



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

CRAWFORD C. MARTIN
ATTORNEY GENERAL

January 29, 1971

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

Opinion No. M- 779

Re: Questions relating to the provisions of Article 6252-11, Vernon's Civil Statutes, and riders in the General Appropriations Act concerning State employees' position classification.

Dear Mr. Calvert:

Your request for an opinion on the above subject matter questions whether the conclusions reached in Attorney General's Opinion M-706 (1970) result in the violation of Section 1 of Article II of the Constitution of Texas, dealing with the separation of powers between the three branches of government.

Your request for an opinion also questions whether the provisions of Sections 1e(1), 1e(2) and 1m of Article V of House Bill 2, Acts 61st Legislature, 1969, 2nd Called Session, pages 623, 981, 1009-1010, the General Appropriations Bill, are in conflict with the general law.

In Attorney General's Opinion M-706 (1970) it was held, pursuant to the provisions of Article 6252-11, Vernon's Civil Statutes (the Position Classification Act of 1961) and the riders to the current General Appropriations Act enacted pursuant thereto (H.B. 2 supra) that:

"State employees under the classification system may be reclassified downward, without change in duty assignment, without a mandatory reduction in rate of pay, not to exceed step 7 rate of the lower salary group."

Article 6252-11, Vernon's Civil Statutes, provides in part as follows:

"Sec. 2. All regular, full-time salaried employments within the departments and agencies of the State specified in Article III, and the Central

Education Agency, Deaf and Blind Schools in Article IV, and all such State employments in positions other than for Judges, District Attorneys, and Assistant District Attorneys specified in Article I of the biennial Appropriations Act, shall conform with the Position Classification Plan hereinafter described and with the salary rates and provisions of the applicable Appropriations Act commencing with the effective date of this Act, with the exceptions and deferments hereafter provided in this Section.

". . .

"Sec. 4. Commencing with the effective date of this Act, all regular full-time salaried employments with the exceptions and deferments specified hereinabove shall be made only in conformity with the classes of work described in such Position Classification Plan, and under the titles authorized by such Plan. The State Auditor shall examine or cause to be examined in periodic post-audits of expenditures of State departments and agencies, and by such methods as he deems appropriate and adequate, whether employments have been made in accordance with the provisions of this Act, and shall report the facts as found to the Governor, the Comptroller, and the Legislative Audit Committee.

". . .

"Sec. 6. . . .

"When exceptions to or violations of the Position Classification Plan or of prescribed salary ranges are revealed by personnel audits, the Classification Officer shall notify the agency head in writing and specify the points of non-conformity or violation. The executive head of such agency shall have reasonable opportunity to resolve the exception or end the violation by reassigning the employee to another position title or class consistent with the work actually performed, by changing the employee's title or salary rate to conform to the prescribed Classification Plan and salary range, or by obtaining a

new class description of work and salary range to correct the exception or violation." (Emphasis added.)

Pursuant to the provisions of Article 6252-11, the Legislature in the General Appropriations Act establishes a Position Classification Plan detailing salaries of employees in classified positions, detailing classified positions and making provisions for reclassifications, specifically requiring that such reclassifications shall comply with the requirements of the Classification Act.

You are therefore advised that the provisions of House Bill 2, Acts 61st Leg., 1969, 2nd C.S., relating to classification of State employees do not amend, repeal or modify the provisions of Article 6252-11, Vernon's Civil Statutes. On the contrary, the provisions of Article 6252-11 constitute the pre-existing law for the classified salaries contained in the General Appropriations Act and riders governing their expenditures.

We will now discuss whether the duties prescribed by law for the Position Classification Officer, the State Auditor, the Legislative Audit Committee, and other officials charged with the duty of prescribing and carrying out the Position Classification Plan, violate the provisions of Section 1 of Article II of the Constitution of Texas.

Section 1 of Article II of the Constitution of Texas provides:

"Section 1. The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted."

A fundamental principle of American constitutional jurisprudence is expressed by the above quoted provisions. The three departments of government are coordinated with and independent of each other, and none can enlarge, restrict or destroy the powers of the other. Lytle v. Halff, 75 Tex. 128, 12 S.W. 610

(1889); Houston Tap Ry. Co. v. Randolph, 24 Tex. 317 (1859). This, however, does not prevent the Legislature from delegating to other officials quasi-legislative and quasi-judicial powers. See Texas Turnpike Authority v. Shepperd, 154 Tex. 357, 279 S.W.2d 302 (1955); Railroad Commission v. Houston Natural Gas Corporation, 155 Tex. 502, 289 S.W.2d 559 (1956); Gulf Land Co. v. Atlantic Refining Co., 134 Tex. 59, 131 S.W.2d 73 (1939); Railroad Commission v. Shell Oil Co., 139 Tex. 66, 161 S.W.2d 1022 (1942); Brazosport Savings and Loan Assoc. v. American Savings and Loan Assoc., 161 Tex. 543, 342 S.W.2d 747 (1961); Southwestern Savings and Loan Assoc. of Houston v. Falkner, 331 S.W.2d 917 (Tex.Sup. 1960); Chemical Bank and Trust Co. v. Falkner, 369 S.W.2d 427 (Tex.Sup. 1963); Kee v. Baber, 303 S.W.2d 376 (Tex. Sup. 1957).

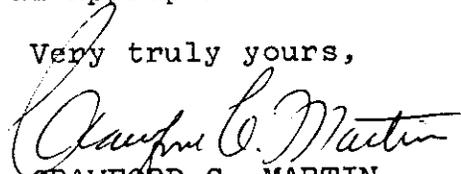
In view of the foregoing authorities, it is our opinion that the duties prescribed by the Legislature on the Position Classification Officer, the State Auditor and the Legislative Audit Committee by the provisions of Article 6252-11, Vernon's Civil Statutes, and the riders in the General Appropriations Act relating to the Position Classification Plan constitute lawfully delegated powers and are not in violation of Section 1 of Article II of the Constitution of Texas.

S U M M A R Y

The duties prescribed by the Legislature on the Position Classification Officer, the State Auditor and the Legislative Audit Committee by the provisions of Article 6252-11, Vernon's Civil Statutes, and the riders in the General Appropriations Act relating to the Position Classification Plan, constitute lawfully delegated powers and are not in violation of Section 1 of Article II of the Constitution of Texas.

The riders in the current General Appropriations Act relating to the Position Classification Plan for State employees do not amend, modify or repeal Article 6252-11, Vernon's Civil Statutes, the Position Classification Act of 1961, the pre-existing law for the Position Classification Plan contained in the General Appropriations Act.

Very truly yours,



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