



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

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ATTORNEY GENERAL**

May 20, 1953

Hon. Allan Shivers
Governor of Texas
Austin, Texas

Letter Opinion No. MS-38

Re: Constitutionality of Senate Bill
345.

Dear Governor Shivers:

You have requested an opinion on the constitutionality of Senate Bill 345 authorizing the Commissioners Court of the counties of Cameron and Willacy to zone that portion of Padre Island lying within Cameron and Willacy Counties "for the purpose of promoting health, safety, peace, morals and the general welfare of the community, including the recreational use of county parks."

Section 1 provides:

"The Legislature finds as a matter of fact that that portion of Padre Island lying within Cameron and Willacy Counties is frequented for recreational purposes by citizens from every part of the State and that the orderly development and utilization of this area is a matter of concern to the entire State. The Legislature further finds as a matter of fact that buildings on islands which are frequented as resort areas tend to become congested and to be put to uses which interfere with the proper use of the area as a place of recreation, to the detriment of the health, safety, morals, and the general welfare of the public."

Section 56 of Article III of the Constitution of Texas prohibits the enactment of local or special laws regulating the affairs of the county. In construing this section of the Constitution the courts of Texas have held that the Legislature may classify counties for legislation provided there is a reasonable basis for the classification. In determining this question the Supreme Court in Miller v. El Paso County, 130 Tex. 370, 150 S.W.2d 1000, 1001, 1002 (1941) stated:

" . . . the classification must be broad enough to include a substantial class and must be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished by the proposed legislation. In

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other words, there must be a substantial reason for the classification ”

Likewise it is stated in Bexar County v. Tynan, 128 Tex. 223, 97 S.W.2d 467, 470 (1936):

“The rule is that a classification cannot be adopted arbitrarily upon a ground which has no foundation in difference of situation or circumstances of the municipalities placed in the different classes. There must be some reasonable relation between the situation of municipalities classified and the purposes and objects to be attained. There must be something . . . which in some reasonable degree accounts for the division into classes.”

The Legislature has found that the portion of Padre Island lying within Cameron and Willacy Counties is frequented for recreational purposes by citizens from every part of the State and that such area tends to become congested to the detriment of the health, safety, morals and general welfare of the public. It is our opinion this is a reasonable basis of classification and is a proper matter for the Legislature to determine. As stated in Watts v. Mann, 187 S.W.2d 917, 924 (Tex. Civ. App. 1945, error ref.);

“ In determining whether there is a reasonable basis for the classification there is a general presumption that the Legislature has done its duty, not violated the Constitution; and therefore the classification will be upheld unless it appears, clearly and without doubt, that it has no reasonable basis of support ”

You are therefore advised that Senate Bill 345 is constitutional.

You specifically request our opinion on the constitutionality of Section 10a which provides as follows:

“The provisions of this Act or of any orders, regulations or restrictions made or entered under the authority of this Act, shall not apply to the location, construction, maintenance or use of central office buildings of corporations, firms, or individuals engaged in the furnishing of telephone service to the public, or to the location, construction, maintenance or use of any equipment in connection with such buildings or as a part of such telephone

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system, necessary in the furnishing of telephone service to the public."

Since telephone service to the public is for the benefit and welfare of the public, it is our opinion the Legislature has authority to classify persons, firms, and corporations engaged in furnishing telephone service to the public and exempt such individuals, firms and corporations from the zoning regulations contained in the Act, and this section is therefore constitutional.

Yours very truly,

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By

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JR:am:da