



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 27, 1996

The Honorable José Rodríguez  
El Paso County Attorney  
County Courthouse  
500 East San Antonio, Room 203  
El Paso, Texas 79901

Letter Opinion No. 96-092

Re: Authority of the El Paso County  
Commissioners Court with respect to the El  
Paso County Hospital District (ID# 34644)

Dear Mr. Rodríguez:

You ask about the authority of the El Paso County Commissioners Court with respect to the El Paso Hospital District (the "district"). You advise that the district was created and operates under the provisions now codified as chapter 281, Health and Safety Code, "Hospital Districts in Counties of at Least 190,000."

Your first question is: "To what extent may the Commissioners Court of El Paso County control the operation and management of the El Paso County Hospital District?" We do not attempt an exhaustive treatment of this question here. As you say in your request, control over the district is shared between the district board of managers and the commissioners court. Health and Safety Code section 281.047 provides that the district board of managers "shall manage, control, and administer the hospital or hospital system of the district." However, the commissioners court appoints the district board of managers, Health and Safety Code section 281.021, sets the tax rate for the district, *id.* § 281.121, may prescribe accounting and purchasing procedures, *id.* § 281.049, approves the district budget presented by the board, *id.* § 281.091, calls district bond elections and issues district bonds, *id.* ch. 281, subch. F, and must approve various other actions the board wishes to take, *see, e.g., id.* §§ 281.050 - .051. Your other questions deal largely with when and how the commissioners court must "approve" various board actions and we will deal with those specific questions below.

Your second question is:

What types of transactions fall within § 281.050 so as to require approval by [the] Commissioners Court? Is the scope of § 281.050 limited to capital improvement and public works projects or does it apply to service contracts? Is Commissioners Court approval required for a contract for professional medical services, including physician services?

Section 281.050 provides:

With the approval of the commissioners court, the board may construct, condemn, acquire, lease, add to, maintain, operate, develop, regulate, sell, exchange, and convey any property, property right, equipment, hospital facility, or system to maintain a hospital building, or other facility or to provide a service required by the district.

You suggest that the predecessor provision to section 281.050 – section 5B(a) of former V.T.C.S. article 4494n – which was codified as section 281.050 without substantive change intended,<sup>1</sup> more clearly made the board's purchase of services subject to commissioners court approval. Former section 5B read:

The Board of Managers, with the approval of Commissioners Court, shall have the power:

(a) To construct, condemn and purchase, purchase and acquire, lease, add to, maintain, operate, develop and regulate, sell, exchange and convey any and all lands, property, property rights, equipment, hospital facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities and services the hospital district may require or may have available to sell, lease, or exchange.

Although the parsing of the provisions may be subject to question, we read neither the current section 281.050 nor the predecessor provision, former section 5B of article 4494n, as making the board's acquisition of services itself subject to commissioners court approval. In our view, the provisions authorize the board, with commissioners court approval, to construct, acquire, dispose of, etc., property of the kind stated in order, in the words of section 281.050, "to maintain a hospital, building, or other facility or to provide a service required by the district." The commissioners court approval requirement of section 281.050 does not apply to the board's service contracts themselves.

Thus, section 281.050 does not operate to require commissioners court approval of the board's contracts for medical and physician services. Notably, another provision, section 281.028, specifically authorizes the board to appoint doctors and other employees it considers needful for the district's operation without referring to the need for commissioners court approval.

Your third question is:

Does section 281.050 require Commissioners Court approval of specific contractual agreements or is general approval of a proposed transaction or project sufficient? Once a transaction or project has

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<sup>1</sup>See Health & Safety Code § 1.001 (nonsubstantive revision).

been approved by the Commissioners Court, may the board of managers modify the transaction or project without additional approval by the Commissioners Court? Is the Commissioners Court approval of the district's budget[] sufficient authorization for the board of managers to proceed with transactions which are identified and funded in the budget?

You argue that "[i]n the absence of any specific code requirements . . . it is a matter for the discretion of Commissioners Court to determine how broad or limited the scope of approval for any transaction or project shall be" -- that it may, for example, determine that its approval of budget items is sufficient approval or that each contract under section 281.050 must be specifically approved, and similarly that it may determine under what circumstances its additional approval of modifications shall be required. We agree.

Section 281.049 broadly authorizes the commissioners court to "prescribe the method of making purchases and expenditures by and for the district." We note, too, that section 281.051 of the code, which authorizes the district board, in performing its powers under section 281.050, to contract with the federal or state governments, a municipality, another hospital district, or a privately owned or operated hospital in the district, expressly requires that the commissioners court determine that each such contract meet certain criteria. Had the legislature intended that other board actions under section 281.050 must each be specifically approved by the commissioners court, we believe it would have so indicated, as it did with respect to contracts under section 281.051. Accordingly, it is our opinion that the commissioners court, in the absence of provisions expressly requiring specific commissioners court approval of a board action under section 281.050, has considerable flexibility to adopt reasonable policies as to whether its specific approval shall be required for various kinds of board actions, or whether general approval will suffice, and the form that such approvals must take.

The answer to your fourth question -- whether the commissioners may "delegate approval to the board for all contracts under a specific dollar amount" -- follows, we think, from our response to your third question: so long as it is reasonable, the commissioners may adopt a policy approving the board's entering contracts under section 281.050 under certain dollar amounts without the need for further specific approval by the commissioners court, unless, of course, the contract in question is also subject to a provision, such as section 281.051, which requires that it be specifically approved by the commissioners court?

Your last question is:

Must Commissioners Court hold a separate newspaper-noticed public hearing when it adopts the budget for the hospital district or may the hospital district budget be adopted at a regularly posted meeting of Commissioners Court?

As you note, there are detailed provisions in Local Government Code sections 111.038 and 111.0385 requiring the commissioners court to hold a specially noticed hearing on the *county* budget, the notice to be published in a newspaper between thirty and ten days before such hearing. The notice required under those provisions is "in addition to the notice required by other law." Local Gov't Code § 111.0385. Relative to the commissioners court's responsibilities over the hospital district's budget, however, chapter 281 provides only that the budget prepared by the district's administrator under the board's direction, "must be approved by the board and then shall be presented to the commissioners court for final approval." Health & Safety Code § 281.091. We find nothing preventing the commissioners court from considering the district budget at one of its regular meetings. See Local Gov't Code § 81.005 (terms and meetings of commissioners court).<sup>2</sup>

### S U M M A R Y

Health and Safety Code section 281.050, which authorizes the board of managers of a hospital district in a county of population of at least 190,000 to take various actions "with the approval of the commissioners court" does not include service contracts in its coverage, including those for doctors and other staff engaged under section 281.028 of the code.

The commissioners court, in the absence of other provisions expressly requiring specific commissioners court approval of a board action under section 281.050, has flexibility under that section to adopt reasonable policies as to whether its specific approval shall be required for various kinds of board actions, or whether general approval will suffice, and the form that such approvals must take.

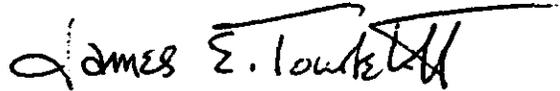
So long as it is reasonable, the commissioners may adopt a policy approving the board's entering contracts under section 281.050 under certain dollar amounts without the need for further specific approval by the commissioners court, unless, the contract in question is also subject to a provision requiring specific commissioners court approval.

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<sup>2</sup>There are no special provisions for giving notice of regular meetings of the commissioners court; rather, as you indicate, notice for these meetings is governed by the Open Meetings Act, chapter 551, Government Code. See Gov't Code §§ 551.001 (commissioners courts as governmental bodies subject to act), .041 (notice of meeting must state date, hour, place, and subject of meeting), .043 (notice of meetings to be posted at least seventy-two hours before meeting), .049 (county governmental body's notice of meeting to be posted at courthouse).

The commissioners court may consider the hospital district budget at one of its regular, regularly noticed, meetings.

Yours very truly,

A handwritten signature in black ink that reads "James E. Tourtelott". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

James E. Tourtelott  
Assistant Attorney General  
Opinion Committee