



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 19, 1997

The Honorable Bill Ratliff  
Chair, Finance Committee  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 97-004

Re: Reconsideration of Letter Opinion No. 95-088:  
Authority of the Lubbock County Hospital District to  
fund the expenses of the office of county medical  
examiner (RQ-898)

Dear Senator Ratliff:

Your predecessor as Chair of the Senate Finance Committee requested a reconsideration of Letter Opinion No. 95-088, which gave a negative answer to the following question:

**Are the salaries and expenses of the Medical Examiner's office authorized medical and hospital care expenses which can be funded by the Lubbock County Hospital District?**

The request for reconsideration states that Letter Opinion No. 95-088 seems to hold that the Lubbock County Hospital District's sole legitimate authority is limited to the provision of medical and hospital services to needy inhabitants of the county. We did not, however, intend Letter Opinion No. 95-088 to have any such implication. Letter Opinion No. 95-088 (1995).

The Lubbock County Hospital District ("hospital district" or "district") was established under the authority of article IX, section 9 of the Texas Constitution, which authorizes the legislature to

provide for the creation, establishment, maintenance and operation of hospital districts composed of one or more counties or all or any part of one or more counties with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, *for hospital purposes*; . . . providing that any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants . . . ; providing that after its creation no other municipality or political subdivision shall have the power to levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care within the boundaries of the district. . . . [Emphasis added.]

A district created pursuant to this provision is required to “assume full responsibility for providing medical and hospital care for its needy inhabitants,” but this is certainly not the only population that it serves. The statute authorizing the creation of the Lubbock County Hospital District<sup>1</sup> charges it with “the responsibility of establishing a hospital or a hospital system, including medical facilities or other health facilities, within its boundaries to furnish hospital and medical care to the residents of the district.”<sup>2</sup> In addition, the “district shall provide all necessary medical and hospital care for the needy inhabitants of the district.”<sup>3</sup> Thus, the Lubbock County Hospital District is responsible for providing hospital and medical care for the residents of the district, as well as for providing all necessary medical and hospital care for needy inhabitants of the district. The tax it levies and collects may only be used for the hospital purposes stated in article IX, section 9.<sup>4</sup>

The request for reconsideration also expresses concern that Letter Opinion No. 95-088 did not adequately discuss why the hospital district’s constitutional and statutory authority “to furnish hospital and medical care to the residents of the district” did not encompass the provision of medical examiner services to the county. It notes that the tasks assigned to a medical examiner necessarily involve the kind of laboratory testing that constitutes “hospital and medical services.”<sup>5</sup> We believe that Letter Opinion No. 95-088 was correct in concluding that the Lubbock County Hospital District could not pay the salaries and expenses of the medical examiner’s office, but we will attempt to explain its conclusion more fully.

To answer this question, we look at the governmental purposes of the hospital district and the medical examiner’s office, as stated in the applicable provisions of the constitution and statutes, rather than the scientific methods they use to carry out their responsibilities. A review of the statutory functions of the medical examiner’s office as set out in article 49.25 of the Code of Criminal Procedure shows that it does not serve hospital purposes or provide medical care. The office of the

---

<sup>1</sup>The hospital district was established with boundaries coterminous with the boundaries of Lubbock County by an election called by the Lubbock County Commissioners Court. Act of May 17, 1967, 60th Leg., R.S., ch. 484, §§ 2(a), 4, 1967 Tex. Gen. Laws 1095, 1096-97. The commissioners court appoints the board of managers of the hospital district and it may prescribe the expenditure and accounting procedures for the hospital district or delegate these matters to the board. *Id.* §§ 8, 11, 1967 Tex. Gen. Laws 1095, 1099 - 1100, 1101.

<sup>2</sup>*Id.* § 3, 1967 Tex. Gen. Laws 1095, 1096, as amended by Act of May 29, 1987, 70th Leg., R.S., ch. 905, § 1, 1987 Tex. Gen. Laws 3073, 3073.

<sup>3</sup>*Id.*; see Act of May 17, 1967, 60th Leg., R.S., ch. 484, § 19, 1967 Tex. Gen. Laws 1095, 1102-03 (inquiry into financial circumstances of patient admitted to hospital district facilities, to determine whether patient or relatives can pay costs of care); see also Attorney General Opinions DM-66 (1991), MW-279 (1980), H-1279 (1978), H-703 (1975), C-759 (1966) (provision of various kinds of medical care by hospital district).

<sup>4</sup>See *Bexar County Hosp. Dist. v. Crosby*, 327 S.W.2d 445 (Tex. 1959) (construing similar limitation in Tex. Const. art. IX, § 9, on use of taxes levied by county-wide hospital district); Attorney General Opinion C-646 (1966).

<sup>5</sup>See Attorney General Opinion M-912 (1971).

medical examiner has all powers and duties relating to the investigation of deaths and inquests that vest in the justices of the peace in a county without a medical examiner.<sup>6</sup> A medical examiner is required to hold inquests to determine the cause of death under the following circumstances:

1. When a person shall die within twenty-four hours after admission to a hospital or institution or in prison or in jail;
2. When any person is killed, or from any cause dies an unnatural death, except under sentence of the law; or dies in the absence of one or more good witnesses;
3. When the body of a human being is found, and the circumstances of his death are unknown;
4. When the circumstances of the death of any person . . . lead to suspicion that he came to his death by unlawful means;
5. [suicide, or circumstances that suggest suicide];
6. [deceased was not attended by a physician, and local registrar does not know cause of death];
7. When the person is a child who is younger than six years of age and the death is reported under chapter 264, Family Code; and
8. [person who dies had been attended by a physician, but physician is unable to certify cause of death].<sup>7</sup>

An "inquest" is "an investigation into the cause and circumstances of the death of a person, and a determination, made with or without a formal court hearing, as to whether the death was caused by an unlawful act or omission."<sup>8</sup> An "inquest hearing" is a "formal court hearing held to determine whether the death of a person was caused by an unlawful act or omission and, if the death was caused by an unlawful act or omission, to obtain evidence to form the basis of a criminal

---

<sup>6</sup>Code Crim. Proc. art. 49.25, § 12.

<sup>7</sup>*Id.* § 6.

<sup>8</sup>*Id.* art. 49.01(2).

prosecution.”<sup>9</sup> Thus, the autopsies, blood tests, tissue tests and other laboratory tests performed by the medical examiner are performed in the context of an inquest into the cause of death, rather than the provision of medical care to patients.

A hospital is “an institution where the sick or injured are given medical or surgical care.”<sup>10</sup> “Medical care,” defined for purposes of the Texas Health Maintenance Organization Act, “means furnishing those services defined as practicing medicine under Section 1.03(8), Medical Practice Act.”<sup>11</sup> The services that are defined under the Medical Practice Act as “practicing medicine” include diagnosing, treating, or offering to treat “any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or to effect cures thereof.”<sup>12</sup>

The purposes of a hospital district thus relate generally to the treatment of the sick or injured, and laboratory tests are performed there for the purpose of diagnosing and treating the patients, not to determine whether a death was caused by an unlawful act. Hospitals perform autopsies, but for different purposes and under different circumstances than does the medical examiner. A hospital performs an autopsy on the body of a deceased patient for medical purposes, such as evaluating the progress of a disease or verifying the diagnosis.<sup>13</sup> A medical examiner’s office has no contact with an individual prior to his or her death under circumstances that require an inquest. If a medical

---

<sup>9</sup>*Id.* art. 49.01(3); *see Parsons v. State*, 271 S.W.2d 643, 652-53 (Tex. Crim. App.), *cert. denied*, 348 U.S. 837 (1954); *Peirson v. Galveston County*, 131 S.W.2d 27 (Tex. Civ. App.—Austin 1939, no writ); Open Records Decision No. 529 (1989) at 2-3. The medical examiner must be a licensed physician, and to the extent possible, must be appointed from persons “having training and experience in pathology, toxicology, histology, and other medico-legal sciences.” Code Crim Proc. art. 49.25, § 2.

<sup>10</sup>WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 583 (1990).

<sup>11</sup>*Ins. Code. art. 20A.02(k).*

<sup>12</sup>V.T.C.S. art. 4495b, § 1.03(12). The definition of “practicing medicine” in the Medical Practice Act also includes the elements of publicly professing to be a physician or surgeon or charging compensation for diagnosis, treatment, or offering to treat the conditions listed in the statute. This part of the definition is relevant to licensure as a physician, but not to our task of distinguishing the functions of the medical examiners’ office from those of a hospital district.

<sup>13</sup>22A AM. JUR. 2D *Dead Bodies* §§ 59-61 (1988). The great majority of autopsies are of the nonofficial type, performed by a pathologist with consent of next of kin. *Id.* § 59, at 40. Attorney General Opinion M-379 concluded that a commissioners court operating a county hospital could not pay for an autopsy of a hospital patient dying of natural causes, because the statutory authority to provide “care and treatment” of patients did not encompass autopsies, and because there was no express statutory authority for the hospital to perform autopsies. Attorney General Opinion M-379 (1969). We believe that Attorney General Opinion M-379 looked at this question too narrowly and reached an incorrect conclusion. An autopsy might be performed to establish the cause of death for purposes of signing the death certificate. 22A AM. JUR. 2D *supra* § 67, at 45; *see* Health & Safety Code § 193.004(a)(2) (person required to file death certificate shall obtain required medical certification from physician last in attendance on decedent); Attorney General Opinion C-124 (1963). The opinion also overlooked the possibility that performing an autopsy in a particular case might enable the hospital to provide better care to other patients with the same disease as the deceased. Accordingly, we overrule Attorney General Opinion M-379.

examiner believes that an autopsy is necessary, or if the district attorney requests an autopsy, the medical examiner or a duly authorized deputy is to perform it immediately. Permission of next of kin is not required for an official autopsy performed pursuant to an inquest, but it is required for an autopsy performed under other circumstances.<sup>14</sup> Thus, the purposes of the medical examiner's office are not within the purposes of the Lubbock County Hospital District, even though the two entities use similar laboratory procedures to carry out their different functions.<sup>15</sup>

The office of the medical examiner is established and funded by the commissioners court.<sup>16</sup> Since the county has no "power to levy taxes . . . for hospital purposes or for providing medical care within the boundaries of the . . . [Lubbock County Hospital District],"<sup>17</sup> it appears that the legislature did not consider the medical examiner's office to be serving hospital purposes or providing medical care.

The request for reconsideration also points out that section 9 of article 49.25 of the Code of Criminal Procedure provides that, in performing an autopsy, the medical examiner may use the facilities of any city or county hospital within the county or such other facilities as are made available. It stated that it follows from this provision that the tests a medical examiner performs are "hospital and medical services." As we have explained, the purpose of a hospital district is to care for the sick, injured, and others in need of medical care, while the purpose of the medical examiner's office is to investigate deaths occurring under certain circumstances to determine whether they were caused by an unlawful act. Both entities may perform blood, tissue, and other laboratory tests, and both may perform autopsies, but they use these techniques to carry out different statutory purposes.

---

<sup>14</sup>See Code Crim. Proc. arts. 49.04, .05; Open Records Decision No. 529 (1989) at 3; *see also* Open Records Decisions Nos. 24 (1974) (autopsy performed by hospital on body of deceased patient), 21 (1974) (autopsy performed in connection with an inquest); 22A AM. JUR. 2D, *supra* §§ 59-68.

<sup>15</sup>Our discussion of this question is consistent with the conclusions of the opinions cited in Letter Opinion No. 95-088. *See* Attorney General Opinions H-31 (1973) (operation of venereal disease clinic and providing vaccinations are purposes of hospital district; regulatory inspections of restaurants, meat, milk, sewage, and water are not), M-256 (1968) (operation of crime laboratory to analyze blood and tissue samples and other substances obtained in criminal investigations is not purpose of hospital district).

<sup>16</sup>Code Crim. Proc. art. 49.25, §§ 1, 2, 4, 5.

<sup>17</sup>See Tex. Const. art. IX, § 9.

The request for reconsideration raises some questions that were not expressly raised in the prior request. It asks whether

a hospital district may be compelled to pay for the services of a medical examiner if he performs the requisite testing on patients of the hospital who have died or in situations in which the medical examiner performs tests when section 6 of article 49.25 does not require an autopsy to be held or in situations in which a medical examiner performs tasks, not as medical examiner, but as a physician.

Article 49.25, section 2 of the Code of Criminal Procedure requires the medical examiner to “devote so much of his time and energy as is necessary in the performance of the duties conferred by this Article” We assume for purposes of this question that the medical examiner is carrying out this responsibility, and that working for the hospital district in his private capacity as physician will not interfere with his duties as medical examiner. The board of managers of the hospital district has authority to appoint doctors to the staff and to “employ such technicians, nurses and other employees of every kind and character as may be deemed advisable for the efficient operation of the hospital or hospital system.”<sup>18</sup> *The hospital district may contract with the medical examiner in his private capacity to perform tests or autopsies on hospital patients for hospital purposes and may pay him for these services. We express no opinion about payment under any arrangement that may have prevailed in the past.*

The request for reconsideration also asks whether and under what circumstances a hospital district and a county may enter into an interlocal contract under the Interlocal Cooperation Act,<sup>19</sup> whereby the hospital district would pay for services performed by the medical examiner in his capacity as a physician performing tests for other physicians. The Interlocal Cooperation Act authorizes local governments to contract with another for governmental functions and services. “Governmental functions and services” means “all or part of a function or service” in any of several enumerated areas, including “public health and welfare” and “comprehensive health care and hospital services.”<sup>20</sup> In our opinion, the term “hospital services” includes a contract for the services of a pathologist performing tests for other physicians. A “local government” is a “county, municipality, special district, or other political subdivision of this state.”<sup>21</sup> The Lubbock County Hospital District is a political subdivision,

---

<sup>18</sup>Act of May 9, 1967, 60th Leg., R.S., ch. 484, § 8, 1967 Tex. Gen. Laws 1095, 1100.

<sup>19</sup>Gov’t Code ch. 791.

<sup>20</sup>*Id.* § 791.003(3)(D), (M).

<sup>21</sup>*Id.* § 791.003(4).

distinct from the county government.<sup>22</sup> Accordingly, we believe that the county and the hospital district may enter into a contract under the Interlocal Cooperation Act for the performance of laboratory tests by the medical examiner.<sup>23</sup>

We cannot provide an exhaustive catalogue of circumstances under which the county and hospital district might contract for the medical examiner to perform laboratory tests for other physicians, but we can point out some important considerations. The contract work must not interfere with the medical examiner's responsibilities under article 45.25 of the Code of Criminal Procedure, and funds of the hospital district may be spent only for laboratory work done for "hospital purposes."

### S U M M A R Y

Letter Opinion No. 95-088, holding that the Lubbock County Hospital District could not fund the expenses of the medical examiners office, is affirmed. Letter Opinion No. 95-088 (1995). The hospital district was created to provide medical and hospital care to the residents of the district and to assume full responsibility for providing such care to the needy inhabitants of the district. The taxes it levies and collects may only be used for hospital purposes. The purpose of the medical examiner's office is to determine whether the death of a person under certain circumstances was caused by an unlawful act or omission, and since this is not a hospital purpose, the hospital district may not fund that office.

The hospital district may contract with the medical examiner in his private capacity to perform medical tests or autopsies on hospital patients for hospital purposes and may pay him for those services, assuming that this arrangement will not interfere with the medical examiner's duties to the county as medical examiner. The county and the hospital district may enter into a contract under the Interlocal Cooperation Act whereby the hospital district would pay for services performed by the medical examiner in his capacity as a physician performing tests for other physicians.

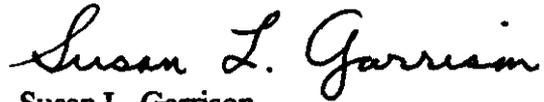
---

<sup>22</sup>Letter Opinion No. 95-088 (1995) at 2.

<sup>23</sup>See Attorney General Opinion H-454 (1974) at 5.

Attorney General Opinion M-379 (1969), holding that a county hospital's statutory authority to provide "care" and "treatment" does not include authority to perform an autopsy on a patient who died of natural causes, is overruled.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison  
Assistant Attorney General  
Opinion Committee