



CHARLES S. BRACK
COUNTY ATTORNEY
CHAMBERS COUNTY

JUN 03 82

RQ-278

TELEPHONE:
409/267-6561
409/267-3128

POST OFFICE BOX 1200
ANAHUAC, TEXAS 77514

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ID # 14572
MJ

Honorable Dan Morales, Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RE: Whether the Chambers County Hospital District No. 1 may lease part of their hospital to a group of private physicians to operate a private adolescent drug treatment facility?

If the district may enter into a lease as described above, does the district need to comply with public auction requirements?

Dear Mr. Morales,

Your advise and opinion is requested concerning the above mentioned issues and in connection therewith, would show the following facts:

FACTUAL BACKGROUND

Chambers County Hospital District No. 1, until recently, was organized pursuant to Chapter 282, Texas Health and Safety Code. Following a local election in September of this year, pursuant to Senate Bill 526, Chapter 94, 72nd Legislature-Regular Session, the hospital district was converted into a district operating under Article IX, Section 9 of the Texas Constitution and Article 4494q-1, V.A.T.S.

The hospital board is considering a proposal by a group of physicians, unconnected to the hospital, for valuable consideration, to convert space in the hospital (which is now generally used as offices, storage and personal lounges) into a six bed private, in-patient adolescence drug dependency treatment facility.

I am advised that the district will continue to provide hospital care to the needy and may, if the proposal is finalized, be able to provide better care to the needy because the proposed arrangement will produce substantial income over and above the costs involved.

ANALYSIS

A special purpose district may "exercise only the powers that are expressly delegated to by the

constitution or the legislature, or which by clear and unquestioned implication", Attorney General Opinion JM-258.

Article 4494q-1, Section 4.06(c) & (d), V.A.T.S., states, in part,

"(c) the board may transfer by lease to physicians, individuals, companies, corporations, etc., . . .

(d) the board may sell or otherwise dispose of district property, facilities, or equipment."

It is clear that the district may lease hospital facilities as indicated above but as Sullivan vs. Andrews County 517 S.W. 2d 410 (Tex.Civ.App.-El Paso, Writ-Rfd., N.R.E.) and Attorney General opinion JM-258 direct, the inquiry must go further. Is the proposed lease, if entered into, an activity authorized by law for the district to be engaged in?

Article IX, Section 9, Texas Constitution authorizes the creation of a hospital district for "hospital purposes", and Article 4494q-1, Section 4.02, V.A.T.S., empowers a district, upon creation, to operate hospital facilities and furnish medical and hospital care for the district's needy inhabitants. Neither the constitution or the statute define "hospital", "hospital purposes" or "hospital facilities". Blacks law dictionary, 6th Edition, 1990, defines the term "hospital" as "an institution for the treatment and care of sick, wounded, infirm or aged persons." Websters Dictionary defines the term as "an institution providing medical, surgical, or psychiatric testing and treatment for people who are ill, injured, pregnant, etc. Additionally, Chapter 223, Texas Health and Safety Code, Hospital Project Financing Act, which applies to all public hospitals, defines hospital project at Section 223.002(4)(B), as

". . . a structure suitable for use as a hospital, clinic, health facility, extended care facility, out patient facility, rehabilitation or recreation facility, pharmacy, medical laboratory, physician's office building . . . or building related to a health facility or system";

Clearly, in-patient care or treatment of drug dependent individuals is a type of service that falls within the ordinary definition of a hospital purpose. Should the district wish to perform in-patient drug treatment services on their own, it is apparent that they could construct and finance such a facility under Chapter 223, Texas Health and Safety Code, as a "hospital", "health facility", "extended care facility" or "rehabilitation facility", etc. It logically follows that if the hospital could do it - they could also lease their facility for others to do.

Would such a lease arrangement, with private physicians, violate Article III, Section 52 of the Texas Constitution? The lease contemplated by the District with the private physicians involves valuable consideration. The district estimates that they will receive substantial net income over the cost of creation and maintenance (approximately \$10,000 a month). There can be no granting of a gratuity, as prohibited by the Constitution, for the district to grant a privilege for which it receives substantial value in return. Sullivan vs. Andrews County, supra.

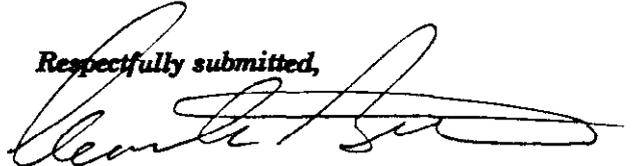
Would the district be required to comply with the provisions of Chapter 272, Texas Local Government Code relating to competitive bidding or any other general statute relating to prior notice and competitive bidding before lease space?

According to Attorney General opinion JM-335, a statute that specifically refers to an entity's powers with regard to leasing hospital property applies to the exclusion of a relevant statute that deals with an entity's powers generally. Here, Article 4494q-1 specifically deals with a hospital district's power to lease hospital facilities to physicians. Thus, Chapter 272, Texas Local Government Code would not apply.

CONCLUSION / SUMMARY

Chambers County Hospital District may lease part of its facilities to private physicians to run an adolescent drug treatment facility and would not be required to do the same pursuant to public auction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles S. Brack", written in a cursive style.

Charles S. Brack, County Attorney

CSB/pw