



**THE ATTORNEY GENERAL  
OF TEXAS**

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**AUSTIN, TEXAS 78711**

March 24, 1972

Honorable Bob Bullock  
Secretary of State  
State of Texas  
Capitol Building  
Austin, Texas 78711

Opinion No. 1100

Re: Authority of Legislature to appropriate money at a future date to pay expenses already incurred in necessary preparations by county committees of political parties for holding primary elections.

Dear Mr. Bullock:

Your March 23, 1972 request for an opinion asks whether at a future time the Legislature may validly appropriate money to pay expenses already incurred in preparation for primary elections by county committees of political parties. It is our opinion the Legislature may not validly make such an appropriation.

The State Constitution requires as a requisite to expenditure of state funds not only an appropriation, but also pre-existing law. Article III, Section 44, provides:

"The Legislature . . . shall not grant . . . by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; . . ."

In the recent opinion of the Texas Supreme Court in Bullock v. Calvert (No. B-3245, March 8, 1972) the Court stated in reference to your attempt to provide a substitute for the unconstitutional filing fee assessment system of financing,

". . . no specific commission to underwrite the election costs can be implied in the face of those contrary enactments . . ." (opinion, p. 11). \*

\* Page references are to the unpublished opinion of the Court.

The Court observed (opinion, pp. 11, 12):

"It may be true that those parties are unable to raise sufficient funds by their own devices. And it may well be that the only other alternative is an expensive special session of the Legislature, which could come as a burden upon its members, requiring them to meet a difficult problem in a brief and at an inopportune time. However, these are considerations which we cannot reach with out assuming to ourselves what the Texas Constitution does not allow us. That Constitution requires legislative authorization and appropriation for the expenditure of public funds."

For the same reasons that state funds could not then be spent by you, no one may now do so. There is no legislative authorization. There are two necessary elements, legislative authorization and appropriation. It is true that the Court said (opinion, p. 7):

"We hold that it lies within the discretion and power of the Legislature to appropriate state funds for this purpose . . ."

There must also be authorization. To read the Court's opinion otherwise is to remove from the Legislature their discretion to determine whether the funds of the State of Texas are to be expended for that purpose. In rejecting your arguments in the recent case, cited above, the Court said (opinion, p. 11):

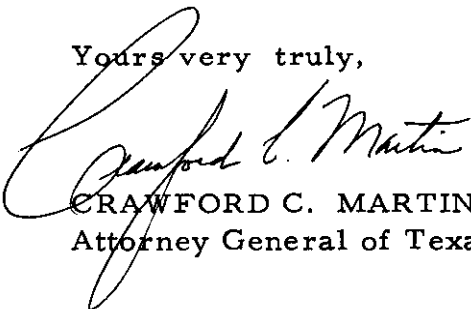
"Secondly, the effect of this degree of implied authority would be to give the Secretary of State the decision on whether or not state funds should be used for party primary elections and, if so, for what particular expenses and to what extent. This would be an unconstitutional delegation of legislative power in violation of the separation of powers section (Art. 2, § 1) of the Constitution." (Emphasis added.)

Present state statutes regulate many activities, including primary elections. Expenditures incident to primary elections made by certain officers of the political parties do not signify a legislative intent to authorize expenditures of state funds. Only the Legislature may make the choice; only the Governor may call the Legislature for a special session.

SUMMARY

The Legislature may not validly appropriate funds in the future to pay expenses presently incurred in preparation for primary elections by county committees of political parties but not "provided for by pre-existing law."

Yours very truly,



CRAWFORD C. MARTIN  
Attorney General of Texas

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