



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

March 16, 1973

Honorable Robert W. Calvert
Chairman, Texas Constitutional
Revision Commission
Austin, Texas

Honorable Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Letter Advisory No. 1

Gentlemen:

Please consider this Letter Advisory as our answer to your recent inquiry concerning various fiscal questions arising under S. C. R. 1, rather than a formal opinion of this office, since we understand that time is of the essence.

We wish to thank you for Judge Calvert's letter of March 15, 1973, with which he forwarded minutes of the March 10 meeting of the Budget Committee of the Constitutional Revision Commission.

One preliminary question arises from the fact that S. C. R. 1 is a concurrent resolution and not a bill. Ordinarily, all laws must be passed by bill and not by resolution [Const. Art. 3, § 30 and Interpretive Commentary thereto], and, accordingly, a statute cannot be amended by resolution. 53 Tex. Jur. 2d, Statutes, § 6, p. 13.

In this instance, however, S. C. R. 1 was adopted in direct obedience to the mandate of Sec. 2 of § 2 of Article 17 of the Constitution that "When the legislature convenes in regular session in January, 1973, it shall provide by concurrent resolution for the establishment of a constitutional revision commission".

It is our opinion, therefore, that S. C. R. 1 having been adopted in aid of the constitutional provision and by its direction, has the same force and effect as the Constitution itself and will override any prior inconsistent statutory enactments.

Your first question asks whether S. C. R. 1 and S. B. 1 exempt the Commission from the provisions of Article 6252-11, V. T. C. S., and from the classification salary schedule and other personnel provisions of the General Appropriation Act.

Article 6252-11, V. T. C. S., the Position Classification Act of 1961, expressly excepts from coverage of the Plan, part-time and temporary employees (Sec. 2). The work of the Commission may be ended by November 1, 1973, by which date it is required to have made its recommendations. Certainly it will be completed by July 31, 1974, the very latest the convention may continue in its deliberations. Jobs with the Commission, therefore, at best will be temporary and Art. 6252-11 should not apply.

S. B. 1 is the appropriation act for the Commission. Since the General Appropriation Act may not include general legislation [Moore v. Sheppard, 144 Tex. 537, 192 S. W. 2d 559 (1946)] it would be ineffective to prescribe conditions of employment or salary schedules for positions not covered by its terms.

Your first question, therefore, is answered "Yes" and effect should be given to § 8(b) of S. C. R. 1, that the Executive Director of the Commission shall employ and fix the compensation of staff and consultants within approved budget limits. We note that, in fact, the Commission Budget Committee has proposed that personnel be hired within the state classification and salary schedule.

Your second question asks whether S. C. R. 1 and S. B. 1 exempt the Commission from the provisions of Article 6823a, V. T. C. S., and the travel and per diem provisions of the General Appropriation Bill.

For reasons heretofore stated, we do not believe the General Appropriation Bill governs, except insofar as it is adopted by Article 6823a. The provisions of that Article apply to all state

employees and appointed state officials. Section 6 of S. C. R. 1, applicable to members of the Commission, entitles them to recover all "actual and necessary" expenses without limitation. There is no similar provision for staff members. However, S. B. 1, the appropriation act for the Commission, directs the Commission to "submit budgets and rules governing payment for staff, per diem, travel (including out of state travel) and consultants". It is our opinion that such rules need not conform to the rules provided by Art. 6823a and, if approved, will provide the basis for reimbursement of expenses. Again we note that the Commission, by its proposed budget, has elected to adopt some provisions of the Appropriations Act.

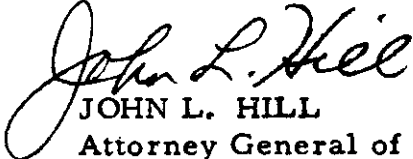
In accordance with the foregoing discussion, we answer your second question "Yes".

Your last question asks whether S. C. R. 1 and S. B. 1 authorize the Commission to enter into direct contracts for office space, supplies and services if it chooses not to use the services of the State Board of Control.

S. C. R. 1, Section 7, specifically provides that the Commission may obtain office space, equipment, supplies, etc., either through the State Board of Control or by contract. Giving this provision full effect, we answer your third question "Yes".

We appreciate the opportunity to be of assistance to you in your important work.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

Letter Advisory No. 1, page 4

APPROVED:



LARRY F. YORK, Executive Assistant



DAVID M. KENDALL, Chairman
Opinion Committee