



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

September 23, 1968

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
State of Texas  
Austin, Texas

Opinion No. M-280

Re: Validity of a certain  
expenditure restriction  
contained in the general  
appropriations bill,  
which restrictions were  
vetoed by the Governor.

Dear Mr. Calvert:

Your request for an opinion reads in part as follows:

"The Comptroller of Public Accounts respectfully requests your official opinion in regard to the validity of certain restrictions contained in H.B. 5, the General Appropriations Bill, passed by the 60th Legislature, First Called Session 1968. In opinions No. V-1254 (August 25, 1951) and M-219 (April 18, 1968) you expressed the opinion that certain restrictions placed upon expenditures of money in the appropriation bill might conflict with general law and would be invalid. In your Opinion No. V-1196 (June 28, 1951) you expressed the opinion that the Governor's veto of a restriction without a concurrent veto of a specific item of appropriations under certain circumstances would not be an effective veto. The General Appropriations Bill contained the following restrictions upon expenditures, all of which restrictions were vetoed by the Governor:

". . .

" (4) The Department of Public Safety.

"The Department of Public Safety is authorized to own and operate three (3) airplanes and two (2)

helicopters only, all of which are to be based in Austin except for rescue operations. None of the funds appropriated above shall be expended for the purchase of airplanes or helicopters without the specific approval of the Governor.'

". . .

"Attached is a copy of the Governor's Proclamation issued on July 20, 1968, in vetoing the above restrictions to the Appropriations Act.

"The Comptroller hereby requests your official opinion as to whether the Comptroller may issue warrants for payments out of the funds involved without regard to the restrictions listed above."

In a subsequent separate opinion, this office will issue its opinion on the other restrictions contained in your opinion request. In Attorney General Opinion Number M-219 (1968), this office held invalid a rider which provides priorities as to certain historical sites contained in the General Appropriations Bill for the Parks and Wildlife Department to follow, on the ground that such rider was in conflict with the general statute, Article 6081s, Vernon's Civil Statutes. The rule concerning validity of riders in the Appropriations Bill is set out in Attorney General Opinion Numbers C-119 (1963), V-1254 (1951) and V-1196 (1951), as well as numerous other Attorney General Opinions. The rule may be stated as follows: General legislation cannot be embodied in the General Appropriations Bill. This does not mean that a General Appropriations Bill may not contain general provisions and details limiting and restricting the use of funds therein appropriated if they do not conflict with or amount to general legislation. Moore v. Sheppard, 144 Tex. 537, 192 S.W.2d 559 (1946); Conley v. Daughters of the Republic, 106 Tex. 80, 156 S.W. 197 (1913). Thus, it may be stated that in addition to appropriating money and stipulating the amount, manner and

purpose of the various items of expenditure, a General Appropriations Bill may contain any provisions or riders which detail, limit or restrict the use of funds or otherwise insure that the money is spent for the required activity for which it is therein appropriated, if the provisions or riders are necessarily connected with and incidental to the appropriation and use of funds, and provided they do not conflict with general legislation. Attorney General Opinion No. 1254 (1951), supra, and authorities cited therein.

With regard to the authority of the Governor to veto separate riders in the General Appropriations Bill, it was held in Fulmore v. Lane, 104 Tex. 449, 140 S.W. 405 (1911), that the Governor has only such power as the Constitution confers upon him, and in the absence of expressed authorization, he may not disapprove certain paragraphs or portions of a bill and approve the remainder. The authority of the Governor to approve or disapprove legislation is contained in Section 14 of Article IV of the Constitution of Texas, which provides, in part, as follows:

" . . . If any bill presented to the Governor contains several items of appropriation he may object to one or more of such items, and approve the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and no item so objected to shall take effect.

. . . "

Fulmore v. Lane, supra, is the leading case on the authority of the Governor to veto riders in an Appropriations Bill and it was stated in that case:

" . . . The executive veto power is to be found alone in section 14, art. 4, of the Constitution of this state. By that section he is authorized to disapprove any bill in whole, or, if a bill contains several items of appropriation,

he is authorized to object to one or more of such items. Nowhere in the Constitution is the authority given the Governor to approve in part and disapprove in part a bill. The only additional authority to disapproving a bill in whole is that given to object to an item or items, where a bill contains several items of appropriation. It follows conclusively that where the veto power is attempted to be exercised to object to a paragraph or portion of a bill other than an item or items, or to language qualifying an appropriation or directing the method of its uses, he exceeds the constitutional authority vested in him, and his objection to such paragraph, or portion of a bill, or language qualifying an appropriation, or directing the method of its use, becomes non-effective. So that we are constrained to hold that that portion of the veto message contained in subdivision 3 of the statement of objections appended to the appropriation bill and filed in the office of the Secretary of State (dealing with the rider) was unauthorized, and therefore noneffective, and the paragraph so attempted to be stricken out will remain as a part of the appropriation bill . . .

Thus it was held in Attorney General Opinion Number V-1196 (1951), relying on Fulmore v. Lane, supra, as well as numerous other out-of-state cases, that the Governor has the power to veto only items of an Appropriation Bill and does not have authority to veto a rider in the Appropriation Bill unless the rider itself constitutes an item of appropriation. A veto by the Governor of any provision of an Appropriation Bill which is incidental to the appropriation and is an inseparable part of an item of appropriation is beyond the constitutional authority delegated to the Governor by the provisions of Section 14 of Article IV of the Constitution of Texas.

Applying the foregoing principles to the provision of the General Appropriations Bill set out above in your request, you are advised that the Comptroller may issue warrants for payments out of the funds involved without

Hon. Robert S. Calvert, page 5 (M-280)

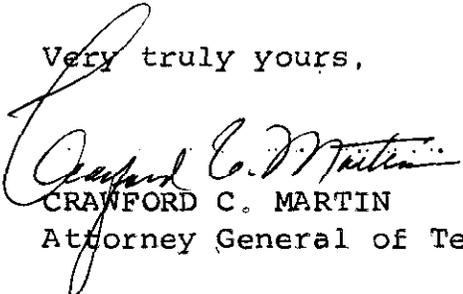
regard to that restriction listed in your request, for the reason that such restriction constitutes general legislation and is therefore invalid, as outlined in Attorney General Opinions M-219 (1968), C-119 (1963) and V-1254 (1951).

In view of this conclusion, it is unnecessary for this office to determine whether the veto of such provision constituted a lawful exercise of the powers granted the governor by the provisions of Section 14 of Article IV of the Constitution of Texas.

S U M M A R Y

The Comptroller may issue warrants for payments out of appropriated funds without regard to the quoted invalid restriction involving the Department of Public Safety contained in the Appropriations Bill.

Very truly yours,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by John Reeves  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Hawthorne Phillips, Chairman  
Kerns Taylor, Co-Chairman  
Bill Allen  
Roger Tyler  
Alfred Walker  
Richard Chote  
John Banks  
A. J. Carubbi, Jr.  
Executive Assistant