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Opinion Committee

Attorney General's Office
Opinion Committee
P. O. Box 12548
Austin, Texas 78711-2548

Dear Sirs:

Enclosed is a brief concerning a question which has arisen here in Lamb County. Could you please issue a letter opinion as soon as possible on the enclosed question.

Sincerely,



Martha M. Rose
County Attorney

MMR/cr
Enclosure

**ACCOMPANIED BY ENCLOSURES —
FILED SEPARATELY**

STATEMENT OF FACTS

The voters of Lamb County will be holding a special election in June of this year in the hopes of creating a Hospital District. During the 71st Legislative Session, enabling legislation was passed which gave Lamb County the authorization to create a Hospital District. (A copy of this legislation is enclosed.) Article 2 provides for Temporary Directors of the District. Those named in the article are Leonard Pierce, Emil Macha, Thurman Lewis, A. J. Spain and Wayne Whiteaker. Those individuals are also the Commissioners of Lamb County. Article 4, Section 4.02 provides that the permanent directors election be held on the 1st Saturday in May following the creation of the District. Since the Special Election will not be held until June, it will be almost one year until permanent directors can be elected as provided by this section.

QUESTION

Is it a conflict of interest for members of the Court of County Commissioners to serve as Temporary Directors for the Hospital District? In serving as Temporary Directors, it will be imperative that they approve a budget, and accomplish all the necessary initial steps to get the Hospital District operational.

APPLICABLE LAW

The Local Government Code, Section 81.002(c) provides the following:

Subject to the provision of Chapter 171, the County Judge or a County Commissioner may serve as a member of the governing body or as an officer or director of another entity except:

- (1) a publicly traded corporation; or
- (2) a subsidiary, affiliate, or subdivision of a publicly traded corporation; that does business within the County.

The applicable portion of Chapter 171, Local Government Code reads, in part: (171.003)

(a) Except as provided by Section 171.005 or 171.006, a local public official commits an offense if the official knowingly:

- (1) participates in a vote or decision on a matter involving a business entity in which the official has a substantial interest if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity;
- (2) acts as surety for a business entity that has work, business, or a contract with the governmental entity; or
- (3) acts as surety on any official bond required of an officer of the governmental entity.

(b) An offense under this section is a Class A Misdemeanor.

Though Section 81.002(c) provides that the Commissioners may serve as an officer or director of another "entity", it does not specify another taxing entity.

CONCLUSION

I have not been able to locate any other statutes that directly address this issue. The Commissioners of Lamb County do not want to get into a position of conflict, and would appreciate an Attorney General letter stating their opinion on this matter.

In my opinion, from reading the statute as it is written, there would be no conflict of interest, but I would appreciate any help you can give me.