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RQ-0132-JC

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October 14, 1999

Honorable John Cornyn
 Texas Attorney General
 P.O. Box 12548
 Austin, Texas 78711-2548

FILE # ML-41068-99
 I.D. # 41068

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 Opinion Committee

Re: Effect of Appropriations Rider to Amend State Statute

Dear General Cornyn:

I am writing to ask for your opinion on the constitutionality of a rider to the General Appropriations Bill for the FY 2000 - 2001 biennium. It is my belief that the rider violates Article III, Section 35, of the Texas Constitution.

BACKGROUND

In 1997, the Texas Legislature created an emergency medical services and trauma care system fund as a special account in the state treasury. *Acts 1997, 75th Legislature, Chapter 1157*. The legislation concerning the fund is codified in Sections 773.121 through 773.124, Health and Safety Code. As amended during the 76th Legislative Session, Section 773.122(c) now provides, in part:

...The share of the money allocated to the eligible recipients in a county's geographic area shall be based on the relative geographic size and population of the county and on the relative number of emergency or trauma care runs performed by eligible recipients in the county....

Section 773.122(c), Health and Safety Code, as amended by HB 2085, Acts 1999, 76th Legislature.

In 1999, there was a rider attached to the General Appropriations Bill for the FY 2000 - 2001 biennium which directly impacts allocations from the emergency medical services and trauma care system fund. Rider 61 to the appropriations for the Texas Department of Health provides:

Trauma Formula Distribution. It is the intent of the Legislature that the Department of Health allocate at least 40 percent to urban counties and at least 60 percent of the Emergency Medical Services allotment to rural and frontier counties.

Based on this rider, the Department of Health staff has proposed changing the Emergency Medical Services and Trauma Care System Account Rule, which is used to determine allocations from the emergency medical services and trauma care system fund. The current rule is found at 25 TAC

157.130. A copy of the proposed rule is attached as Exhibit A, and I would direct your attention to §157.130(f)(1)(B).

DISCUSSION

It is my contention that the rider violates Article III, Section 35, of the Texas Constitution. Because general appropriations acts are limited to the single subject of appropriating funds, a general law may not be enacted, amended or repealed in such acts. *Moore v. Sheppard*, 192 S.W.2d 559, 561-62 (Tex. 1946); Attorney General Opinion V-1254 (1951); Attorney General Letter Opinion No. 96-079 (1996).

I recognize that not all riders found in an appropriations bill violate Article III, Section 35. *Phillips v. Daniel*, 94 S.W.2d 1193 (Tex. Civ. App. 1936, error ref.). However, a rider may not repeal, modify or amend an existing general law. As was stated in Attorney General Opinion M-1199:

An appropriation bill may detail, limit or restrict the use of funds therein appropriated or otherwise insure that the appropriated money will be spent for the purpose intended. *Moore v. Sheppard*, 144 Tex. 537, 192 S.W.2d 559 (1946); *Linden v. Finley*, 92 Tex. 451, 49 S.W. 578 (1899); Attorney General's Opinions O-445 (1939), V-1253 (1951), V-1254 (1951), 2959 (1935), V-1196 (1951).


A rider attached to the general appropriation bill cannot repeal, modify or amend an existing general law. *State v. Steele*, 57 Tex. 203 (1882); *Linden v. Finley, supra*; *Moore v. Sheppard, supra*; Attorney General's Opinions 1745 (1917), 2787 (1929), 2965 (1935), 2970 (1935), O-445 (1939), O-1837 (1940), O-2573 (1940), O-5329 (1943), V-412 (1947), V-894 (1949), V-1196 (1951), V-1254 (1951), M-1141 (1972).

M-1199 (1972) at 1.

Rider 61 effectively amends Section 773.122(c), Health and Safety Code. Under the rider and the rule proposed by the Department of Health, a county's share received from the emergency medical services and trauma care system fund will not be based *solely* on the relative geographic size and population of the county and on the relative number of emergency or trauma care runs performed by eligible recipients. Instead, a new criteria has been added which was not contemplated in the 1997 general laws. For this reason, I believe Rider 61 is unconstitutional.

I appreciate your kind assistance in this matter. Should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Bill Hill
District Attorney