



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN
~~WILLIAMSON~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable R. V. Rayford
County Auditor
Rusk County
Henderson, Texas

Dear Sir:

Opinion No. 0-1827

Re: Can the commissioners' court pay
a solicitor to secure members for
the group hospital service provi-
ded for under Article 4590a?

Your recent request for an opinion of this department
on the above stated question has been received.

We quote from your letter as follows:

"Article 4590a Revised Civil Statutes pro-
vides for Group Hospital Service. Section 3
limits to 15% of all dues and payments the a-
mount that may be paid for administering the
affairs of the Service.

"Can the Commissioners' Court pay a Solici-
tor to secure Members for the Group Hospital
Service provided for under the above article?"

Sections 1, 2 and 3 of Article 4590a, Vernon's Annotated
Civil Statutes, reads as follows:

"Section 1. That from and after the pass-
age of this Act, any seven (7) or more persons,
a majority of whom are superintendents of hos-
pitals or physicians or surgeons licensed by
the State Board of Medical Examiners, upon ap-
plication to the Secretary of State of the State
of Texas for a corporate charter may be incor-
porated for the purpose of establishing, main-
taining and operating a nonprofit hospital ser-
vice plan, whereby hospital care may be provided
by said corporation through an established hospi-
tal or hospitals, and sanitariums with which it
has contracted for such care, as is hereinafter
defined."

"Sec. 2. That such corporations when organized shall be authorized to accept applicants, who may become members of said corporations furnishing group hospital service under a contract, which shall entitle each member to such hospital care for such period of time as is provided therein; and that such corporations shall be governed by this Act and shall not be construed as being engaged in the business of insurance under the laws of this State. That such corporations organized and operated under the provisions of this Act shall not be required by any department of this State to post bond, or place deposits with any department of this State to begin and/or operate under this Act and the provisions of Title 78 of the Revised Civil Statutes of Texas of 1925, are hereby declared inapplicable to corporations organized and/or operated under this Act."

"Sec. 3. That said corporations shall be governed and conducted as nonprofit organizations for the sole purpose of offering and furnishing hospital service to its members in consideration of the payment by such members of a definite sum for the hospital care so contracted to be furnished. The necessary expenses of administering the affairs of said corporations may be paid from the dues or payments collected. Provided not more than fifteen per cent (15%) of all dues or payments received may be used for expenses of administering the affairs of said corporation, subject to the authorization or approval of the Board of Insurance Commissioners of Texas."

Article 4478, Vernon's Annotated Civil Statutes, reads as follows:

"The commissioners court of any county shall have power to establish a county hospital and to enlarge any existing hospitals for the care and treatment of persons suffering from any illness, disease or injury, subject to the provisions of this chapter. At intervals of not less than twelve months, ten per cent of the qualified property tax paying voters of a county may petition such court to provide for the establishing or enlarging of a county hospital, in which event said court within the time designated in such petition shall submit

to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital. Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital and shall have the following powers:

"1. To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings.

"2. To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing building, for the use of said hospital. The plans for such erection, alteration, or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.

"3. To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.

"4. To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital and for all other necessary permanent improvements in connection therewith; to do all other things that may be required by law in order to render said bonds valid.

"5. To appoint a board of managers for said hospital.

"6. To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital, and apply the same in accordance with the terms of the gift."

Also see Articles 4479, 4480, and other articles set

out in Chapter 5 under Title 71 of Vernon's Annotated Civil Statutes, pertaining to the board of managers, powers of such board, records, superintendents, admission of patients, support of patients, etc., regarding county hospitals, wherein the county commissioners' court has certain duties and authorities as given by the above-mentioned statutes.

The statutes mentioned under Title 71, Chapter 5, of Vernon's Annotated Civil Statutes, are called to your attention for the purpose of showing the Legislature had treated the subject of erecting, establishing, operating and maintaining such hospitals with considerable detail.

The commissioners' court is given the authority to acquire real property for such purpose; to erect all necessary buildings, and to levy and collect taxes for the maintenance thereof.

The commissioners' court is a creature of the State Constitution and its powers are limited and controlled by the Constitution and the laws as passed by the Legislature. See Article 5, Section 18, of the Constitution of Texas; Baldwin v. Travis County, 88 S.W. 480; Seward v. Falls County, 246 S.W. 728; Commissioners' Court v. Wallace, 15 S.W. (2) 535.

Article 4590a does not give any new or additional power or authority to the Commissioners' Court regarding county hospitals.

In opinion No. 0-926, written by Honorable Wm. J.R. King, Assistant Attorney General, directed to Honorable A. E. Hicker-son, County Auditor, Montgomery County, Conroe, Texas, this department held that:

"It is the opinion of this department that the Montgomery County Hospital Board of Managers does not have authority to sell policies of insurance for hospital service under a membership plan as a means of financing the county hospital."

In view of the foregoing authorities you are respectfully advised that it is the opinion of this department that the county commissioners' court has no authority to employ and pay a solicitor to secure members for group hospital service as provided for under Article 4590a, supra.

Trusting that the foregoing fully answers your inquiry, we remain

Honorable R. V. Rayford, page 5

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Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Ardell Williams
Ardell Williams
Assistant

AW:LM:wc

s/GERALD C. MANN

Approved Opinion Committee By s/BWB Chairman