



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

September 4, 1953

Hon. Tom Sealy
Chairman, Board of Regents
The University of Texas
Austin, Texas

Opinion No. S-98

Re: Authority of The University
of Texas and its branches
to expend funds appropriated
by the General Appropriation
Bill for the biennium ending
August 31, 1955, for the pur-
poses of providing air condi-
tioning for existing State
buildings at such institutions
or for the purchase of room
air conditioning machinery or
units.

Dear Mr. Sealy:

Your request for an opinion reads in part:

"Your opinion is respectfully requested upon whether or not funds appropriated to The University of Texas and its branches by House Bill No. 111 passed by the General Appropriation Bill for the biennium ending August 31, 1955, may be used on and after September 1, 1953, for the purpose of providing air conditioning of existing buildings at such respective institutions or for the purchase of room air conditioning machinery or units."

The 52nd Legislature included within the General Appropriation Act (Sec. 37, Art. V, Ch. 499, Acts 52nd Leg., 1951, at p. 1947, approved June 28, 1951), a provision prohibiting the expenditure of any funds appropriated to agencies of higher education, including The University of Texas, for the purchase of new or additional air conditioning or refrigerating equipment for any purpose (with certain exceptions not here per-

tenant) during the biennium beginning September 1, 1951. The same Legislature also passed House Concurrent Resolution No. 38, approved May 10, 1951, which declared, in effect, that numerous budget requests had been presented to the Legislature for the appropriation of funds for air conditioning State buildings and purchase of air conditioning machinery and room air conditioning units, and that it was economically unsound to air condition State buildings, except new construction, or to purchase air conditioning machinery or units for use therein. Therefore the policy of the State of Texas was not to permit the use of State funds for air conditioning State buildings, except new construction, or for the purchase of room air conditioning machinery or units.

The 53rd Legislature failed to include any prohibition in the General Appropriation Act (Ch. 81, Acts 53rd Leg., 1953, p. 127) as to the expenditure of funds by agencies of higher education or any other governmental department or agency for the purpose of air conditioning State buildings, either old or new, or for the purpose of purchasing air conditioning units for use therein, and expressly omitted the prohibitory clause contained in Section 37, Article V, of the General Appropriation Act of the 52nd Legislature.

The legal proposition here involved is whether the expenditure of funds under the General Appropriation Act of the 53rd Legislature is governed by the directive contained in H.C.R. No. 38 of the 52nd Legislature.

The Constitution clearly recognizes the right of the Legislature to express its will by resolution (Art. III, Secs. 34, 38; Art. IV, Sec. 15, Constitution of Texas), but there is a marked distinction between a law and a resolution. As was stated in Conley v. United Daughters of the Confederacy, 164 S.W. 24, 26 (Tex. Civ. App. 1913, error ref.):

"The chief distinction between a resolution and a law seems to be that the former is used whenever the legislative body passing it wishes to merely express an opinion as to some given

matter or thing, and is only to have a temporary effect on such particular thing; while by the latter it is intended to permanently direct and control matters applying to persons or things in general. . . . "

A concurrent resolution of the Legislature does not have the effect of a statute. Terrell Wells Swimming Pool v. Rodriguez, 182 S.W.2d 824, 826 (Tex. Civ. App. 1944, error ref.) and the general rules governing the interpretation of statutes are likewise applicable to resolutions. (2 Sutherland on Statutory Construction, 262).

It is significant that the General Appropriation Act of the 53rd Legislature does not contain the prohibitory provision against the expenditure of appropriated funds for the purpose of air conditioning buildings or the purchase of air conditioning units for agencies of higher education. It is a rule of statutory construction that the mere fact that significant words are omitted from the re-enactment or amendment of a statute imports a conclusive presumption that the Legislature intended to exclude the object theretofore accomplished by the abandoned words. San Marcos Baptist Academy v. Burgess, 292 S.W. 626 (Tex. Civ. App. 1927, plea of privilege case, no writ history).

In Terrell v. King, 118 Tex. 237, 14 S.W.2d 786 (1929), it was held that the Legislature, which had enacted a law making an appropriation for its contingent expenses, could, by joint resolution approved by the Governor, direct the expenditure of a portion of the appropriation in financing a legislative committee which was lawfully created, and that since the purpose was of a temporary nature only, the joint resolution was the proper method of authorizing the expenditure of the funds which had been previously appropriated in accordance with law. The Court then said:

"It is no longer an open question in Texas that a joint resolution of both Houses, approved by the Governor, reflects the command and will

of the State in one of the modes prescribed by the Constitution and is as binding as a statute."

The Court cited no authorities in support of the quoted dictum, but it is our opinion that such dictum is not controlling in view of the action of the Supreme Court in refusing the application for writ of error in Terrell Wells Swimming Pool v. Rodriguez, supra, in 1944.

In Mosheim v. Rollins, 79 S.W.2d 672 (Tex. Civ. App. 1935, error dismissed), it was held that a resolution passed in aid of a statute falls when such statute is declared unconstitutional. Here the resolution passed in aid of the General Appropriation Act of the 52nd Legislature, by analogy must cease to have any effect upon the expiration of the General Appropriation Act of the 52nd Legislature. The Legislature, through a concurrent resolution, may express a policy which would control the interpretation of statutes passed by that Legislature only.

In view of the fact that H.C.R. No. 38 is a mere expression of an opinion by the 52nd Legislature that the expenditure of funds for air conditioning of buildings under the control of agencies of higher education was economically unsound at the time of the passage of the General Appropriation Act for the biennium commencing September 1, 1951, and since as a matter of law a resolution has only a temporary effect as to such appropriation, it is our opinion that the 53rd Legislature did not consider such concurrent resolution to be binding upon or express the opinion of that body in enacting the General Appropriation Act for the biennium beginning September 1, 1953, having purposely omitted therefrom any provision prohibiting any State agency or department from expending appropriated funds for the purpose of either air conditioning State buildings or purchasing air conditioning units to be used therein.

SUMMARY

Funds appropriated to The University of

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Texas and its branches by the General Appropriation Bill for the biennium ending August 31, 1955, may be used for the purpose of providing air conditioning for existing State buildings at such institutions or for the purchase of room air conditioning machinery or units.

APPROVED:

Yours very truly,

Mary K. Wall
Reviewer

JOHN BEN SHEPPERD
Attorney General

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Reviewer

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CKR:da