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January 2, 2020

The Honorable Garnet F. Coleman
Chair, Committee on County Affairs
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0280

Re: Distribution of county transportation grant
funds appropriated under Senate Bill 500
(RQ-0295-KP)

Dear Representative Coleman:

You ask about the proper allocation formula for distribution of county transportation grant funds appropriated to the Transportation Infrastructure Fund (“Fund”) under Senate Bill 500.¹ *See* Act of May 26, 2019, 86th Leg., R.S., ch. 465, § 78, 2019 Tex. Sess. Law Serv. 891, 905 (“Senate Bill 500”). Administered by the Texas Department of Transportation (“Department”), the Fund provides grants to counties “for transportation infrastructure projects located in areas of the state affected by increased oil and gas production.” TEX. TRANSP. CODE § 256.103(a); *see also id.* §§ 256.101–.108 (Subchapter C, chapter 256, governing the Transportation Infrastructure Fund).

Two bills from the 86th Legislature prompt your question. *See* Request Letter at 1. Senate Bill 500 makes a supplemental appropriation of \$125,000,000, effective June 6, 2019, to the Fund. *See* Senate Bill 500, §§ 78, 88. House Bill 4280, effective September 1, 2019, changes the distribution formula for the Department to allocate Fund grants. *See* Act of May 26, 2019, 86th Leg., R.S., ch. 1322, §§ 1, 4, 2019 Tex. Sess. Law Serv. 3885, 3885–86 (“House Bill 4280”) (to be codified at TEX. TRANSP. CODE § 256.103(b)). Given the difference in effective dates for these two bills, you ask whether the funds from the supplemental appropriation should “be allocated for grants to counties under the distribution formula contained in the present statute or should it be allocated under the provisions that will be effective on September 1, 2019[.]” Request Letter at 1. Because September 1, 2019, has now passed, we refer to the pre-September 1 distribution formula as the previous formula and to the post-September 1 formula as the present distribution formula.

In making the supplemental appropriation to the Fund, the Legislature did not limit the expenditure of the additional funds to the 2018–2019 fiscal biennium. *See* Senate Bill 500, § 78. Senate Bill 500 makes supplemental appropriations to myriad programs, and in it the Legislature set the period of each appropriation. *See id.* §§ 1–87. In several appropriations, the Legislature provided that they were “for the state fiscal year ending August 31, 2019.” *Id.* §§ 11, 13, 24. In

¹Letter from Honorable Garnet F. Coleman, Chair, House Comm. on Cty. Affairs, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (rec’d July 18, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

contrast, with respect to other supplemental appropriations, the Legislature provided they were for “the two-year period beginning on the effective date of this Act.” *Id.* §§ 10, 54. The supplemental appropriation to the Fund is “for the two-year period beginning” from Senate Bill 500’s effective date of June 6, 2019. *Id.* § 78; *see also* TEX. CONST. art. VIII, § 6 (providing that “nor shall any appropriation of money be made for a longer term than two years”). The supplemental appropriation to the Fund spans both the 2018–2019 and the 2020–2021 fiscal bienniums. *See* Tex. Att’y Gen. Op. No. GA-880 (2011) at 2 n.3 (citing *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 884–85 (Tex. 2000) for the proposition that the Legislature knows how to enact a law effectuating its intent). The supplemental appropriation in Senate Bill 500 makes no special provision for the distribution formula. Thus, the formula in effect at the time the distribution is made governs.

Further, House Bill 4280 does not operate retroactively to apply the current distribution formula to the supplemental appropriation prior to the formula’s effective date. *See* House Bill 4280, §§ 1–4. Generally, “[a] statute is presumed to be prospective in its operation unless expressly made retrospective.” TEX. GOV’T CODE § 311.022; *see* TEX. CONST. art. I, § 16 (“No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.”). Statutes apply retroactively only if their statutory language indicates that the Legislature intended that the statute be retroactive. *Merchs. Fast Motor Lines, Inc. v. R.R. Comm’n*, 573 S.W.2d 502, 504 (Tex. 1978). Nothing in House Bill 4280 indicates that the Legislature intended the current distribution formula to operate retroactively to govern the award of grants prior to its effective date. *See* House Bill 4280, §§ 1–4. Nor can we construe the supplemental funding provided by Senate Bill 500 as indicia of the Legislature’s intent for House Bill 4280’s new formula to operate retroactively. *Cf. Strake v. Ct. App.*, 704 S.W.2d 746, 748 (Tex. 1986) (noting that because appropriation bills are limited to the single subject of making appropriations by Texas Constitution article III, section 35, they may not enact, amend, or repeal general law). And because nothing in Senate Bill 500 addresses the Department’s awarding of grants, the appropriate distribution formula is determined solely by the provision in effect when the Department makes the award.

For these reasons, the previous distribution formula governs any grants the Department may have awarded from the Fund prior to September 1, 2019. And, the current distribution formula governs grants the Department awards on or after September 1, 2019.²

²As a practical matter, the Department informs us that its “timeline for implementation of the [grant] application process and the ultimate final award of grants to counties will all take place after September 1, 2019.” Letter from Jeff Graham, Gen. Counsel, Tex. Dep’t of Transp., to Virginia K. Hoelscher, Chair. Op. Comm. at 1 (Aug. 19, 2019) (on file with the Op. Comm.).

S U M M A R Y

In providing a supplemental appropriation to the Transportation Infrastructure Fund in Senate Bill 500 with a two-year period, and in amending Transportation Code section 256.103's distribution formula with an effective date within that two-year period, the Legislature provided that different distribution formulas govern the supplemental appropriation.

Section 256.103's pre-amendment distribution formula governs any grants the Department may have awarded from the Fund prior to September 1, 2019. Section 256.103's post-amendment distribution formula governs grants the Department awards on or after September 1, 2019.

Very truly yours,



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