



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

July 9, 1965

Honorable Preston Pool
County Attorney
Garza County
Post, Texas

Opinion No. C- 463

Re: Whether the Commissioners Court of Garza County may close the doors and cease operating Garza Memorial Hospital and related questions.

Dear Mr. Pool:

Your letter of June 16, 1965, requests an opinion of this office as to the following questions:

"(1) May the Commissioner's Court of Garza County close the doors and cease operating Garza Memorial Hospital? Does it make any difference if this is with or without the consent of the Board of Managers?

"(2) Does Garza County have authority to lease its County Hospital organized in accordance with (Article) 4478 by virtue of Art. 4494h?

"(3) Does Garza County have the power to sell or lease its county hospital under Article 4494j?"

It is an established rule that the Commissioner's Court is a court of limited jurisdiction and has only such powers as are conferred upon it by statute and the Constitution by express terms or by necessary implication. Childress County v. State, 127 Tex. 343, 92 S.W.2d 1011 (1936); Von Rosenberg v. Lovett, 173 S.W. 508 (Tex.Civ.App. 1915, error ref.); Roper v. Hall, 280 S.W. 289 (Tex.Civ.App. 1925). No statutory or constitutional provisions may be found which confer either expressly or by implication, power upon the Commissioner's Court to close the doors or cease operation of a hospital established under provisions of Article 4478, Vernon's Civil Statutes, with the exceptions of lease or sale of said hospital. Article 4478 provides in part:

" . . . At intervals of not less than twelve months, ten percent of the qualified property tax paying voters of a county may petition such court to provide for the establishing or enlarging of a county hospital, in which event said court within the time designated in such petition shall submit to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital. Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital. . . ."
(Emphasis added).

Article 4478 by mandatory language, requires the Commissioners Court to maintain an established County hospital through designated powers granted within Article 4478. No provision may be found in the statutes or Constitution which allows the Commissioners Court to discontinue maintenance of a hospital established pursuant to a special election within Article 4478, with the exception of lease or sale of said hospital. Neither may the Board of Managers cease such operation as Article 4480 grants said Board power to make rules and regulations for carrying out the purposes of the hospital with no specific power to cease operations.

According to the last preceding Federal Census, the population of Garza County was 6,573. The Commissioners Court of Garza County has authority to lease its County Hospital under provisions of Article 4494h, Vernon's Civil Statutes, which provides as follows:

"Any county in this State having a population of not less than five thousand (5,000) and not more than ten thousand, three hundred and ninety (10,390) inhabitants according to the last preceding Federal Census, shall have authority to lease any county hospital belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by order of the Commissioners Court, which order shall be recorded in the minutes of said Court."

In 1964 Garza County had an assessed valuation for State and ad valorem tax purposes of \$14,984,753. The Commissioners Court of Garza County has the authority to sell its county hospital under provisions of Article 4494j, Vernon's Civil Statutes, which provides as follows:

"Any county in this State having an assessed valuation of property for State and ad valorem tax purposes of less than Twenty Million Dollars (\$20,000,00) and having a county hospital belonging to said county and operated by such county, may, and such county is hereby authorized to sell or lease such hospital, provided the Commissioners Court of such county shall find and determine by an order entered in the minutes of such Court that it is to the best interests of such county to sell or lease said county hospital. The proposed sale or lease shall not be considered by such Commissioners Court unless and until said proposed sale or lease shall be approved by a majority vote in an election to be held in such county for the purpose of determining the will of property taxpaying voters living in the county, in reference to such subject. Such election shall be ordered by the Commissioners Court of any such county upon petition of not less than ten per cent (10%) of such voters and shall be otherwise held under and governed by the election provisions of Article 4478, Revised Civil Statutes, 1925, of the State of Texas."

It is our opinion that the Commissioners Court may lease the county hospital under provisions of Article 4494h. Said court may lease or sell the county hospital within the provisions of Article 4494j, Vernon's Civil Statutes.

S U M M A R Y

The Commissioners Court of Garza County does not have power to cease operations of the Garza County Hospital established under Article 4478, Vernon's Civil Statutes. The Commissioners Court of Garza County has authority to lease its County Hospital in accordance with Article 4494h and to sell or lease its hospital in accordance with Article 4494j, Vernon's Civil Statutes.

Hon. Preston Pool, page 4 (C-463)

Very truly yours,

WAGGONER CARR
Attorney General

Gordon Houser

By:
Gordon Houser
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GH:mkh

APPROVED:
OPINION COMMITTEE

W. V. Geppert, Chairman
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APPROVED FOR THE ATTORNEY GENERAL
BY: T. B. Wright