

RECEIVED

MAR 14 2013

OPINION COMMITTEE



FILE # AL-47236-13

I.D. # 47236

**RQ-1115-GA**

**BASTROP COUNTY AUDITOR'S OFFICE**

804 PECAN STREET, BASTROP, TEXAS 78602 • TEL: (512)332-7222 • FAX:  
(512)332-7272

March 6, 2013

The Honorable Greg Abbott  
Attorney General of Texas  
Box 12548  
Austin, Texas 78711-2548

**RE: Is property owned by a hospital authority and leased to a charitable organization, which is required to use the property as a hospital, being used exclusively for the use and benefit of the public such that the property satisfies the exclusive public use test of Texas Tax Code, section 11.11?**

Dear General Abbott:

Texas law is clear that when property owned by a public entity is leased to others for their private commercial use, such as a hospital authority leasing office space to physicians, the property is not used exclusively for the use and benefit of the public. Therefore, it is not entitled to a property tax exemption under Texas Tax Code, section 11.11. See *Grand Prairie Hosp. Auth. v. Dallas County Appraisal Dist.*, 730 S.W.2d 849 (Tex.App. – Dallas 1987, writ ref'd n.r.e.); *Grand Prairie Hosp. Auth. v. Tarrant Appraisal Dist.*, 707 S.W.2d 281 (Tex.App. – Fort Worth 1986, writ ref'd n.r.e.); TEX. ATT'Y. GEN. OP. No. MW-430 (1982); TEX.ATT'Y. GEN. OP. No. JC-0311 (2000). In TEX. ATT'Y GEN. OP. No. JC-0571 (2002), your office recognized where the Tomball Hospital Authority operated a hospital in its hospital building and had also leased two floors to a for profit entity to operate a long term hospital, the hospital authority might be able to establish that the lessee's use of the property would be used wholly for the hospital's public purposes.

A situation exists in Bastrop County that is less clear than where a public entity's property is leased to a private entity. The situation in Bastrop County is that property owned by a public entity is leased to a non-profit corporation to be used for the non-profit's purpose of providing hospital/health care services. Accordingly, I am seeking your opinion on whether a property owned by a public entity, the Smithville Hospital Authority, and leased to a charitable organization, Seton Healthcare, and used for hospital purposes, in much the same manner as it was being used by the Smithville Hospital Authority, is being used exclusively for

the use and benefit of the public such that the property satisfies the exclusive public use test of Texas Tax Code, section 11.11, and Texas Constitution Article VIII, section 2 and Article XI, section 9.

The facts of the situation are as follows: The Smithville Hospital Authority, created under the authority of Texas Health and Safety Code, Chapter 262, owns property located in Smithville, Bastrop County, Texas. Prior to June 27, 2011, the hospital was operated by the Smithville Hospital Authority, and received an exemption from ad valorem taxation under the authority of Texas Tax Code, section 11.11.

On June 27, 2011 Smithville Hospital Authority entered into a lease agreement with Seton Healthcare. Pursuant to the terms of the lease, Seton Healthcare pays the Smithville Hospital Authority rents, including base rent and performance rent for the exclusive use and possession of an acute care hospital facility, referred to in the lease as the "Hospital." The funds generated from the rent payments are placed into the Smithville Hospital Authority's general fund.

According to the lease, Seton Healthcare is required to operate the Hospital as an acute care licensed facility, including the provision of inpatient services and the operation of an emergency room. Seton Healthcare is further required to provide indigent care in Bastrop County consistent with Seton Healthcare's system-wide policies and procedures. Seton Healthcare is entitled to the exclusive possession and use of the Hospital. The lease is not to be construed as creating a partnership or joint venture between the Smithville Hospital Authority and Seton Healthcare. The Smithville Hospital Authority does not participate in the management of the Hospital, outside of its role as the landlord.

Both Seton Healthcare and the Smithville Hospital Authority acknowledge that the lease transaction constitutes a "change of ownership or control" of the Hospital for purposes of state licensure and Medicare certification. Both Seton Healthcare and the Smithville Hospital Authority agree to transfer the Hospital's provider number and reimbursement contracts for Medicare and Medicaid to Seton Healthcare.

Seton Healthcare is a charitable organization, as that term is defined by Texas Tax Code, section 11.18. Seton Healthcare's stated charitable purpose is providing medical care without regard to the beneficiaries' ability to pay. TEX. TAX CODE § 11.18(d)(1). Property that is owned by Seton Healthcare and used exclusively by Seton Healthcare is granted a charitable exemption by the Bastrop Central Appraisal District pursuant to Texas Tax Code, section 11.18. Seton Healthcare has not applied for a charitable exemption on the Hospital, presumably because the real estate associated with the Hospital is not owned by Seton Healthcare. TEX. TAX CODE § 11.18(a).

Under one line of thought, the Hospital is being leased to Seton Healthcare and that lease results in Seton Healthcare's charitable use of the property which conclusively establishes that the property is not being used exclusively for a public purpose, much the same as the lease of offices to private physicians would conclusively establish that the property was not being used exclusively for a public purpose. Because the property is not being used exclusively for a public purpose, it is not entitled to a tax exemption under Texas Tax Code, section 11.11.

Another line of thought says that the property is owned by a hospital authority and used as a hospital. The fact that the Seton Healthcare is a non-profit corporation organization leasing the Hospital in furtherance of its charitable purpose does not change the fact that the Hospital is being used exclusively for the health, comfort, and welfare of the public. Because the property is owned by a public entity, and is used exclusively for the purpose of providing health care, the Hospital is entitled to a tax exemption under Texas Tax Code, section 11.11.

Your opinion on the correct way to interpret Tax Code, section 11.11 is greatly appreciated. Thank you for your consideration.

A handwritten signature in black ink that reads "Lisa Smith". The signature is written in a cursive style with a large, stylized "L" and "S".

Lisa Smith  
Bastrop County Auditor