



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

May 19, 1947

PRICE DANIEL
ATTORNEY GENERAL

Hon. Claud Gilmer
Committee on Appropriations
House of Representatives
Austin, Texas

Opinion No. V-208

Re: Construction of Section
49a of Article III State
Constitution

Dear Sir:

Your letter request reads, in part, as follows:

"The Appropriation Committee of the House has directed the following inquiry as to the procedure contemplated and required under Section 49a of Article 3 of the State Constitution, the amendment of 1942 which requires the State to operate on a cash basis.

"Section 49a requires the State Comptroller to furnish each regular session of the Legislature with a statement of the revenues to be available during the coming biennium and from which appropriations for operation of State government will be made.

"The second paragraph of the Section contains four sentences, numbered for reference '1,' '2,' '3,' and '4' and reading as follows:

"Sentence '1.' 'From and after January 1, 1945, save in the case of emergency and imperative public necessity and with a four-fifths vote of the total membership of each House, no appropriation in excess of the cash and anticipated revenue of the funds from which such appropriation is to be made shall be valid.

"Sentence '2.' 'From and after January 1, 1945, no bill containing an appropriation shall be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts endorses his certificate thereon showing that the amount appropriated is within the amount estimated to be available in the affected funds.

"Sentence '3.' 'When the Comptroller finds an appropriation bill exceeds the estimated revenue he shall endorse such finding thereon and return to the House in which same originated.

"Sentence '4.' 'Such information shall be immediately made known to both the House of Representatives and the Senate and the necessary steps shall be taken to bring such appropriation to within the revenue, either by providing additional revenue or reducing the appropriation.'

"If sentence '1' had followed sentence '4,' and expressly provided that the originating House would have a further alternative of again passing the appropriation bill, knowing and intending that same would become a deficit, the procedure would be clear.

"It is considered that a full construction of the quoted section should be obtained so that both Houses of the Legislature, the Comptroller, and the Governor will be in agreement and in position to contemplate the action that will be taken when an appropriation bill exceeds available revenue, and so that all will understand the position that such a bill will occupy.

"For the purpose of clarifying the information desired, we mention the following questions:

"A. When an appropriation bill, with an 'emergency and imperative public necessity' clause in it, is passed in the usual manner of first consideration, and receives a record vote of 4/5th or more of the total membership of each House, will it then become effective without return for reconsideration and in the light of information from the Comptroller that same will create a deficit?

"B. How can sentence '1' and sentence '4' be construed so that same will not be held in conflict nor one to limit the other?

"C. Will sentence '1' be considered as furnishing a further alternative to sentence '4' so that the Legislature would not be controlled by a vote within the requirements of sentence '1,' taken by both Houses without the knowledge that such bill would create a State deficit?

"D. In the event it is considered that the provisions of sentence '1' apply and control upon the first consideration of a bill, then would such action preclude consideration by the Comptroller in accordance with sentence '2' and sentence '3'?

"E. Will a statement and expressed finding by the Legislature of an 'emergency and imperative public necessity' be sufficient to justify the requirement of sentence '1,' or will it be necessary to recite specific facts and necessitous circumstances; and if so, what minimum requirements will control in this respect?

"F. If it is considered that an appropriation bill, found to create a deficit, will be returned for subsequent

consideration in each House, what status will it occupy? Will it be considered as a new and an original bill? May the appropriation be reduced by either House? Is the bill subject to amendment otherwise? Could, for illustration, a provision reciting 'emergency and imperative public necessity' be added to the bill?

"G. Does the requirement of '4/5ths vote of the total membership of each House' mean 120 or more affirmative votes in the House and 28 or more affirmative votes in the Senate?

"Thanking you to advise in reference to the above questions and such other information as you may consider necessary and of advantage in connection with this subject. . ."

Section 49a, Article 3 Constitution of Texas, as adopted in election November 3, 1942 is as follows:

"It shall be the duty of the Comptroller of Public Accounts in advance of each Regular Session of the Legislature to prepare and submit to the Governor and to the Legislature upon its convening a statement under oath showing fully the financial condition of the State Treasury at the close of the last fiscal period and an estimate of the probable receipts and disbursements for the then current fiscal year. There shall also be contained in said statement an itemized estimate of the anticipated revenue based on the laws then in effect that will be received by and for the State from all sources showing the fund accounts to be credited during the succeeding biennium and said statement shall contain such other information as may be required by law. Supplemental statements shall be submitted at any Special Session of the Legislature and at such other times as may be necessary to show probable changes.

"From and after January 1, 1945, save in the case of emergency and imperative

public necessity and with a four-fifths vote of the total membership of each House, no appropriation in excess of the cash and anticipated revenue of the funds from which such appropriation is to be made shall be valid. From and after January 1, 1945, no bill containing an appropriation shall be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts endorses his certificate thereon showing that the amount appropriated is within the amount estimated to be available in the affected funds. When the Comptroller finds an appropriation bill exceeds the estimated revenue he shall endorse such finding thereon and return to the House in which same originated. Such information shall be immediately made known to both the House of Representatives and the Senate and the necessary steps shall be taken to bring such appropriation to within the revenue, either by providing additional revenue or reducing the appropriation.

"For the purpose of financing the outstanding obligations of the General Revenue Fund of the State and placing its current accounts on a cash basis the Legislature of the State of Texas is hereby authorized to provide for the issuance, sale, and retirement of serial bonds, equal in principal to the total outstanding, valid, and approved obligations owing by said fund on September 1, 1943, provided such bonds shall not draw interest in excess of two (2) per cent per annum and shall mature within twenty (20) years from date. Adopted election Nov. 3, 1943."

The courts have not construed the provisions of Section 49a, Article 3 of our Constitution.

In Attorney General's Opinion O-6497 we hold, "that in cases of emergency and imperative public necessity the Legislature may, by a four-fifths vote of the total membership of each House, pass an appropriation in excess of cash and anticipated revenue."

". . . that a four-fifths vote would not be evidence that an emergency and

an imperative public necessity existed. Section 32, Article 3 deals with the question of 'imperative public necessity' in suspending the rule requiring bills to be read on three several days, and this section provides that this necessity shall be stated in a preamble or in a body of the bill. Section 39, Article 3 deals with the question of 'emergency' in providing for the time at which a bill shall take effect, and this section states that an emergency must be expressed in a preamble or in the body of the Act. It is true that no such requirement is contained in Section 49a, but we think, in view of the above mentioned sections of the Constitution, the safe plan would be to state the emergency and imperative public necessity either in the preamble or in the body of the bill."

In our Opinion No. 0-6738a we said:

"Section 49a of Article III is what is popularly known as the 'pay as you go' amendment to the Constitution of Texas duly adopted in an election held November 3, 1942. It is generally understood, as is manifest from the first paragraph of Section 49a, not quoted, that the purpose of this amendment was to keep in approximate balance the anticipated annual income and expenditures of the State of Texas, a very wholesome purpose. Or stated in another way, the evil sought to be remedied was the appropriation and disbursement of moneys in excess of anticipated or actual income. . . .

"Section 49a clearly provides that bills containing appropriations must have been referred to the Comptroller of Public Accounts and must contain his endorsement or certificate thereon (which admittedly were not done in this case) showing that the amount appropriated is within the amount estimated to be available in the affected funds, 'save in the case of emergency and imperative public necessity' and with a four-fifths vote of (1)

the total membership of (2) each House."

In giving you our opinion, we will not attempt to answer your questions categorically, as we believe we can better clarify the matters inquired about by illustrations.

An appropriation bill passes both Houses with a four-fifths vote of the total membership of each House. The amount appropriated is in excess of the cash and anticipated revenue of the funds from which such appropriation is made. The bill recites that an emergency and imperative public necessity (stating what it is) requires that this appropriation be made notwithstanding the fact that it exceeds the estimated revenue. This bill would be considered passed, and if not vetoed, would become effective. The provisions of said Section 49a you designate as "Sentence '2'", "Sentence '3'" and "Sentence '4'" would not be applicable.

The same appropriation bill containing the emergency and imperative public necessity clause (as outlined above), is passed by the Legislature by a vote of less than four-fifths of the total membership of each house, or it passes by a four-fifth vote of the total membership of each house but does not contain the emergency and imperative public necessity clause (as outlined above). This bill so passed would be subject to the provisions you designate as "Sentence '2'", "Sentence '3'" and "Sentence '4'". That is, the Comptroller would find that the appropriation bill exceeds the estimated revenue and would endorse such finding on the bill and return it to the House in which it originated and immediately make such information known to both Houses. By the express language of that part of said section you designate as "Sentence '2'" such bill would not be considered as passed. It is not a new bill. It would be subject to amendment as to either form or substance. The Legislature would then have three methods by which it could legally pass such appropriation bill and make it effective, that is, (1) the bill could be amended so as to include the emergency and imperative public necessity clause (as outlined above), if the bill as originally passed did not contain same, and then pass same by a four-fifths vote of each House, or (2) the Legislature could amend the bill by reducing the appropriation so the amount would not be in excess of the cash and anticipated revenue of the funds from which the appropriation is made, or (3) the Legislature could pass an additional revenue act that would increase the anticipated revenue to such extent that the amount so appropriated in the bill would

not exceed the cash and anticipated revenue of the funds from which such appropriation is made.

The above construction gives full force and effect to all the language employed in said section of the Constitution and is in accordance with the rule of construction announced by the Court in Cordova v. State, 6 Crim. App. 212, 220; "In expounding a constitutional provision, such construction should be employed as will prevent any clause, sentence, or word from being superfluous, void or insignificant." Furthermore, it harmonizes all provisions.

SUMMARY

In order for a bill to be valid that makes an appropriation in excess of the cash and anticipated revenue of the funds from which such appropriation is to be made, it must contain an emergency and imperative public necessity clause (stating the emergency and necessity that requires the appropriation notwithstanding it exceeds such cash and anticipated revenue), and it must be passed by a four-fifths vote of the total membership of each House. If a bill that makes an appropriation in excess of the cash and anticipated revenues is passed with a less vote than four-fifths of the total membership of each House, or passes with a vote of four-fifths of such membership but not containing such emergency clause, same should be returned by the Comptroller, with a finding thereon that the appropriation therein exceeds the cash and anticipated revenue, to the House in which it originated. It would then have the same status as though it had never been voted upon, and would be subject to amendment as to either form or substance.

Yours very truly

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APPROVED:

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