriff, defendant in error, the case referred to in above mentioned bill, where the Supreme Court of Texas through Honorable James P. Alexander, Chief Justice, reversed the judgment of the Court of Civil Appeals and the judgment of the trial court was affirmed. However, it is to be noted that a motion for rehearing has been filed in this case before the Supreme Court and has not yet been acted upon by said court.

Section 56 of Article 3 of the State Constitution provides in part:

"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 . . . and in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities."

We have carefully considered Senate Bill No. 288, supra, in connection with the recent case of J. R. Miller, et al vs. the County of El Paso, Texas, et al, which opinion was handed down on the 23rd day of April, 1941, by the Supreme Court, and the authorities cited therein. Therefore, it is our opinion that Senate Bill No. 288 is a local or special bill attempting to regulate the affairs of counties and prescribing the powers and duties of certain officers mentioned therein. Therefore, Senate Bill No. 288, supra, is unconstitutional and void.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Ardell Williams

Ardell Williams
Assistant

APPROVED JUN 20, 1941

Grover Sellers

FIRST ASSISTANT
ATTORNEY GENERAL

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APPROVED
OPINION
COMMITTEE
BY Burk
CHAIRMAN