



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

May 16, 1973

The Honorable Bill Hollowell
Vice-Chairman, Rules Committee
House of Representatives
Austin, Texas

Letter Advisory No. 33

Re: The constitutionality of
House Bill 776 relating to
the criminalization of
certain acts which interfere
with the legislative process.

Dear Representative Hollowell:

You have requested our opinion on the constitutionality of House Bill 776, which would amend the Penal Code by adding new articles having to do with interference with the legislative process.

§ 15 of Article 3 of the Constitution of Texas provides:

"Each House may punish by imprisonment, during its sessions, any person not a member, for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings; provided, such imprisonment shall not, at any one time exceed forty-eight hours."

A number of the offenses covered by House Bill 776 are offenses already prohibited by our Penal Code, e. g., Article 1138 having to do with assault and battery, Article 1147 having to do with aggravated assaults, Article 1002 having to do with altering or injuring public records, and Article 859 injuring or defacing public buildings. Also § 38.13 of the revision of the Penal Code proposed by the State Bar of Texas provides against intentionally hindering an official proceeding by noise or violent or tumultuous behavior or disturbance.

Some offenses made misdemeanors by the Penal Code, would be made felonies by House Bill 776. Where different statutes define the same crime but fix different punishments, the statutes are too indefinite to be operative. Stevenson v. State, 167 S. W. 2d 1027 (Tex. Crim., 1943); and see State v. Shoppers World, Inc., 380 S. W. 2d 107 (Tex, 1964); Texas

Liquor Control Board v. Attic Club, Inc., 457 S. W. 2d 41 (Tex. 1970).

Although House Bill 776 would treat those who commit certain offenses in or near one of the Houses of the Legislature differently from those who might commit the same offense elsewhere, we see no violation of the Fourteenth Amendment guarantee of equal protection. The classification rests on relevant grounds and cannot be classified as "wholly arbitrary" or "capricious." McGowan v. Maryland, 366 U. S. 420, 6 L ed 2d 393, 81 S Ct, 1101 (1961).

However, it is our opinion that some of the provisions, so general in nature, probably infringe upon rights guaranteed both by the Bill of Rights of the State of Texas and the Bill of Rights of the United States Constitution. For instance, as to freedom of speech, Article 187b, § 2(2) would make it a misdemeanor to intentionally disturb or interfere with a meeting of a legislative body by using obscene language, even though such conduct was not in the presence of the body. Article 187b, Subsection (4) of § 2, making it an offense to intentionally disturb or disrupt a meeting or proceeding of a legislative body by "congregating with other persons," and § 6, making it an offense to "intentionally picket inside a building" used wholly or in part by the legislature for its function, would probably be construed as limiting the rights of assembly and to petition for redress of grievances guaranteed by § 27 of Article 1 of the Constitution of Texas and by the First amendment to the Constitution of the United States.

Title 40 of the United States Code, §§ 193f et seq., deals with the same subject matter as House Bill 776. § 193g of the Federal statute, making it a crime to assemble and demonstrate on the Capitol grounds, was held unconstitutional when applied to persons on the grounds in Jeannette Rankin Brigade v. Chief of Capitol Police, 342 F Supp 575 (D. C. 1972). However, the constitutionality of the same federal statute was upheld in U. S. v. Nicholson, 263 A 2d 56 (D. C. App. 1970) by restricting its "over-broad scope" to application to acts which interfered with the orderly process of the Congress or with the safety of various persons and their right to be free from intimidation, undue pressure, noise or inconvenience, and thus held unapplicable to defendants charged with refusing to leave the Capitol steps when ordered to do so.

House Bill 776, Article 187e, would authorize each House of the Legislature to adopt appropriate rules to govern the orderly conduct of its affairs, consistent with various rights of the public. There are no criminal sanctions for violation of such rules. The Article is duplicitous of § 15 of Article 3 of the Constitution, supra.

Section 2 of Article 187b prohibits "using abusive or obscene language or making an obscene gesture; making unreasonable noise; congregating with other persons" for the intended purpose of disturbing a session of a legislative body, wherever it might be. It is our opinion that this language is too vague to give notice of that conduct which is sanctioned and, therefore, is unconstitutional. Texas Liquor Control Board v. Attic Club, 457 S. W. 2d 41 (Tex. 1970). And see Cohen v. California, 403 U. S. 15, 29 L ed 2d 284, 91 S Ct 1780 (1971) holding "offensive conduct" to be insufficient, and see Edwards v. South Carolina, 372 U. S. 229, 9 L ed 2d 697, 83 S Ct 680 (1963).

Article 187d, entitled "INDEMNIFICATION," guarantees to members, officers and employees of the legislative body that they will be indemnified against financial loss arising out of a claim brought by reason of their alleged negligence or other acts if they were, at the time, performing duties relating to the maintenance of order and provided the damage did not result from willful and wrongful acts or gross negligence.

The indemnification procedure applies, by its terms and specifically by the provisions of § 4 of proposed Article 187d, to members, officers and employees of a legislative body. Our Constitution prohibits grants of public moneys to an individual in § 51 of Article 3. If the state itself is liable for the loss, indemnification would be valid but if there is no liability upon the part of the State as where a claim is barred by governmental immunity, the use of public money to pay a claim owed by an individual is a gift or donation in violation of the Constitution. State v. City of Austin, 331 S. W. 2d 737 (Tex. 1960); Letter Advisory No. 24 (1973).

Proposed Article 187f authorizes courts to grant injunctive relief upon the filing of a verified petition by the presiding officer of each House or his designee if so provided by rule. Section 3 of the proposed Article 187f contemplates the issuance of a temporary injunction without notice or hearing. In the absence of a requirement of notice and hearing before the temporary injunction is issued, it is our opinion that the Article would violate the due process requirements of the Constitutions of the State of Texas and of the United States. Camp v. Shannon, 348 S. W. 2d 517 (Tex.

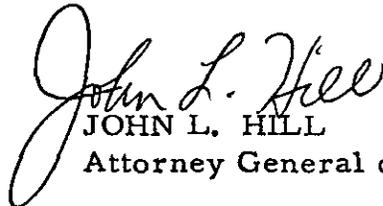
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1961); Millwrights Local Union v. Rust Engineering Co., 433 S. W. 2d 683 (Tex. 1968).

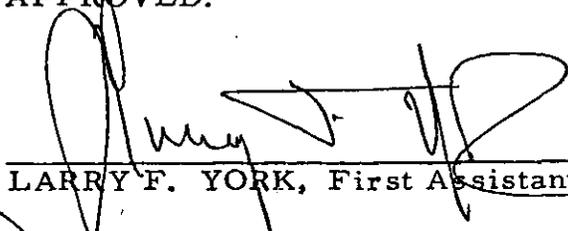
Finally, House Bill 776 has no severability clause. While our courts now hold that, even in the absence of such a clause, if that which remains of a statute after void portions have been stricken is in itself complete and capable of being executed in accordance with the apparent intent of the Legislature, the remaining portion of the statute will be sustained, nevertheless there is more assurance that the valid portions will be retained if the Act contains a severability clause. Salas v. State, 365 S. W. 2d 174 (Tex. Crim., 1963) cert. den. 375 U. S. 15, 11 L ed 2d 45, 84 S Ct 96 (1963).

In summation, it is our conclusion that House Bill 776 contains some valid and enforceable sections, but that there are certain areas of it which violate provisions of the Constitution as pointed out above and which should be corrected or eliminated.

Very truly yours,


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APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee