



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL

May 16, 1973

The Honorable Neil Caldwell
Chairman, Appropriations Committee
House of Representatives
Austin, Texas

Letter Advisory No. 36

Re: Constitutionality of proposed
provision in the appropriations
bill with reference to supple-
mental medical assistance
nursing home care.

Dear Representative Caldwell:

You have asked our opinion as to the constitutionality of a proposed provision in the appropriations bill which would read:

"Expenditure of moneys appropriated hereinabove in item 52. C. For Supplemental Medical Assistance-Nursing Home Care, for persons currently eligible for nursing home care but who will no longer be eligible for nursing home care because of changes in federal eligibility standards after January 1, 1974, shall be subject to prior approval by the Governor upon his determination that such events have occurred."

Your letter states:

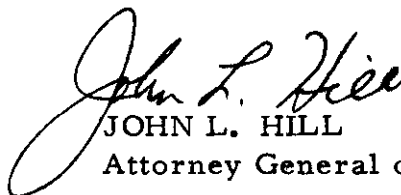
"The Committee would like your opinion as to the constitutionality of a provision in the bill making the appropriation contingent upon a determination and certification by the Governor that, in fact, the Federal eligibility standards had been changed and that certain recipients were no longer eligible."

Insofar as the proposed provision would require "approval" by the Governor, we call your attention to our Letter Advisory No. 2 (1973) in which we discuss proposed legislation giving the Governor certain budgetary authority. It was the conclusion then and it is still our opinion that the Legislature may not confer upon the Governor broad powers which amount, in effect, to a continuing veto of an appropriation. To the extent, therefore, that the word "approval" connotes any discretion by the Governor, the language would be held violative of the separation of powers of our Constitution. Article 2, §1.


This is not to say, however, that such an appropriation could not be conditioned upon the occurrence of an event where the determination of the fact that such event has occurred is certified by the Governor. In such an event, the Governor would be granted no discretion.

It is our opinion, therefore, that the inclusion of the word "approval" in the language quoted above may render the provision unconstitutional, and we hope that this advisory has appropriately directed your attention to other language which would effectively accomplish the desired results.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee