



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

December 6, 1961

Mr. V. D. Housworth  
Executive Secretary  
State Board of Barber Examiners  
512 State Office Building  
Austin, Texas

Opinion No. WW-1214

Re: Construction of Section 27  
of Article 734a, Vernon's  
Penal Code, as amended by  
H.B. 829, Acts of the 57th  
Legislature, and Article  
III of Senate Bill 1, First  
Called Session, Acts of  
the 57th Legislature, in  
reference to appropri-  
ation of monies in the  
State Board of Barber  
Examiners Fund.

Dear Mr. Housworth:

In your letter requesting an opinion from this office you mentioned that Section 27 of Article 734a, Vernon's Penal Code, as amended by House Bill 829, Acts of the 57th Legislature, Regular Session, 1961, Chapter 287, page 601 provides in part that:

". . . The secretary shall keep a record of all proceedings of the Board and shall be the custodian of all such records and shall receive and receipt for all money collected by the Board. All money so received shall be immediately deposited with the State Treasurer, who shall credit same to a special fund to be known as 'State Board of Barber Examiners Fund,' which money shall be drawn from said special fund upon claims made therefor by the Board to the Comptroller; and if found correct, to be approved by him and vouchers issued therefor, and counter-signed and paid by the State Treasurer, which special fund is hereby appropriated

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for the purpose of carrying out all the provisions of this Act. . . ." (Emphasis added)

In regard to the underlined portion of Section 27 of Article 734a, you have posed the question of:

"Does the referenced phrase have the effect of appropriating to the Board all moneys in the Barber Examiners Fund, or should we look instead to the appropriations from that fund set forth in S.B. No. 1, 1st C.S., 57th Legislature, Article III of the General Appropriations Act?"

Section 6 of Article VIII of the Constitution of Texas provides in part that:

"No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, . . ."  
(Emphasis added)

In the case of Pickle v. Finley, State Comptroller, 91 Tex. 484, 44 S.W. 480 (1898), the Court held that:

". . . It is clear that an appropriation need not be made in the general appropriation bill. It is also true that no specific words are necessary in order to make an appropriation; and it may be conceded, as contended, that an appropriation may be made by implication when the language employed leads to the belief that such was the intent of the Legislature. . . ."

In the case of National Biscuit Company v. State of Texas, 134 Tex. 293, 135 S.W.2d 687 (1940), the Court held that:

"As just stated, one of the provisions of Section 6 of Article 8 of our Constitution requires all appropriations of money out of the State Treasury to be specific. It is settled that no

particular form of words is required to render an appropriation specific within the meaning of the constitutional provisions under discussion. It is sufficient if the Legislature authorizes the expenditure by law, and specifies that purpose for which the appropriation is made. An appropriation can be made for all funds coming from certain sources and deposited in a special fund for a designated purpose. In such instances, it is not necessary for the appropriating Act to name a certain sum or even a maximum sum. . . ."  
(Emphasis added)

In view of the holdings of the Supreme Court of Texas in Pickle v. Finley, State Comptroller, supra, and National Biscuit Company v. State of Texas, supra, we are of the opinion that the language found in Section 27 of Article 734a, as amended by House Bill 829, meets the mandatory requirements of Section 6 of Article VIII of the Constitution of Texas so as to constitute a valid appropriation of all the moneys in the special fund known as the "State Board of Barber Examiners Fund", for the purpose of carrying out the provisions of Article 734a.

However, in the words of the Court of Civil Appeals in the case of Atkins v. State Highway Department, 201 S.W. 226 (Civ.App. 1917):

" . . . It is not to be understood, however, that we hold the appropriation good for a longer term than two years. This statement is made in view of section 6, art. 8 of the Constitution which provides 'Nor shall any appropriation of money be made for a longer term than two years.'"

As the provisions of Section 27 of Article 734a, as amended by House Bill 829, meet the mandatory requirements of Section 6 of Article VIII of the Constitution of Texas so as to constitute a valid appropriation, the question is then raised as to what effect is to be given Senate Bill 1, the General Appropriation Bill, insofar as it sets forth a budgeted departmental appropriation for the State Board of Barber Examiners.

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As Senate Bill 1 attempts to restrict the appropriation to the State Board of Barber Examiners to a certain specified sum, rather than to those funds on hand in the "State Board of Barber Examiners Fund" on the effective date of House Bill 829 and such revenue as may be credited to such fund during the two year period following the effective date of House Bill 829, it is invalid and ineffectual to the extent that it attempts to limit the appropriation to the State Board of Barber Examiners to a certain specified sum. The appropriation found in Section 27 of Article 734a, as amended by House Bill 829, places no such restriction upon the appropriation, and it has long been held that a biennial appropriation, such as Senate Bill 1 in the instant case, cannot control, amend or repeal a general law. Consequently, we are of the opinion that the State Board of Barber Examiners will not be limited in its expenditures to those funds appropriated by the Legislature pursuant to the provisions of Senate Bill 1, but in fact will be authorized to expend, for the two year period commencing with the effective date of House Bill 829 and for the purpose of carrying out the provisions of Article 734a, all of the monies on hand in the "State Board of Barber Examiners Fund" on the effective date of House Bill 829, in addition to all monies credited to such fund during the two year period following the effective date of House Bill 829. Such expenditures are, however, limited by certain restrictions found in Section 27 of Article 734a, as amended by House Bill 829, which will be commented upon in reply to your last question.

While we have held that the provisions of Section 27 of Article 734a, as amended by House Bill 829, rather than the provisions of Senate Bill 1, control as to the appropriation made to the State Board of Barber Examiners, this office held in Attorney General's Opinion No. V-414 (1947) that:

" . . . S.B. 391 being the biennial appropriation act, cannot control a general law, but may express a legislative intent as to use of the moneys appropriated therein and any restriction upon the use of moneys so appropriated will govern so long as it does not run afoul a general law. . . ." (Emphasis added)

In view of this previous holding by this office, we are of the further opinion that in the instant case the legislative intent found in Senate Bill 1, insofar as it applies to the appropriation made

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to the State Board of Barber Examiners, should govern up to and including the amounts specified in the appropriation made by Senate Bill 1 to the State Board of Barber Examiners, and that any available funds in the "State Board of Barber Examiners Fund" over and above the total appropriation contained in Senate Bill 1 in regard to the State Board of Barber Examiners may be expended in such manner as the State Board of Barber Examiners deems necessary and proper for the purposes of carrying out the provisions of Article 734a, subject only to the restrictions contained in Section 27 of Article 734a, as amended by House Bill 829.

Your letter further requested an opinion upon the question of:

" . . . what would be the terminal date of the appropriations made in the basic statute (i.e. H.B. 829) and would S.B. No. 1 have the effect of providing appropriations for the use of this Board between that terminal date and the end of the current biennium on August 31, 1963?"

As the effective date of House Bill 829 is August 28, 1961, the appropriation contained in Section 27 of Article 734a, as amended by House Bill 829, cannot, under the provisions of Section 6 of Article VIII of the Constitution of Texas, be for a period longer than two years. Therefore, the terminating date for the appropriation found in Section 27 of Article 734a, as amended by House Bill 829, is August 27, 1963.

We are of the opinion that the provisions of Senate Bill 1 would have the effect of providing appropriations for the use of the State Board of Barber Examiners for the period of time between August 27, 1963, and August 31, 1963.

The last question posed by your letter is set forth as follows:

"The last paragraph of Section 27 as amended by the said H.B. 829 relates to compensation of members of the Board and their reimbursement for traveling expenses. If H.B. 829 does in fact appropriate all moneys in the Barber Examiners Fund to the Board for the purposes of such act, then

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is the per diem for members of the Board limited to the amount set out in S.B. No. 1, the general appropriations act; and are the amounts available for their travel reimbursement, and office expense, limited to the annual sums set forth in such act?"

Section 27 of Article 734a, as amended by House Bill 829, provides for an appropriation of the funds in the "State Board of Barber Examiners Fund", but there is also found therein the following provision placing a restriction upon such appropriation:

"The compensation of the members of the Board shall be a per diem as set by the General Appropriations Act, and in addition to the per diem provided for herein, they shall be entitled to traveling expenses in accordance with the appropriate provisions of the General Appropriations Act. . . ."

In view of the foregoing language, we are of the opinion that the per diem of the members of the State Board of Barber Examiners and the funds available for their travel reimbursement are restricted to those amounts found in line items one (1) and five (5) of the departmental appropriation for the State Board of Barber Examiners in Senate Bill 1.

#### S U M M A R Y

The provisions of Section 27 of Article 734a, Vernon's Penal Code, as amended by House Bill 829 have the effect of appropriating to the State Board of Barber Examiners all moneys in the "State Board of Barber Examiners Fund" on the effective date of House Bill 829 as well as all funds credited to such fund for a period of two years thereafter.

The terminating date for the appropriation found in Section 27 of Article 734a, as amended by House Bill 829, is August 27, 1963.

The per diem of the members of the

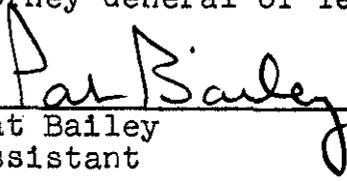
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State Board of Barber Examiners and the funds available for their travel reimbursements are restricted to those amounts found in line items one (1) and five (5) of the departmental appropriation for the State Board of Barber Examiners in Senate Bill 1.

Yours very truly,

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Attorney General of Texas

PB:lgh

By   
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APPROVED:

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