



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2013

The Honorable Jim Pitts  
Chairman  
Appropriations Committee  
Texas House of Representatives  
Room 1W.2  
Texas Capitol  
Austin, Texas 78711

Dear Chairman Pitts:

You asked for this Office's legal advice regarding the scope of the Legislature's authority under article VIII, section 22(a) of the Texas Constitution. Article VIII, section 22(a), commonly referred to as the constitutional spending limit, provides:

(a) In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

TEX. CONST. art VIII, § 22(a). Your question is based, in part, on the second sentence of section 22(a), which directs the Legislature to enact "procedures to implement this subsection." *Id.* Specifically, you ask whether the Legislature may declare by statute that money appropriated from the Economic Stabilization Fund (ESF) is "dedicated by this constitution." Such a statute, if effective, would allow the Legislature to appropriate funds from the ESF without counting those funds toward the constitutional spending limit. For the reasons explained below, we conclude that such a statute would exceed the Legislature's constitutional authority and run afoul of article VIII, section 22(a) of the Texas Constitution

We begin by examining the text of article VIII, section 22(a) of the Texas Constitution. Article VIII, section 22(a) consists of two sentences. The first sentence creates a substantive constitutional rule limiting the "rate of growth of appropriations from state tax revenues not dedicated by this constitution." Tex. Const. art. VIII, § 22(a). The second sentence directs the Legislature to enact procedures to implement that constitutional rule. By its plain terms, the second sentence does not authorize the Legislature to change the substantive requirements set forth in the first sentence. Rather, it merely authorizes the enactment of "procedures to implement" the first sentence's substantive requirements. *Id.*

In *Hendee v. Dewhurst*, the Third Court of Appeals rejected the argument that the second sentence of article VIII, section 22(a) authorizes the Legislature to change the substantive rule created by the first sentence. The court concluded that the legislative authority to enact procedures to implement section 22(a) “is not committed unconditionally to the legislature’s discretion, but instead is accompanied by standards. . . . [L]egislation that purports to implement the requirement that ‘[i]n no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state’s economy’ must necessarily be consistent with those standards.” 228 S.W.3d 354, 371-72 (Tex. App—Austin 2007, pet. denied).

Thus, in the court’s view—and in ours—the Constitution contains the one and only legal standard by which to judge whether appropriated funds must be counted toward the constitutional spending limit. That constitutional standard is whether the appropriated funds are from “state tax revenues not dedicated by this constitution.” TEX. CONST. art VIII, § 2(a). Only a constitutional amendment can change that standard. Any legislation that purported to limit, expand, or otherwise alter the standard would exceed the Legislature’s authority and run afoul of article VIII, section 22(a). In other words, whether the ESF consists of “state tax revenues not dedicated by this constitution” is a question of constitutional interpretation, which the Legislature cannot resolve with a statute.

On that question of constitutional interpretation, the Constitution’s plain terms lead us to conclude that funds in the ESF are not “dedicated” by the Constitution and therefore must be counted toward the constitutional spending limit. The Constitution provides that “the legislature may, by a two-thirds vote of the members present in each house, appropriate amounts from the economic stabilization fund *at any time and for any purpose.*” TEX. CONST. art. III, § 49-g(m) (emphasis added). Because ESF funds may be used “at any time and for any purpose” on a two-thirds vote of both houses, the funds are not “dedicated,” as that term is commonly understood. *See* NEW OXFORD AMERICAN DICTIONARY 452 (3rd ed. 2010) (defining “dedicated” as “exclusively allocated to or intended for a particular service or purpose”); THE AMERICAN HERITAGE COLLEGE DICTIONARY 369 (4th ed. 2002) (defining “dedicated” as “[d]esigned for a particular use or function”).

As the court in *Hendee* explained: “State tax revenues not dedicated by this constitution’ refers to one source of funds that the legislature could appropriate; others include non-tax revenues and tax revenues whose use is dedicated by the constitution.” 228 S.W.3d at 360. Thus, the court contrasted undedicated tax revenues (which must be counted toward the spending limit) with “tax revenues whose use is dedicated by the constitution” (which are not counted toward the spending limit). *Id.* Examples of funds dedicated by the Constitution that need not be counted toward the spending limit include motor vehicle registration fees and taxes on motor fuels and lubricants, both of which are dedicated by article VIII, section 7-a of the Constitution “for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways, [etc.]” TEX. CONST. art. VIII, § 7-a. These funds are clearly dedicated for a particular

purpose. ESF funds, in contrast, may be spent “for any purpose” on a two-thirds vote in both houses. *Id.* art III, § 49g(m). As a result, they are not “dedicated” and must be counted toward the constitutional spending limit.

We note that since the creation of the ESF in 1988, the Legislative Budget Board (LBB) has counted appropriations of ESF funds toward the constitutional spending limit. This practice reflects a conclusion by the LBB that ESF funds are “state tax revenues not dedicated by the constitution.” *Id.* art. VIII, § 22(a). As explained above, we share that conclusion. Further, we advise you that the Legislature lacks authority to enact a statute altering that conclusion. Only a constitutional amendment approved by Texas voters can remove ESF funds from the spending limit calculations mandated by article VIII, section 22 of the Texas Constitution. *Cf. Hendee*, 228 S.W.3d at 372-73.

Please note that this letter is not a formal opinion of the Attorney General issued pursuant to section 402.042 of the Texas Government Code. Rather, this correspondence merely constitutes informal legal advice pursuant to your request.

Sincerely,



Greg Abbott  
Attorney General of Texas

cc: The Honorable Joe Straus  
The Honorable David Dewhurst  
The Honorable Tommy Williams