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**RECEIVED**

By Opinion Committee at 1:53 pm, Oct 12, 2023

**JOHN T. FLEMING**  
COUNTY ATTORNEY

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**RQ-0516-KP**

October 2, 2023

**CMRR# 7019 2970 0000 3759 9875**

Office of the Attorney General  
Attention Opinion Committee  
P.O. Box 12548  
Austin, Texas 7811-2548

Re: *Request for Attorney General Opinion concerning Texas Special District Local Law Code §1069.211*

Attorney General Paxton,

Pursuant to §402.042 of the Government Code the Nacogdoches County Attorney's office respectfully requests an Attorney General opinion on a question that this office believes affects the public interest. As such, this office submits the following brief hoping to secure the Office of Attorney General's interpretation of Texas Special District Local Law Code §1069.211.

Issue:

1. What is the meaning of "not to exceed one-fourth of one percent" found in Tex. Spec. Dist. Code Ann. §1069.211?

Applicable Law:

Tex. Spec. Dist. Code Ann. §1069.211:

*The district may allocate a portion of its annual sales and use tax revenue, not to exceed one-fourth of one percent, to encourage economic development in the district as described by Section 52-a, Article III, Texas Constitution. (Acts 60th Leg., R.S., Ch. 431, Sec. 10(k).)*

Tex. Spec. Dist. Code Ann. §1069.301:

*(a) The board shall impose a tax on all taxable property in the district subject to district taxation.*

*(b) The board shall impose the tax to pay:*

*(1) indebtedness issued or assumed by the district; and*

*(2) the maintenance and operating expenses of the district. (Acts 60th Leg., R.S., Ch. 431, Secs. 12 (part), 15 (part).)*

#### Facts and Analysis:

Under the Code, the Nacogdoches County Hospital District possessed the ability to assess and collect ad valorem taxes in order to pay “indebtedness issued or assumed by the district...and...the maintenance and operating expenses of the district.” See Tex. Spec. Dist. Code Ann. §1069.301. However, on January, 18, 1992, the citizens of Nacogdoches County voted to replace the Hospital District’s ad valorem tax assessment with the receipt of a portion of the sales and use tax, which is referenced in §1069.211. Since that time, the District has received one percent (1%)<sup>1</sup> of the sales and use tax assessed in Nacogdoches County which is used to pay the debt and expenses contemplated under §1069.301. Such debts include three senior lien bonds as well as subordinate lien obligations, all of which are secured by a pledge of the sales and use tax collected by the District.<sup>2</sup> While the obligations are outstanding, the District has agreed not to reduce, abate, or provide exemption to the payment of the sales and use tax. Each month the District receives the remainder of the tax receipts only after the principal and interest on the bonds have been received and retained by the bond trustee.

Although there has been no formal finding, the Hospital District has generally viewed the language of §1069.211 to mean that the District had the ability to allocate up to “one-fourth of one percent” of the one percent sales and use tax for economic development. So, for example, if the District collected \$10 million in sales tax revenue for the year, it was able, but not required, to allocate no more than \$25,000.00 for economic development ( $\$10,000,000.00 \times (0.01 \times 0.25)$ ). However, some persons have proposed a different interpretation of this language. Most recently at a regular meeting<sup>3</sup> of the Board of Directors of Nacogdoches County Hospital District, some attendees asserted that the “one percent” referenced in section 1069.211 referred to the entire one percent annual sales and use tax received by the District. Applying this interpretation to the example cited above, the District would potentially have the ability to allocate up to \$2,500,000.00 for economic development; i.e., one-fourth of \$10 million annual sales and use tax revenue ( $\$10,000,000.00 \times 0.25$ ).

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<sup>1</sup> This is relative to the total sales and use tax rate of 8.25%. Thus, the Hospital District receives 1.0 basis point of the 8.25 basis.

<sup>2</sup> See attached Nacogdoches County Hospital District Board Meeting Minutes at §IV.

<sup>3</sup> See attached Nacogdoches County Hospital District Board Meeting Minutes at §V.

Additionally, research conducted on §1069.211 uncovered an absence of case law interpreting the statute. Moreover, there is very limited legislative history, and what was identified was general in nature and did not amplify the intended meaning of §1069.211. Lastly, it appears that the authority granted and the language found in §1069.211 are unique to Nacogdoches County Hospital District. The closest comparisons, while ultimately distinguishable, were found in Tex. Spec. Dist. Code Ann. §1121.115 and §1122.115. Although both sections provide the authority for other healthcare districts to loan or grant money for economic development, they do very little to assist in interpreting “not to exceed one-fourth of one percent” found in §1069.211.

As illustrated by the examples above, there is a genuine public interest, concern, and need to secure an accurate interpretation of §1069.211. Moreover, because there is a significant distinction from a financial perspective, the hospital district has, ostensibly, a vested interest in avoiding potential violations of its authority under the Code. As such, this office respectfully requests the Office of Attorney General to interpret the meaning of “not to exceed one-fourth of one percent” in Tex. Spec. Dist. Code Ann. §1069.211 and render an opinion.

Respectfully,

A handwritten signature in cursive script that reads "John Fleming". The signature is written in dark ink and is positioned above the typed name.

John Fleming  
Nacogdoches County Attorney  
Nacogdoches County, Texas



**REGULAR MEETING OF  
THE BOARD OF DIRECTORS  
NACOGDOCHES COUNTY HOSPITAL DISTRICT  
June 27, 2023 @ 5:15 P.M.**

**IN ATTENDANCE:**

Lisa King, President  
Sean Hightower, Vice-President  
Fred Groover, Secretary  
Justin Sowell  
Wesley McKnight  
John McLaren  
David Schaffer

**ALSO IN ATTENDANCE:**

Lynn Lindsey, Administrator  
Rhonda McCabe, CAO  
Ella B. Nobles, Operation Manager  
Wade Blake, EMS Manager  
Jerry Baker, Legal

- I. **CALL TO ORDER:** Lisa King called the regular scheduled board meeting to order at 5:16 p.m.
- II. **APPROVAL OF MINUTES:** Motion was made by Justin Sowell, to approve May 31, 2023 regular board minutes. Motion was seconded by Sean Hightower. Motion carried.
- III. **CITIZENS COMMUNICATION:** None
- IV. **BOND COUNSEL PRESENTATION:** presented by Jerry Baker, please see attached statement.
- V. **ECONOMIC DEVELOPMENT PRESENTATION:** Mayor Randy Johnson - Mayor Johnson presented section 1069-211 of the state constitution asking for 1% of the funds collected from sales tax. Lynn Lindsey asked to get a ruling on what percentage could possibly be given upon approval to other entities. This discussion will continue as soon as both parties agree on the percentage.
- VI. **AMBULANCE COMMITTEE – Wade Blake:** Mr. Blake presented the Ambulance report to the board. The EMS report reflected numbers for the month of May 2023 with a total of

804 calls, logged 17,500 miles and billing 806,000 not collection but billed. Mr. Blake projects and increase in total calls due to the EMS services has taken over all calls for both hospitals included routine and out of town transfers. Also, included in the report staffing, invoice for new chassis along with the two new ambulance that was ordered in 2022.

## VII. ACTION AND PURCHASE REQUESTS

**A. FY 2024 Budget-Lynn Lindsey:** Ms. Lindsey presented the FY 2024 Budget to the board. Motion made by Sean Hightower to approve budget as presented. Motion seconded by West McKnight. Motion carried.

**B. Results of Operations- Lynn Lindsey:** Ms. Lindsey presented the Results of Operations to the board. Motion made by Fred Groover to approve Results of Operations. Motion seconded by John McLaren. Motion carried.

### C. Contract & Agreements

**1. Administrative Services Agreement – Lion Star Nacogdoches, LLC - Jerry Baker:** Mr. Baker presented the Administrative Services Agreement - Lion Star Nacogdoches, LLC to the board. Motion made Sean Hightower to approve Administrative Service Agreement. Motion seconded by John McLaren. Motion carried.

### D. Cadence Insurance Renewal

**1. Renewal of Director & Officer Liability, Employment Practices Liability and Fiduciary Liability Insurance Policies – Lynn Lindsey:** Ms. Lindsey presented the D&O policy for renewal. Motion made by Sean Hightower to approve D&O renewal policy and giving Lynn Lindsey the authority to negotiate up to \$60,000 for the renewal of the D&O renewal policy. Motion seconded by John McLaren. Motion carried.

**2. Renewal Workers Compensation Insurance Policy – Lynn Lindsey:** Ms. Lindsey presented the W/C policy information only. Ms. Lindsey has the authority to approve and pay due to the amount. Jerry Baker, legal asked for a motion to table. Motion made by Sean Hightower and seconded by Justin Sowell. Motion carried to table.

**E. Annual Evaluation of Administrator – Lisa King:** Ms. King notified the board it was time for the Annual Evaluation of Administrator. Ms. King stated that a tool would be prepared to help in this process.

**EXECUTIVE ADMINISTRATIVE REPORTS**

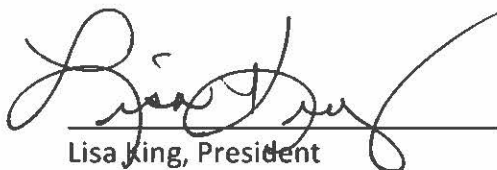
**A. Administrator Report / Board Calendar- Lynn Lindsey:** Ms. Lindsey had no new information to report. Board Calendar as followed:

- Strategic Planning Committee July 11, 2023 @ 12:00 noon
- Finance & Facility Committee meeting Thursday, July 27, 2023 @ 1:30 p.m.
- Regular Board meeting Monday, July 31, 2023 @ 5:15 p.m.
- Retirement Committee will meet in August 2023

**CONVENE TO EXECUTIVE SESSION FOR THE FOLLOWING:**

- Consultation with Legal Counsel Regarding Pending or Contemplated Litigation under Tex. Govt. Code §551.071
- Deliberate the Appointment, Employment and Duties of an Employee under Tex. Govt. Code §551.074
- Deliberation of the provision of healthcare services under Tex. Govt. §Code 51.085

**ADJOURN:** Meeting adjourned at 6:55 p.m.

  
\_\_\_\_\_  
Lisa King, President

  
\_\_\_\_\_  
Sean Hightower, Vice-President

**FW: bond summary**

**From:** Robert D. Dransfield <[robert.dransfield@nortonrosefulbright.com](mailto:robert.dransfield@nortonrosefulbright.com)>

**Sent:** Tuesday, June 27, 2023 10:01 AM

**To:** Lynn Lindsey <[llindsey@nachd.org](mailto:llindsey@nachd.org)>

**Cc:** Robert D. Dransfield <[robert.dransfield@nortonrosefulbright.com](mailto:robert.dransfield@nortonrosefulbright.com)>

**Subject:** RE: bond summary

Lynn, you have asked us to provide a general overview as to the bonds the District currently has outstanding and the security for the payment of those bonds. We provide that overview below and invite you to please let us know if you have additional questions after your review of the overview.

The District has 3 series of senior lien bonds outstanding, the Sales Tax Improvement and Refunding Bonds, Series 2013, originally issued in the principal amount of \$44,360,000, the Sales Tax Refunding Bonds, Series 2015, originally issued in the principal amount of \$8,775,000 and the Sales Tax Refunding Bonds, Series 2016, originally issued in the principal amount of \$7,270,000. Additionally, the District has subordinate lien obligations designated as the District's Public Property Finance Contractual Obligations, Series 2020, originally issued in the principal amount of \$404,600. The Series 2013 Bonds have a final maturity of May 15, 2043 and debt is retired either by the serial maturity coming due or the sinking fund payments that are associated with the 2037 and the 2043 maturities and the Series 2013 Bonds are subject to optional redemption on any date after the proper notice is given on May 15, 2022 and any date thereafter so the Series 2013 Bonds are subject to redemption at the option of the District now at the price of par plus accrued interest to the date of redemption. The Series 2015 Bonds have a final maturity of May 15, 2026 and are subject to optional redemption on May 15, 2025 and any date thereafter with the proper notice. The Series 2016 Bonds have a final maturity of May 15, 2031 and are subject to optional redemption on May 15, 2026 and any date thereafter with proper notice. The subordinate lien contractual obligations mature on November 1, 2025 and are not subject to optional redemption.

All of the above mentioned obligations are secured by a pledge of the Sales Tax that was voted in the District on January, 18, 1992. While the obligations are outstanding, the District has agreed as a part of its contract with the holders of those obligations not to reduce, abate, or provide an exemption to the payment of the Sales Tax irrevocably pledged under the corresponding Resolution which authorized the issuance of the obligation. In the 2016 Bonds, the District irrevocably pledged and transferred to the bond trustee named in the Resolution (U.S. Bank Trust Company, National Association) all of the right, title and interest in the Gross Sales Tax to (i) the payment of the principal and interest on the Bonds Similarly Secured (the Series 2013, 2015 and 2016 Bonds) which may be outstanding from time to time and (ii) to the establishment and maintenance of all funds or accounts previously established for the Bonds Similarly Secured. By contract with the Series 2016 Bondholders, the District has agreed not to rescind or revoke the trust relationship created in the resolution authorizing the issuance of the Series 2016 Bonds for the benefit of the holders of the Bonds Similarly Secured which



contractual commitment would remain in place until the Bonds Similarly Secured are no longer outstanding.

The structure of the obligations is to have the Gross Sales Tax collected by the Comptroller of Public Accounts be deposited directly with the bond trustee and the bond trustee is directed to transfer to the applicable paying agent/registrant (which is currently U.S. Bank Trust Company, National Association) the amounts sufficient to pay the principal and interest requirement on the Bonds Similarly Secured as those requirements accrue or at the maturity of the obligations.

The District has the right to issue additional bonds that would be secured by the Sales Tax on a parity with the Bonds Similarly Secured or bonds or other obligations that have a subordinate lien and pledge of the Sales Tax revenues to that of the Bonds Similarly Secured. If the District were to desire to issue additional bonds or obligations, it would need to follow the requirements of the outstanding resolutions which generally would be the continuation of the direction that the Gross Sales Tax Revenues be deposited with the trustee to secure the debt as well as to fund any required amounts to be deposited to the Reserve Fund that has been established with the previously issued bonds.

Lynn, I hope this general overview is responsive to your inquiry but if you have additional questions or would like additional discussion, please do not hesitate to let me know and I will be happy to address items that are of interest to you. Thank you. Bob

**Robert D. Dransfield** | Partner  
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