



ATTORNEY GENERAL
OF TEXAS

AUSTIN 10, TEXAS

WILLIAM WILSON
ATTORNEY GENERAL

August 27, 1957

Hon. Penn Jackson, Chairman
State Board of Insurance
Austin, Texas

Opinion No. WW-233

Re: Validity of certain provisions of House Bill 133, the General Appropriations Bill for the fiscal years beginning September 1, 1957 and 1958.

Dear Mr. Jackson:

Your office has requested an opinion concerning the validity of a rider in the appropriation bill for the biennium beginning September 1, 1957, found in Part III on page 94, requiring the filing of an affidavit to the effect that the minimum qualifications stipulated in the rider for actuaries and new or additional examiners have been met. The Comptroller is prohibited from issuing salary warrants to the named employees of the Insurance Department unless the affidavit is filed.

The legal problem presented concerns Article III, Section 35 of the Texas Constitution, which prohibits any bill from containing more than one subject. The principles involved are thoroughly discussed in Attorney General's Opinion WW-96, and it is not deemed necessary to discuss them again.

This question is controlled by the decision in Moore v. Sheppard, 144 Tex. 537, 192 S. W.2d 559 (1946). The clerks of Courts of Civil Appeals had been charging fees for unofficial and uncertified copies of Court Opinions and retaining the proceeds for their private use. The Legislature by rider in an appropriation bill attempted to require the clerks to deposit all fees collected for official or unofficial Opinions in the General Fund of the Treasury. The Court held that prescribing fees was a matter of general legislation and was a separate "subject" within the meaning of Article III, Section 35, so as to be prescribed since an appropriation bill could only be concerned with the subject of appropriations. (In Attorney General's Opinion WW-96 a similar rider in the Legislative Budget Board's draft of the appropriation act in question was held unconstitutional for the reason that prescribing qualifications of the actuaries and examiners is a matter for general legislation which could not be included in an appropriation act.) The Moore v. Sheppard rider required each employee to file monthly an affidavit showing that he had not retained the fees but had deposited them in the State Treasury. The rider further stated:

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"The Comptroller shall not issue a warrant in payment of the salary of any such employee for any month unless and until the affidavit required herein has been filed for said previous month."

The rider here in question prohibits the Comptroller from issuing salary warrants to the named employees of your office until an affidavit is filed with the Comptroller certifying that such employees have met the minimum qualifications therein stipulated.

The Court in Moore v. Sheppard, supra, stated:

"There being no statutory duty requiring petitioners to furnish uncertified, unofficial copies of Opinions of the Courts of Civil Appeals, no statute fixing any fee for such services, and no valid statute requiring that money received therefore (sic) be deposited in the State Treasury, there is no debt owing by petitioners to the State. Since petitioners are not required to account to the State Treasurer, under existing statutes, for such receipts, they cannot be required to execute an affidavit that such funds have been deposited in the State Treasury as a condition for the delivery of their monthly salary warrants."

The rule of Moore v. Sheppard therefore applies with equal force to the legislation in question. Accordingly, it is unconstitutional.

SUMMARY

The rider contained in the appropriation bill for the fiscal years beginning September 1, 1957 through 1958, Acts 55th Legislature, Regular Session, Chapter 385,

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beginning at Part III, page 94, is un-
constitutional in contravention of Section
35, Article III of the Texas Constitution.

Very truly yours,

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Attorney General of Texas

By

WALLACE P. FINFROCK
Assistant

WPF:pc

APPROVED:

OPINION COMMITTEE:

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C. K. Richards

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REVIEWED FOR THE ATTORNEY GENERAL

BY:

James N. Ludlum