



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

April 22, 1975

The Honorable Chet Brooks, Chairman
Senate Committee on Human Resources
Senate Chamber
State Capitol Building
Austin, Texas

Letter Advisory No. 97

Re: Constitutionality of proposed legislation providing for contracts between the Coordinating Board and hospital districts to provide for reimbursement of teaching costs incurred by hospitals.

Dear Senator Brooks:

You have requested our opinion concerning the constitutionality of the committee substitute for Senate Bill 343 which would permit the Coordinating Board to contract with teaching hospitals to compensate them for their costs in providing teaching services. You state in your request that the bill would apply to the University of Texas Medical Schools at Dallas, Houston, and San Antonio, the Texas Tech University Medical School, and the Baylor College of Medicine. The teaching hospital presently utilized by the Houston school is a private hospital; the remaining four are owned by hospital districts. We see no problems under article 9 of the Texas Constitution with respect to a contract with a private hospital and shall therefore address only that facet of the bill which would allow contracts with hospital districts.

These hospital districts were created under article 9 of the Texas Constitution, section 9 of which provides in part:

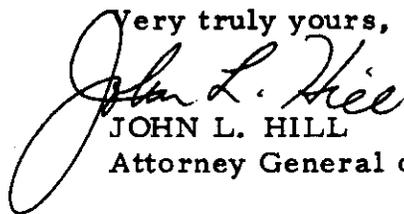
. . . the support and maintenance of the district's hospital system shall never become a charge against or obligation of the State of Texas nor shall any direct appropriation be made by the Legislature for the construction, maintenance or improvement of any of the facilities of such district.

Section 4 of article 9 contains substantially identical provisions. We have discovered no cases which directly interpret these clauses. The provisions of sections 4 and 9 prohibit charges against and obligations of the State for the support and maintenance of hospital systems and direct appropriations to the districts. The purpose of these sections was to provide adequate hospital care for all persons of the various counties, especially the indigent and needy. See, Interpretative Commentary, Tex. Const., art. 9, sec. 4. The pertinent limitations were intended to insure that the district assume full responsibility for the satisfaction of this goal by preventing the State from becoming involved in financial support of the districts.

However, we believe sections 4 and 9 were not intended to prevent exchanges of consideration between state agencies and hospital districts where a district contracts to provide services to the State which it is otherwise under no duty to provide. Thus in this instance, we believe the prohibition regarding charges against and obligations of the State for the support and maintenance of a district's hospital system to be inapplicable. The State would be contracting for and thus supporting and maintaining the teaching services of a hospital, not the normal hospital functions for which the district has the constitutional responsibility.

The only case of which we are aware that involved funding of teaching hospitals is Smith v. Davis, 426 S.W.2d 827, 831 Tex.Sup. 1968). In that case the Texas Supreme Court upheld a statute authorizing higher tax levels for certain hospital districts which operate teaching hospitals. While the opinion contains both dicta which could be interpreted as supporting our conclusion and some which may support a contrary conclusion, the court did not address any of the issues raised by your request.

While the matter is not free of doubt, it is our opinion that the committee substitute for Senate Bill 343 would probably be held not to violate article 9, sections 4 and 9, so long as the districts are compensated only for teaching services. However, under article 3, section 51 of the Texas Constitution, any contract must provide adequate consideration of the State. Attorney General Opinion H-403 (1974), and authorities cited therein.

Very truly yours,

JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee