



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

April 14, 1955

Honorable Allan Shivers
Governor of Texas
Austin, Texas

Opinion No. MS-198

Re: Constitutionality of H.B. 54, 54th
Legislature, relating to working
hours of firemen and policemen.

Dear Governor Shivers:

You have requested an opinion as to the constitutionality and the sufficiency of the caption of House Bill 54, 54th Legislature, which has been passed by the Legislature and sent to your office for approval.

House Bill 54 amends Section 6 of Chapter 38, Acts of the 49th Legislature, which at present regulates the maximum working hours of firemen and policemen in cities of more than 40,000 inhabitants, by making the law applicable to cities of more than 10,000 inhabitants and by adding provisions authorizing local elections in these cities to fix the maximum hours of firemen. The bill also makes a few other minor changes in the number of hours which firemen and policemen may be required to work during certain periods of time. The caption of the bill states that it relates to the maximum working hours of firemen in cities of more than 10,000 inhabitants, without making any mention of policemen.

Section 35 of Article III of the Constitution requires that the subject of a bill be stated in its title, and further provides that "if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed." Since the purpose to change the law relating to working hours of policemen is not expressed in the caption of House Bill 54, the bill is ineffectual to change the present law insofar as it applies to policemen. Arnold v. Leonard, 114 Tex. 535, 273 S.W. 799 (1925); Rodgers v. Tobias, 225 S.W. 804 (Tex.Civ.App. 1920, error ref.); 39 Tex. Jur., Statutes, Sec. 48.

The further question arises, is the bill valid insofar as it relates to working hours of firemen? Section 35 of Article III states that the act shall be void only as to so much thereof as is not expressed in the title. The decisions construing this provision are summarized in 39 Texas Jurisprudence, Statutes, Section 39, in the following statement:

"A provision or section of a statute is void if its purpose or substance is not expressed in the caption of the act, but this does not invalidate other provisions or sections unless the latter are so connected with or dependent


on the former in subject-matter, purpose or meaning that they cannot stand alone."

We may take note of the fact that the duties and working conditions of firemen and of policemen are not identical, that the number of hours usually required of these two groups is not the same, and that the necessity for regulation may be more compelling in one case than in the other. There is not such a close relationship between the groups that one would not likely be the subject of legislative regulation without the other. This is evident in the present bill, where the Legislature has provided for a further regulation of the hours of firemen through local elections without including policemen in these provisions. It is also evident in other legislation enacted in the past, wherein the Legislature has set up separate pension systems for each group and has provided a pension system for firemen which is supported in part by the State without providing a similar system for policemen.

Elimination of the void portion of House Bill 54 does not enlarge its scope or remove limitations and conditions on the operation of the remainder of the bill, as was the case in Texas-Louisiana Power Co. v. City of Farmersville, 67 S.W.2d 235 (Tex.Comm.App.*). Nor are the provisions relating to firemen and those relating to policemen "so mutually connected with and dependent on each other as conditions, consideration, or compensation for each other as to warrant the belief that the Legislature intended them as a whole, and would not have enacted one or more of them if the others could not be joined and carried into effect." Gerhardt v. Yorktown Independent School Dist., 252 S.W. 197 (Tex.Civ.App. 1923). It cannot be said that the Legislature would not have enacted this bill with respect to firemen independently of similar legislation with respect to policemen. It is therefore our opinion that the bill, if enacted into law, would be valid insofar as it affects the working hours of firemen.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By 
J. Fred Jones
Assistant

JFJ:wb

* 1933.

APPROVED:

Enos Jones, Reviewer
J. A. Amis, Reviewer
Robert S. Trotti, First Assistant