



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CENTER
ATTORNEY GENERAL

September 30, 1965

Honorable Ralph Prince
County Attorney
Box 2403
Longview, Texas

Opinion No. C-517

Re: Whether the Commissioners Court may, acting under the provisions of Article 4494(L), V.C.S., lease the county hospital for a 99 year term with the express agreement that the lessee may encumber the land, existing buildings, and equipment for substantial improvements thereto, including the construction of new buildings and the purchase of new equipment.

Dear Sir:

You have requested an opinion of this office on the following question:

"May the Commissioners Court, acting under the provisions of Article 4494 (L) R.C.S., lease the county hospital for a 99 year term with the express agreement that the lessee may encumber the land, existing buildings, and equipment for substantial improvements thereto, including the construction of new buildings and the purchase of new equipment?"

In 1959, you requested an opinion of this office (WW-630) as to whether the Commissioners Court of Gregg County had the authority under Article 4494 (L), Vernon's Civil Statutes, to lease the county hospital. While answering your request in the affirmative, our office pointed out that in the proposed lease contract:

". . . the county does not lend its credit or become a stockholder in or subscriber to the capital of the lessee and does not enter upon a joint venture with said lessee since control over the management and operation of the hospital is ceded to the lessee, all debts of the hospital.

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are avoided by the county, and it is held safe for any liability which might arise from the operation of the hospital. . . ."

The proposed lease in the present instance would allow the lessee to encumber the county's property and in case of default of the lessee leave the county liable to the lien holder. Therefore, the lease in effect pledges the credit of the county, this contravenes Article III, Sections 50 and 52 of the Constitution of the State of Texas.

Further, as also noted in Opinion WW-630:

". . . No appropriation of public funds to charitable or non-charitable organizations managed and operated or controlled by private individuals can be made by a Commissioners' Court. Tex. Const. Art. III, Sec. 50, Sec. 51 and Sec. 52; Tex. Const. Art. VIII, Sec. 3; and Tex. Const. Art. XVI, Sec. 6. Upon the lease of the hospital it will, of course, cease to be a legitimate recipient of county funds."

The Commissioners' Court is a court of limited jurisdiction and has only such powers as are conferred upon it by statutes and the Constitution by express terms or by necessary implication. Childress County v. State, 127 Tex. 343, 92 S.W.2 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). However, the Commissioners' Court has no statutory authority to encumber the property through liens. Under the proposed lease, the Commissioners' Court would allow the lessee to encumber the land, existing buildings, and equipment of the hospital. In Opinion No. O-47, this department held that:

". . . The Commissioners' Court, having no power except that specially conferred by the Constitution and statutes passed pursuant thereto, would have no power to enter into any contract for the building and maintenance of a hospital, the title to which would be held in any manner contrary to the principal provisions of Article 4478."

Article 4478 provides:

". . . At intervals of not less than twelve months, ten per cent 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. . . ."

In Opinion No. 0-6433, this department held:

"The legislature has authorized counties to create 'debts' within the meaning of the constitution by authorizing the issuance of bonds and time warrants, and we are unable to find any legal means by which a commissioners' court may obligate the tax revenues of the county for a future year other than by complying with the statutory provisions as to the issuance of bonds and/or time warrants."

And further:

"It is our opinion that the contract of sale for the hospital equipment is not in conformity with the statutory provisions pertaining to the creation of a debt against the county. We know of no constitutional or statutory provision authorizing the creation of an obligation against the county out of the revenues of future years by means of vendor's lien notes, bearing a stipulated rate of interest."

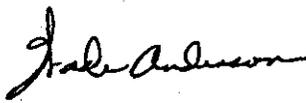
Since, in this instance, the Commissioners' Court may not bind the county other than by duly voted bonds and/or time warrants and may not encumber county property with liens, the Commissioners' Court may not by lease agree to allow the lessee to do indirectly that which the court could not do directly. In answer to your question it is the opinion of this office that since the Commissioners' Court may not encumber the land, existing buildings, and equipment of the hospital through liens, the county's lessee may not be granted the right to so encumber the property.

SUMMARY

The Commissioners' Court may not make an express agreement to lease a county hospital which lease would allow the lessee to encumber the land, existing buildings, and equipment for substantial improvements thereto, including the construction of new buildings and the purchase of new equipment. Such a condition would be unconstitutional under Article III, Sections 50 and 52, Texas Constitution, and in contravention of Article 4478. Further, the Commissioners' Court is given no authority to create debts for the establishing or enlarging of a hospital in any manner other than by time warrants and/or bonds which have been duly voted upon by the property holders of the county, and, therefore, the Commissioners' Court may not allow the lessee to encumber the property through liens.

Very truly yours,

WAGGONER CARR
Attorney General

By 

Wade Anderson
Assistant

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APPROVED:
OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
BY: T. B. Wright