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# JOURNAL

OF THE

## SENATE OF TEXAS

BEING THE

Third Called Session

OF THE

## FORTY-FIRST LEGISLATURE

BEGUN AND HELD AT

The City of Austin, July 3, 1929



WENDELL O'NEAL, Journal Clerk.  
MRS. HUGH HARRIS, First Assistant Journal Clerk.  
MISS GLADYS ASH, Second Assistant Journal Clerk.

Message from the Governor.

The Chair recognized the Doorkeeper, who introduced a messenger from the Governor with the following message:

Executive Office, July 9, 1929.  
To The Forty-first Legislature,  
Ladies and Gentlemen:

At this time there are appropriations to be paid out of the General Revenue Fund, for which warrants have not been drawn, amounting to the sum of \$6,727,705.64. The balance in the Treasury to the credit of the General Revenue Fund on July first was \$2,312,736.48. Therefore, the outstanding and unpaid appropriations at this time exceed the balance in the General Revenue Fund, as of July 1, 1929, by the sum of \$4,414,969.16. There will be some collections made during the months of July and August. During these months last year there was collected for the General Revenue Fund the sum of \$2,152,157.43. In calculating the revenue available for the next two fiscal years you must take into account the amount of present outstanding appropriations which will be paid after the end of the present fiscal year. The amount of these outstanding appropriations which will be paid after September first of necessity constitute a charge against the prospective income for the next two fiscal years. After taking into account the possible collections coming to the General Revenue Fund during July and August, it appears that the present outstanding appropriations exceed the revenue to the end of the present fiscal year by approximately \$2,200,000.00. Of course, all of these appropriations may not be used, but there is no accurate basis of estimating what will and what will not be used. To be safely within the revenues it is proper to contemplate that what cannot be paid before September first will have to be paid after September first. It would seem that at least \$1,000,000.00 would have to be paid out of next years' revenue.

From September 1, 1927, to September 1, 1928, there was collected and credited to the General Revenue

Fund the sum of \$14,009,752.83, from sources other than ad valorem taxes. From September 1, 1928, to July 1, 1929, there was collected and credited to the General Revenue Fund the sum of \$12,421,026.58, from the same sources.

It is reasonable to assume that for the next two years the collections from these sources will not exceed by more than a few thousand dollars the amount of money which was collected during the past two years from the same sources. On account of the overflow of the prison farms it is possible that the income from these sources will be less in 1929, than it was in 1928. In estimating the income for the General Revenue Fund for the next two fiscal years, it seems to me that \$14,000,000.00 annually is a liberal estimate of the income to the General Revenue Fund from sources other than the ad valorem taxes.

In 1928, the valuations of all property rendered for ad valorem taxes was the sum of \$3,961,426,097.00. I am advised that the average increase in valuations over a period of ten years has been \$88,000,000.00 annually. If this is taken as the basis of the annual increase for the next two years and added to the valuations for the year 1928, it should form a fair basis upon which to compute the returns to the General Revenue Fund from State ad valorem taxes. It is to be remembered that the Legislature has remitted taxes on valuations totalling approximately \$3,500,000.00. This must be deducted from the total valuations before computing the amount yielded to the General Revenue Fund from ad valorem taxes.

The Automatic Tax Law provides that twenty per cent of the valuations shall be first deducted to allow for the cost of collection and delinquencies.

I know of no fair or safe basis or formula for figuring the prospective income from ad valorem taxes except the one provided in the law. Men may speculate upon the prospective income, but there can be no

safe or conservative way to figure this income except in the manner fixed by the Automatic Tax Law.

If the figures above stated and the formula prescribed by the Automatic Tax Law are used, it appears that under the maximum rate of taxation allowed by the Constitution the prospective income to the General Revenue Fund for the next two years from all sources will not exceed \$49,000,000.00. From this sum it is proper to deduct the amount of outstanding appropriations which will be paid after September first. If \$1,000,000.00 is adopted as the amount of outstanding appropriations to be paid out of next years revenue, it seems apparent to me that there is available for appropriation by this session of the Legislature for the support of the government for the next two years not exceeding the sum of \$48,000,000.00. According to my figures that is the maximum sum available under the highest tax rate allowed by law.

Personally, I do not think that the appropriations ought to be placed so high that they would force the levy of the highest rate of taxation allowed by the Constitution. I do not believe the adequate support of the State Government requires it at this time. I believe the State departments and institutions can be adequately supported for the next two years by the appropriation of not exceeding \$45,000,000.00. Although it is within your power to make appropriations that will require a levy of the maximum rate of taxation allowed by the Constitution, I hope you will not consider that necessary.

According to my figures, two years ago you appropriated approximately \$47,000,000.00 for the support of the government, its departments, and institutions from September 1, 1927 to September 1, 1929. Approximately \$4,000,000.00 of this sum was for buildings. If this last sum is deducted from the totals, the remainder, amounting to approximately \$43,000,000.00, represents the amount appropriated for the support of the departments and institutions from September 1, 1927 to September 1, 1929. There is no such demand for buildings this year as there was two years ago, and it is therefore my judgment that you can, if you will, keep the total of the appropriation bills you will pass at this

session within or below \$45,000,000.00.

You have the power to pass appropriation bills that will exceed the revenues to be yielded by the maximum tax rates, but it is fervently trusted that you will not exercise this power. I sincerely hope that you will provide for the necessary support of the activities of the government without creating a situation requiring the levy of the maximum tax rate, but if your appropriations are to reach that figure, then I indulge the further hope that you will not let them exceed the prospective revenue for the time within which they must be paid.

You can reduce items in passing the appropriation bills, but when once passed, I must either approve all of an item, or reject all of it. There is no such thing as reducing the amount of any separate item under the veto power—the whole item must stand or it must all be vetoed. For example, you may appropriate more or less as an item for traveling expenses, but I cannot reduce any item so appropriated. You have the opportunity in passing the bills to inquire into the exact needs and supply the necessary fund. You realize that it is utterly impossible by the use of the veto power to write an appropriation bill. It seems to be the purpose of some to ascertain the maximum amount of money that can be collected under the highest rates of taxation, and then proceed to appropriate that sum. It doesn't seem to me that the matter should be approached in that fashion. I think the effort should be to ascertain what amount of appropriations are reasonably necessary to adequately support the government. If that attitude is taken I feel certain that you will not find it necessary to appropriate sums of money requiring the levy of the maximum rate of taxation. If you take the other attitude, of course, the maximum rate of taxation will be the result. It will be possible by the use of the veto power to reduce the total some, but it is evident that this power cannot be used to strike enough from the bills to have much effect upon the tax rate.

In the end the totals of these appropriation bills and the result upon the revenues and the tax rate must be your responsibility, for you have

the power to control the expenditures from the public funds.

I have tried to give you the condition of the State revenue as I understand it, and I hope that we may be able to cooperate in holding the public expenditures within proper bounds and see that no unnecessary appropriations are made from the public funds. Retrenchment in the public expense is possible. The appropriation bill of two years ago carried the first building program which the State had had in several years. There is no necessary demand for any such extensive program at this time.

It is my purpose to limit the matters submitted at this session of the Legislature to the general subject of appropriations. That subject was submitted by the Proclamation convening the session.

I find, however, that one of the statutes carried into the recodification of 1925 contains certain wording which may seriously affect a threatened suit involving the payment of State Aid to the public school system. It seems that in the recodification of the statutes in 1925, Article 7043, carried forward the old provision that a rate should be fixed which would yield and produce \$4.-00 per capita for all the children within the scholastic age as shown by the last school census. This wording may not be a limitation, but in view of its presence in the statute, I regard it as proper to submit the subject of amending this Article to this session of the Legislature, that such language may be eliminated from the statute.

Respectfully submitted,

DAN MOODY,  
Governor of Texas.

**Message From the Governor.**

The Chair recognized the Door-keeper, who introduced a messenger from the Governor with the following message:

Executive Office,

Austin, Texas, July 13, 1929.

To the members of the Forty-first Legislature:

Ladies and Gentlemen:

In the first message which I sent to this, the Third Called Session of the Forty-first Legislature, I discussed appropriations and stated that it was not my purpose to submit other subjects than appropriations and the amendment of Article 7043, mentioned in that message. Certain existing conditions are so important that I feel it my duty to abandon my original intention regarding the limitation of subjects for legislative consideration, and call these conditions to your attention and ask that you give them consideration. I believe that these matters are so urgent, and of such importance, that they would justify the call of a special session of the Legislature. Therefore, notwithstanding my original purpose, I am submitting these subjects for your consideration.

The University of Texas is resurveying all University Lands in the several counties of West Texas. It seems that the law originally provided that this land should be surveyed in sections, but that it was surveyed in large blocks of a number of sections, and that the field notes for the many sections making up the University Lands are not entirely accurate. I understand that there is an excess in practically all of these surveys. Each excess may not, under the law, constitute a vacancy. Some excesses may constitute vacancies, and there may be accumulations of excesses from several surveys, which will constitute a large area of vacant and unsold public domain. At this time it is impossible to foretell just what excesses may exist and what vacancies may be developed.

Likewise it is impossible to foretell just where such vacancies may ultimately be found. Under the present statutes and Constitution of the State such lands as may be shown by the resurvey to be vacant, and therefore a part of the unsold public domain, would belong to the Permanent School Fund and be subject to the law controlling the handling and disposition of public school lands.

Any vacancies which may be developed could be unsurveyed public school land and subject to filings and sales under existing laws. It is altogether possible that vacancies may exist having valuable rights because of actual or prospective mineral development, or because of actual or prospective mineral production.

Under existing law anyone may file a letter of inquiry with the Commissioner of the General Land Office regarding any vacancies that may exist, and thereby acquire a vested right and fix his right to purchase such vacancy as unsurveyed school land. Under the decision of the Supreme Court in the case of Green vs. Robison, construing the Relinquishment Act, when any such filing is so made, and the land is sold, the State reserves the mineral rights therein, but subject to the terms of the Relinquishment Act, as construed in that case. As I understand that opinion, the person making such a filing, and so purchasing the land, would buy the surface rights, and by such purchase would become the agent of the State to lease the land for oil development. Such purchaser would be at liberty to lease the land on the basis of seven-eighths of the oil production to the lessee, and one-eighth to the lessor, of which one-eighth the purchaser would be entitled to one-half for his service as agent of the State in making the lease. It is not clear to my mind from the statute or any decided case whether the Relinquishment Act applies to devel-

oped and undeveloped mineral lands, or only to undeveloped mineral lands. Prudence, however, forces State officers to assume that it applies to both classes of mineral lands.

It is impossible for anyone to estimate the value of these properties. It is within the range of probability that lands having millions of dollars of value might be developed to be vacancies and be thus disposed of under existing law. It has been held by the Attorney General's Department that in the sales of public school lands the value of the surface rights is the test of a fair price to the State, even though the land may be oil bearing land, and even though this sale carries what, for practical purposes, amounts to a fifteen-sixteenths interest in the oil in the land. From the practical standpoint, thus a purchaser may buy one-sixteenth interest in a potential oil field for the value of the surface rights in the land.

In view of the possible development of vacancies, the present condition of the law, and the potential valuation of these lands as oil producing lands, it seems to me to be of transcendent importance that this legislature pass proper laws to safeguard the interest of the school fund and the University of Texas. If you are unwilling to remain in session to pass proper laws for the protection of the school fund and the University of Texas in the sale of any developed vacancies, then it seems to me that you should take steps immediately to withhold any such possible vacancies from the market, awaiting the passage of adequate laws. It is my personal judgment that it is better to pass a statute withholding this land from sale than to pass one providing for its sale. I may be in error in my judgment on this point and you may feel that it is better to pass laws now to provide for the disposition of these lands and give the school fund and University an opportunity to secure the prices which the land would now bring.

I am further told that there are several hundred thousand acres of surveyed land which have been forfeited to the State and that the time within which the original purchasers may redeem these lands has passed and that this land will be offered for sale under existing laws within the

next few months. I know nothing about the value of the mineral rights in this land. It is all, as I understand, subject to filing of mineral leases by the payment of a small sum per acre. And, it is all, as I further understand, subject to sale under the terms of the Relinquishment Act, resulting as I have previously pointed out, in the State (from a practical standpoint) reserving only one-sixteenth of the oil which may be in and under such lands. These surveys, as I understand are scattered far and wide in numerous counties of the State. I regard it of pressing importance that you likewise consider this matter and consider the passage of laws reserving to the State all mineral interests in such surveyed school lands. As oil development approaches these lands the State could arrange under proper laws for the development of the school's interest in the reserved mineral estate.

These two items may involve many, many million dollars to the University of Texas and the Permanent School Fund and their consideration is, in my judgment, a matter of pressing and extraordinary importance.

I am told that Congress has made an appropriation of a large sum of money to pay the cost of constructing a Post Office in the city of Lubbock. I understand that the people of Lubbock and the authorities of the Federal government have agreed upon a Post Office site, and that this property belongs to Lubbock County. It develops that the officers of the United States government have found defect in the title to this property and that it is impossible for Lubbock County to convey a satisfactory title to the property to the Federal government. A law is needed to empower Lubbock County to convey an acceptable title.

I am told that before another session of the Legislature convenes that appropriation made for the construction of this Post Office building would lapse. I think it is important to Lubbock County that you pass some bill to relieve this emergency.

You will recall that the State of Texas owns the streets in certain parts of the City of Austin. Bonds have been voted in this city to carry

forward a paving program and this program is now in progress. It develops that it will be difficult, if not impossible, to finance the deferred payments for this paving unless the Legislature gives the City of Austin and persons owning property that abuts State owned streets some character of legislative relief. I am told by the managing officers of the City of Austin that in certain sections the streets have been torn up preparatory to paving, and that since this has been done it has developed that the deferred payments for the paving work cannot be financed because the title to the streets is in the State of Texas. This in my judgment is of importance and justifies its submission for your consideration.

During the last several years the City of Brownwood and Brown County have been active in efforts to create a Water Improvement or Water Control and Improvement District for the purpose of impounding certain waters for irrigation purposes. Bonds have been voted and part of the bonds issued. It develops that one of the officers of the District created has issued a part of the bonds, but has become incapacitated to issue the remainder of the bonds. I understand that the work is in progress, or that the preliminary steps have been taken, but that it cannot be prosecuted to completion unless legislative authority is given respecting the issuance of bonds which have been voted. This subject is considered as of sufficient importance to merit your consideration at this time.

I hope that the consideration of these subjects will not detain you longer than you would otherwise remain here in acting upon the appropriation bills. I feel constrained to submit them because of my understanding of their urgency.

Regarding appropriations, permit me to add this word. There is a point which I believe it would be well to remember. It is economy of time to be patient with the Conference Committees and give them time to balance the appropriation bills and bring them within the revenues. By the term "balance the appropriation bills" I mean seeing that you do not appropriate more money to one department or institution than is needed and fail to appropriate as much money as is

needed to some other department or institution. If the bills should not be balanced in this sense of the term, it would create a necessity for further legislative consideration. As you know, appropriation bills cannot be balanced by the use of the veto power, because that power cannot be used to add to, but only to take from in whole items. It, therefore, seems to me that it would be an economy of time to see to the balancing of the appropriation bills now. It will take less time now than later.

Some of your members have been urging me to submit other subjects. I would like to comply with these requests, but I do not want to submit any more subjects than absolute necessities require.

Respectfully submitted,

DAN MOODY,  
Governor of Texas.

**Message from the Governor.**

The Chair recognized the Door-keeper, who introduced a messenger from the Governor with the following message:

Executive Office,  
Austin, Texas, July 15, 1929.  
To the Forty-first Legislature:  
Ladies and Gentlemen:

Members of the Legislature have been requesting me to submit subjects of local legislation for your consideration, saying that necessary legislation on these subjects could be considered while the committees are completing the work on the appropriation bills. I am complying with these requests and submitting the following:

(1) The passage of local road laws,

(2) The passage of local school laws,

(3) The passage of local game laws,

(4) The amendment of Article 199, Section 83,

(5) At the regular session of the present Legislature you passed an amendment to the stock law. Another amendment to the law was passed at first called session. As I understand, this latter amendment did not take into account the amendment passed at the regular session, and as a result there is some confusion about the terms of this law. I understand that the matter concerns only Harris and Galveston Counties. I submit the subject of correcting these amendments to this law.

These subjects are not intended to include any bill increasing the salary of any local office.

Respectfully submitted,

DAN MOODY, Governor.

Executive Office,  
Austin, Texas, July 16, 1929.  
To the Forty-first Legislature:  
Ladies and Gentlemen:

I am advised that Senate Bill No. 24, has passed the Senate, has been favorably reported by a committee in the House, and that a motion not to print the bill has been adopted by the House. I understand that some point of order has been raised that the subjects submitted do not cover this bill. The bill is an amendment to Chapter 186, page 456, Acts of the Thirty-ninth Legislature, passed at the Regular Session. The sponsors of this bill advise me that it is merely corrective of the present statute. I submit the subject of amending the above mentioned Act of the Thirty-ninth Legislature, to relieve the parliamentary situation affecting the aforementioned Senate Bill No. 24.

I am further advised that a bill has been introduced in the House amending Article 922, Code of Criminal Procedure, and that this bill is before the House with the Committee's favorable report; that a point of order has been raised that the bill is not embraced in any of the subjects previously submitted. This bill has as its purpose the amendment of the aforesaid article, to prescribe additional requirements with

reference to filing affidavit as to insanity after the conviction of defendant. The need for amendment is obvious. Since the issue is now before the Legislature, I submit the subject of amending this Article of the Code of Criminal Procedure.

Respectfully submitted,

DAN MOODY,  
Governor of Texas.