



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

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ATTORNEY GENERAL

February 17, 1948

FAGAN DICKSON
FIRST ASSISTANT

Hon. W. A. Hadden
County Attorney
Pecos County
Fort Stockton, Texas

Opinion No. V-505

Re: Authority of Managers of
County Board of Hospitals
to fix the Superintendent's salary on a con-
tingent basis.

Dear Sir:

Reference is made to your recent request for an opinion by this Department, wherein you enclosed a letter addressed to you by the County Judge, which reads, in part, as follows:

"The taxpayers of Pecos County voted bonds in the amount of \$300,000. in 1946 for the construction and equipment of a county hospital, and assessed and levied a tax for the payment of bond maturities and interest.

"The Commissioners Court being informed that the hospital would be or could be made self supporting assessed, levied or collected no taxes for maintenance or necessary expenses thereof.

"After the site has been acquired and the contract awarded for the construction of necessary buildings, and a board of managers appointed by the court as provided by Art. 4479 VCS, has this board power or authority to employ a superintendent and fix his salary on a contingent basis, based on the net earnings of the hospital or income from the operation thereof, he to receive a salary not to exceed the net earnings of the hospital with a maximum of \$5,000.00 a year he assuming the payment of all operating expenses, and in no manner obligating the county. He to be employed subject to all the terms, conditions and provisions of the

County Hospital Act."

Article 4478, V. C. S., provides for the establishing, enlarging, repairing and maintaining a county hospital.

Article 4479 provides for the appointment of six resident property taxpaying citizens of the county who shall constitute a board of managers of said hospital.

Article 4480, V. C. S., is as follows:

"The board of managers shall elect from among its members a president, and one or more vice-presidents and a secretary and a treasurer. It shall appoint a superintendent of the hospital who shall hold office at the pleasure of said board. Said superintendent shall not be a member of the board, and shall be a qualified practitioner of medicine, or be specially trained for work of such character.

"Said board shall fix the salaries of the superintendent and all other officers and employes within the limit of the appropriation made therefor by the commissioners court, and such salaries shall be compensation in full for all services rendered. The board shall determine the amount of time required to be spent at the hospital by said superintendent in the discharge of his duties. The board shall have the general management and control of the said hospital, grounds, buildings, officers and employees thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof; and make such rules and regulations as may seem to them necessary for carrying out the purposes of such hospital. They shall maintain an effective inspection of said hospital and keep themselves informed of the affairs and management thereof; shall meet at the hospital at least once in every month, and at such other times as may be prescribed in the by-laws; and shall hold an annual meeting at least three weeks prior to the meet-

ing of the commissioners court at which appropriations for the ensuing year are to be considered." (Emphasis added)

Article 4484, V. C. S., provides, in part:

"The board of managers shall keep in a book provided for that purpose a proper record of its proceedings. . . The Board shall certify all bills and accounts, including salaries and wages, and transmit them to the commissioners court, who shall provide for their payment in the same manner as other charges against the county are paid." (Emphasis added)

Article 4485, V. C. S., provides, in part, as follows:

"The superintendent shall be the chief executive officer of the hospital, but shall at all times be subject to the by-laws, rules and regulations thereof, and to the powers of the board of managers.

"He shall, with the consent of the board of managers, equip the hospital with all necessary furniture, appliances, fixtures and all other needed facilities for the care and treatment of patients, and for the use of officers and employes thereof, and shall purchase all necessary supplies, not exceeding the amount provided for such purposes by the commissioners court

"He shall collect and receive all moneys due the hospital, keep an accurate account of the same, report the same at the monthly meeting of the board of managers, and transmit the same to the county collector within ten days after such meeting."

In the case of Commissioners Court of Madison County v. Wallace, 118 Tex. 279, 15 S. W. (2d) 535, the Supreme Court said:

"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. Article 5, Section 18 of the Constitution of Texas; Baldwin v. Travis County, 40 Tex. Civ. App. 199, 88 S. W. 480; Seward v. Falls County (Tex. Civ. App.) 246 S. W. 728; Bland v. Orr, 90 Tex. 492, 39 S. W. 558."

It is a well settled principle of law that the commissioners court does not have any authority except that which is expressly or impliedly conferred upon it by law. Edwards County v. Jennings, 33 S. W. 385; 15 C. J. 457, Sec. 103; 15 C. S. 537, Sec. 221.

"Where a power is granted and the method of its exercise is prescribed, the prescribed method excludes all others, and must be followed." Lewis Sutherland Statutory Construction, Vol. 2, par. 572, 527, 628, 631.

15 C. J. S. 935, 936, provides, in part, as follows:

"The source of payment of compensation of county officers, agents, and employees is ordinarily regulated by constitutional and statutory provision. Under some constitutional and statutory provisions such compensation is payable only from the general funds in the county treasury, or from some special fund, or from the fees and emoluments of the office; . . ."

It is noted in Article 4480, supra, that the board shall fix the salaries of the Superintendent and all other officers and employees within the limits of the appropriation made therefor by the Commissioners Court and such salaries shall be compensation in full for all services rendered.

The word "salary" as defined in Webster's New International Dictionary is: "The recompense or consideration paid or stipulated to be paid to a person at regular intervals for services, especially to holders of official, executive or clerical positions; fixed compensation regularly paid, as by the year, quarter, month or week."

We find in Words and Phrases that "the word 'salary' may be defined generally as a fixed annual or periodical payment for services, depending on the time and not on the amount of the services rendered."

Since the statutes clearly provide that the board fix the salary of the Superintendent of the hospital, and that the Commissioners' Court shall pay the salary certified "in the same manner as other charges against the county are paid", and in view of the foregoing, it is the opinion of this Department that the board of managers does not have the authority to employ a Superintendent of the County Hospital and fix his salary on a contingent basis. Stated in another way, we believe that the board must fix the salary of the Superintendent at a sum certain within the limits of the appropriation made therefor by the Commissioners' Court.

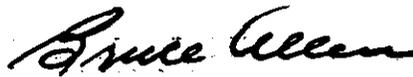
SUMMARY

The Board of Managers of the County Hospital is not authorized to fix the Superintendent's salary on a contingent basis, based on the net earnings of the hospital or income from the operation thereof. Arts. 4480, 4484, and 4485, V. C. S.; Art. V, Section 18, of the Texas Constitution.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By



Bruce Allen
Assistant

BA:mw

APPROVED:



FIRST ASSISTANT
ATTORNEY GENERAL