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78th Legislature

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**RQ-0293-GA**

November 12, 2004

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OPEN RECORDS DIVISION

The Honorable Greg Abbott  
Texas Attorney General  
209 West 14<sup>th</sup> Street, 8<sup>th</sup> Floor  
Austin, Texas 78711-2548

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FILE # ML-44016-04 NOV 15 2004

I.D. # 044016 OPINION COMMITTEE

Dear General Abbott:

I request your formal advisory opinion on questions related to a rider, Article IX, Section 11.15, of H.B. 1, Acts of the 78<sup>th</sup> Legislature, Regular Session, 2003 (the General Appropriations Act).

The threshold issue is whether this rider to the general appropriations act, that automatically reduces state spending to the extent necessary to bring state spending into balance within the Comptroller's revenue estimate, is constitutional. I also ask your opinion as to whether the Comptroller has the discretion to disregard such a rider; refuse to certify the budget under Texas Constitution Article III, Section 49a(b); and return the bill to the constitutional house in which same originated.

Article IX, Section 11.15 reads as follows:

**Sec. 11.15. Contingency Appropriation Reduction and Contingency Appropriation.**

(a) In the event that it is necessary, in order to certify the appropriations in this Act, appropriations made by this Act out of the General Revenue Fund and general revenue dedicated accounts are hereby reduced on a pro-rata basis by the amount necessary to allow certification of this Act under Section 49a, Article III, Texas Constitution. The Comptroller shall report the total amount of reduction made by this subsection (a) to the Legislative Budget Board and Governor.

(b) An amount equal to the sum of the General Revenue Fund and general revenue dedicated account appropriations contained in this Act that are vetoed by the Governor under Section 14, Article IV, Texas Constitution, shall be segregated by the



Comptroller and is hereby appropriated, as necessary, for the transfers in subsection (c).

(c) (1) The Legislative Budget Board and Governor shall determine the final allocation of the net appropriation reductions made pursuant to this section no later than October 1, 2003 and shall direct the Comptroller to transfer funds between appropriation items accordingly. The reductions required by subsection (a) and the transfers required by this subsection (c) do not apply to constitutionally dedicated funds; funds necessary for the payment of debt service; funds appropriated to the Employees Retirement System, the Teacher Retirement Fund, and the Foundation School Program; amounts necessary for salaries out of appropriations made in Article IV of this Act; or to items of appropriations designated "estimated."

(2) The Legislative Budget Board and the Governor may utilize, in the plan of transfers sent to the Comptroller pursuant to subsection (c)(1), state fiscal relief federal funds for transfer to agencies or institutions with appropriations made in this Act that would otherwise be reduced pursuant to this section or other authority and such state fiscal relief federal funds are hereby appropriated in the amount utilized for this purpose.

(3) The Legislative Budget Board and Governor shall inform each state agency and institution affected by the reductions no later than October 15, 2003.

The 78th Legislature determined that Section 11.15 is the most efficient and responsible way for the Legislature to ensure that the General Appropriations Act will meet the requirements of Texas Constitution, Article III, Section 49a, requiring a balanced budget. It has been suggested that the rider is an unconstitutional delegation of power and therefore may be disregarded by the Comptroller in considering the bill for certification. However, Subsections (a) and (b) of Section 11.15, by their express terms, are an appropriation and do not delegate to the Comptroller, to the Legislative Budget Board, or to the Governor legislative authority to *appropriate* funds, nor does it in any way encumber the Comptroller's ability to estimate the revenue available to certify the budget under Texas Constitution, Article III, Section 49a(b). In addition, Article XVI, Section 69, Texas Constitution, specifically authorizes the transfer of funds described by Section 11.15(c).

I appreciate your attention to this important matter.

Sincerely,

  
Stephen E. Ogden

cc: Lieutenant Governor David Dewhurst