



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

May 4, 1955

Honorable Allan Shivers
Governor of Texas
Capitol Station
Austin, Texas

Opinion No. MS-209

Re: Constitutionality of House Bill
855, 54th Legislature, authorizing
cities in certain counties to
dispose of airports.

Dear Governor Shivers:

You have requested an opinion on the constitutionality of House Bill 855, 54th Legislature, authorizing certain cities to abandon land and properties for airport purposes owned by such cities.

At the present time the bill would apply to home rule cities in the counties of Hidalgo, Travis, Nueces, El Paso and Jefferson. Section 56 of Article III of the Constitution of Texas prohibits the enactment of local or special laws regulating the affairs of cities.

The primary and ultimate test of whether a law is general or special is whether there is a reasonable basis for the classification made by the law and whether the law operates equally on all within the class. Rodriguez v. Gonzales, 148 Tex. 537, 227 S.W.2d 791 (1950); Bexar County v. Tynan, 128 Tex. 223, 97 S.W.2d 467 (1936); Miller v. El Paso County, 136 Tex. 370, 150 S.W.2d 1000 (1941).

In Rodriguez v. Gonzales, supra, the court stated that there is no substantial difference in the situation or circumstances of border counties relating to suits for delinquent taxes upon which to base the classification of an act changing the procedure in collecting delinquent taxes in certain counties bordering between the United States and the Republic of Mexico.

Likewise, we can perceive no reasonable basis for authorizing cities falling within the classification of House Bill 855 to dispose of properties for airport purposes when that authority does not exist in other cities. Under such circumstances, the courts have consistently held such a law to be local and special and, therefore, unconstitutional.

Hon. Allan Shivers, Page 2 (MS-209)

In view of the above authorities, House Bill 855 is, in our opinion, unconstitutional.

APPROVED:

J. C. Davis, Jr.
County Affairs Division

John Atchison
Reviewer

Robert O. Fagg
Reviewer

Robert S. Trotti
First Assistant

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By 
John Reeves
Assistant