



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

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ATTORNEY GENERAL**

May 14, 1953

Hon. Allan Shivers  
Governor of Texas  
Austin, Texas

Letter Opinion No. MS-34

Re: Effect of Senate Bill 73.

Dear Governor Shivers:

Your request for an opinion on the construction of Senate Bill 73 of the 53rd Legislature contains the following questions:

"Does this bill, insofar as it applies to cities over 10,000, make mandatory the salary scale set forth in Section 1?"

"What is the effect of the paragraph in Section 1 dealing with an election?"

"What is the effect of the last sentence in Section 1?"

Senate Bill 73 amends Article 1583-a, Vernon's Penal Code, by providing:

"Provided, however, that in all cities in this State having a population in excess of ten (10,000) thousand according to the last preceding Federal Census, or any succeeding Federal Census, the minimum salary of each member of the Fire Department and of the Police Department may be increased to not less than the minimum amount stated in a petition signed by qualified voters in said city in number not less than twenty-five (25%) per cent of the total number voting in the last preceding municipal election. Said petition shall state the amount of the proposed minimum salary aforesaid, and when it is filed with the governing body of a city said governing body shall call an election within ninety (90) days after said petition has been so filed to determine whether said proposed minimum salary shall be adopted. If at said election a majority of the votes cast shall favor the adoption of said proposed minimum salary, said governing body shall put such salary into effect on or before the first day of the next fiscal year of said city. No other issue shall be joined

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on the same ballot with the proposition submitted at the election as herein provided. The question shall be submitted for the vote of the qualified electors as follows:

" 'FOR the proposed minimum salary of \$ \_\_\_\_\_ per month for Firemen and Policemen'

" 'AGAINST the proposed minimum salary of \$ \_\_\_\_\_ per month for Firemen and Policemen'

The requested salary set forth in the petition mentioned above shall be inserted in lieu of the blank spaces in said 'FOR' and 'AGAINST' clauses. When an election has been held in a city pursuant to the provisions of this Act, a petition for another election in said city shall not be filed for at least one year subsequent to the election so held. Nothing herein shall be construed to prevent the city concerned from adopting under the provisions of this Act without an election the minimum salary set forth in the petition filed with the governing body of said city."

The minimum salaries prescribed in Section 1 of Article 1583-2, Vernon's Penal Code, have been construed to be mandatory. City of San Antonio v. Baird, 209 S.W.2d 224 (Tex. Civ. App. 1948, error ref.); Austin Fire and Police Departments v. City of Austin, 149 Tex. 101, 228 S.W.2d 345 (1950). Senate Bill 73 contains no provision which would alter this construction.

Senate Bill 73 authorizes the filing of a petition with the governing body for the purpose of increasing the minimum salaries prescribed by the provisions of Article 1583-2, Vernon's Penal Code, and authorizes the governing body to raise the minimum salaries on a petition without an election. However, the governing body is required to call an election on the petition if it does not desire to raise the minimum on its own volition.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By

SCR:JR:cm:da

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