THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

April 2, 1949

Hon. Pearce Johnson, Chairman
Committee on State Affairs
House of Representatives
Austin, Texas

Opinion No. V-801

Re: Legislative authority to enact S.B. No. 87, relating to issuance of bonds by Robertson County to fund outstanding scrip.

Dear Sir:

We have received your letter of March 18, 1949, which is quoted, in part, as follows:

> "The Committee questioned the necessity of the bill, and moved that it be sent to the Attorney General for a report as to whether or not the bill was necessary. In other words, are we giving authority to do something that is already permitted?"

We are not in a position to answer your question as to whether this bill is necessary. That is a fact question which goes to the merits of the bill rather than its validity. It is assumed that you wish to know whether the proposed bill is constitutional, and, if so, whether it accomplishes something not already provided for in existing statutes.

The proposed bill is a special law dealing only with Robertson County. In Section 1 thereof the Commissioners' Court is given authority to issue refunding bonds to refund road and bridge scrip warrants of the county which are outstanding on the effective date of the act, with the proviso, however, that not more than $88,000 of refunding bonds shall be issued under the terms of the act.

Section 2 relates to the maturity dates, interest rates, and execution of the bonds, and provides that no notice of intention to issue the refunding bonds shall be required.

Section 3 makes applicable to such refunding bonds the provisions of Articles 709 to 715, inclusive, Revised Civil Statutes, relating to approval of the bonds by the Attorney General and registration thereof by the Comptroller.

Section 4 provides that all scrip warrants outstanding of the effective date of the act are validated.

Section 5 is the usual emergency clause.

An examination of the caption reveals that it fully describes the provisions of the act, and is sufficient, assuming, of course, that the act itself is constitutional.

Section 56 of Article III, Constitution of Texas, prohibits the enactment of local or special laws which, among other things, regulate the affairs of counties, or which authorize the laying out, opening, altering or maintaining of roads, highways, streets or alleys. This prohibition applies to all local and special laws "except as otherwise provided in this Constitution."

It is evident that this positive inhibition would preclude the valid enactment of the bill under consideration unless authority therefor is found elsewhere in the Constitution. Section 9 of Article VIII of the Constitution relates to certain county taxes, among which is the tax for road and bridge purposes. This section provides, in part, as follows:

> "And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws."

If the proposed act in question comes within the purview of the above-quoted provision, then its enactment is not prohibited by Section 56 of Article III. In the case of Henderson County v. Allred, 120 T. 483, 40 S. W. (2d) 17, the Supreme Court had for consideration the validity of a special road law enacted for Henderson County,

similar to the proposed law under consideration. We quote from the opinion of the court as follows:

> "The act in question is a local or special road law enacted for Henderson county without local notice having been given. Under its terms the commissioners' court of Henderson county was authorized to fund into bonds of the county such of its legal indebtedness chargeable against the road and bridge fund as existed January 1, 1929, which might be represented by script or time warrants. It was also provided in said act that such funding bonds might be issued without the necessity of submitting the question of their issuance to a vote of the people of the county.
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> " . . .
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> "Nor can the contention that the passage of the local or special road law for Henderson county is prohibited by the terms of section 56, article 3, of the Constitution, be sustained. This section of the Constitution provides: 'The legislature shall not, except as otherwise provided in this constitution, pass any local or special law: * * * authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys.'
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> "The above provision is a part of the original Constitution of 1876. Its terms operated to prohibit the Legislature without proper notice having been given from enacting any local or special law in regard to public roads from the date of its adoption in 1876 until December 19, 1890. On the latter date, however, section 9 of article 8 was amended. The amendatory portion of this article contained the following clause: 'And the legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws.'

"On January 7, 1907, section 9 was again amended by changing its former terms, but the above provision with reference to the passage of local or special road laws was re-enacted in the identical language in which it was originally adopted.

"From the above-quoted provisions of the Constitution, it will be readily seen that local or special road laws are expressly exempted from the operation of the provisions of section 56, article 3. The power of the Legislature to enact such local or special laws without the required notice is therefore placed beyond cavil.

" . . .

" . . . If the Legislature possessed the power to control by local or special laws the laying out, construction, and maintenance of public roads in Henderson county, which cannot be doubted under the foregoing decisions, then it must necessarily follow that it has the power to control and regulate by such a law the expenditure of all funds used for such purposes. Undoubtedly, the Legislature might lawfully, by local law, have made provision for the issuance by the county of the warrants and script which it has now authorized to be funded into negotiable bonds. The power to authorize the creation of such indebtedness and to provide the form in which it shall be evidenced necessarily includes the power to authorize a change in the form thereof.

" . . . Indisputably the Legislature had the power to authorize Henderson county by local or special law to issue warrants or bonds as a means of obtaining funds to be used in the building and operation of its road system without submitting the question as to the issuance thereof

> to a vote of the people of the county. This being true, it logically follows that, where an indebtedness has been lawfully incurred for road purposes by Henderson county and its obligations issued therefor in the form of script and warrants, that the Legislature may validly authorize the county to change such form of indebtedness by funding the same into the negotiable bonds of the county."

It is clear under this decision that Sections 1, 2, and 3 of proposed Senate Bill No. 87 constitute a valid exercise of legislative power, assuming that the scrip warrants were validly issued.

Section 4 of the act provides that all scrip warrants outstanding on the effective date of the act are validated. It has been held time and again that the enactment of curative statutes constitutes a valid exercise of legislative power, and that the Legislature can ratify anything that it could have authorized in the first instance. Tom Green County v. Moody, 116 T. 299, 289 S. W. 381; Hunt v. Atkinson (Com. App.), 18 S. W. (2d) 594; 39 Tex. Jur. 41.

It is clear that the Legislature has the power to validate any action that it could have authorized in the first instance; however, it does not have the power to ratify any act which is prohibited under our constitution. In the case of Bigfoot Independent School Dist. v. Genard, 116 S. W. (2d) 804, affirmed 129 S. W. (2d) 1213, the court held as follows:

> " . . . It is conceded, and is obvious, that the Legislature has no power to validate an act which it did not have the power to authorize in the first instance; it cannot ratify an act it cannot authorize. Here, the Constitution prohibited the imposition and levy of a tax upon the property embraced in an independent school district except when

> authorized by a majority of the taxpaying voters of the district at an election held for that purpose. The Legislature had no inherent or granted power to dispense with that constitutional requirement and authorize the trustee of the district to make such levy until the voters had acted favorably thereon, and not having the power to authorize the act in the first instance, it had no power to ratify or validate it after it was committed without authority. 2 Cooley's Const. Lim., 8th Ed. 791; 39 Tex. Jur. p. 41, § 19; Tom Green County v. Moody, 116 Tex. 299, 289 S. W. 381."

Thus, Section 4 would have the effect of validating the scrip warrants of the county insofar as non-constitutional objections are concerned. If there were certain errors or omissions in the issuance of the warrants, but these were statutory objections and not constitutional objections, then after the act would become effective, such errors and omissions would become immaterial. For example, The Bond and Warrant Law (Article 2368a, V. C. S.) prohibits the commissioners' court from making any contract calling for the expenditure of $2,000.00 or more of any county funds without first submitting the contract to competitive bids. Advertisement has to be made, and the successful bidder must give a performance bond. These steps are required by statute, and not by the Constitution. If the steps are not taken, then under the statute the contract is void. However, the Legislature may enact a validation statute which would dispense with these objections.

We have said above that the Legislature does not have the power to validate an unconstitutional act. It is too well settled to require citation of authority that scrip warrants are payable out of current revenues, and that to constitute valid obligations they must be within the reasonably ancitipated revenues of the county for the year in which they were issued. Otherwise, they would be

unconstitutional under Section 7 of Article XI, Constitution of Texas. This section prohibits cities and counties from incurring a debt unless at the time of the creation thereof provision is made for the levy and collection of a sufficient tax to pay the same. Unless scrip warrants are within the reasonably contemplated revenues of the county, they would constitute debts within the prohibition of Section 7, and, as no tax is levied therefor, would be unconstitutional obligations. See 11 Tex. Jur. 670 and authorities cited therein.

Thus, Section 4 of the act, if it is enacted, would have the effect of validating the scrip warrants as to non-constitutional objections. It could not validate any scrip warrants which are unconstitutional.

You ask whether the act accomplishes something not already provided for in existing statutes. In the first place, as we have already pointed out, the act contains a validation provision. In the second place, although validly issued scrip warrants may be funded into bonds under Article 2368a, supra, Section 7 of the statute requires published notice of intention to issue such bonds and authorizes the filing of a referendum petition. Section 2 of the proposed act provides that "no notice of intention to issue such refunding bonds shall be required."

SUMMARY

Proposed Senate Bill No. 87, a special road law for Robertson County which authorizes the issuance of bonds to refund certain scrip warrants of the county without the necessity of a notice of intention to issue such bonds, if enacted in the form submitted to this department, would be constitutional.

Section 4 of the act, which validates such scrip warrants, would have the effect of curing objections to

the warrants which were not constitutional in nature, but could not validate any unconstitutional warrants.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By George W. Sparks
George W. Sparks
Assistant

GWS-s

APPROVED:

Price Daniel
ATTORNEY GENERAL