



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

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May 20, 1953

Hon. Allan Shivers
Governor of Texas
Capitol Station
Austin 11, Texas

Letter Opinion No. MS-39

Re: Validity and effect of Senate Bill No. 340 of the 53rd Legislature.

Dear Governor:

You have asked the following questions regarding the validity and effect of Senate Bill No. 340 of the 53rd Legislature:

1. Is the caption in proper form with especial reference to that clause referring to the amending of Chapter 241, Acts of the 44th Legislature?

2. Does Section III of this bill in any wise affect the cigarette tax other than to permit the use of the \$600,000 in the State Hospitals and Special Schools building fund?

The applicable portion of the caption of Senate Bill No. 340 reads:

"An Act. . . amending Chapter 241, Acts 44th Legislature, Regular Session, 1935, as amended, and all other laws insofar as they conflict herewith; . . ."

Section 3 of Senate Bill No. 340 reads:

"Chapter 241, Acts 44th Legislature, Regular Session, 1935, as amended, and all other laws or parts of laws in conflict herewith are repealed to the extent of such conflict." (Emphasis in each instance supplied by the writer.)

The caption proposes to amend Chapter 241, Acts of the 44th Legislature, while the body of the bill repeals such chapter insofar as it conflicts with the present bill.

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The "repeal" of a law means its complete abrogation by the enactment of a subsequent statute, whereas, the "amendment" of a statute means an alteration in the law already existing, leaving some part of the original still standing. State v. Moore, 99 S.W.2d 17 (Mo. Sup. Ct. 1936). Here the Legislature stated in the caption its purpose to amend "Chapter 241, acts of the 44th Legislature, as amended, and all other laws insofar as they conflict herewith." It is evident that Section 3 of Senate Bill No. 340 is properly designated in the caption as amending Chapter 241, for Section 3 does not completely abrogate Chapter 241 but rather alters it where it conflicts with the new enactment, and leaves the unaltered original still standing. Consequently, the caption is in proper form with reference to Section 3.

In answer to your second question, the only purpose of Senate Bill No. 340 is to authorize the expenditure of a part of the 1953 Appropriation Act in a different proportion from that prescribed in the Appropriation Act. Therefore there is no effect on the cigarette tax as a result of this bill unless such effect is derived from the operation of House Bill No. 111, the 1953 Appropriation Act.

Yours very truly,

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By
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