



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

September 17, 1948

Hon. James C. Martin  
County Attorney  
Nueces County  
Corpus Christi, Texas

Opinion No. V-683

Re: The necessity of a Board of Managers of a City-County hospital advertising for bids on contracts in excess of \$2,000 or for materials and supplies in excess of \$150.

Dear Mr. Martin:

In your request for an opinion you state that the City of Corpus Christi and Nueces County, pursuant to Article 4494-i, V. C. S., established and are now operating a City-County hospital in the City of Corpus Christi called Memorial Hospital. The Board of Managers of the hospital desires to expend approximately \$30,000 for the purchase of a building, boiler, water heater, ironer, pipe valves and fittings for a laundry to be operated in connection with the hospital. You submit two questions as follows:

"1. Does the Board of Managers of a City-County Hospital operating under Article No. 4494-1 have to advertise for bids for purchase of materials and supplies in excess of \$150.00, as provided in Article No. 1659?

"2. Is the Board of Managers of a City-County Hospital operating under Article No. 4494-1 required to advertise for bids on any contract in excess of \$2,000.00 as provided by Article No. 2368-a?"

Article 1659, V. C. S., provides, in part, as follows:

"Supplies of every kind, road and bridge material, or any other materials, for the use

of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners court, has submitted the lowest and best bid. . . In cases of emergency, purchases not in excess of one hundred and fifty dollars may be made upon requisition to be approved by the commissioners court, without advertising for competitive bids."

Article 2368a, V. C. S. as amended, provides, in part, as follows:

"No county acting through its Commissioners Court and no city in this State shall hereafter make any contract calling for or requiring the expenditure or payment of Two Thousand Dollars (\$2,000) or more out of any fund or funds of any county or subdivision of any county creating or imposing an obligation or liability of any nature or character upon such county or any subdivision of such county, or upon such city, without first submitting such proposed contract to competitive bids. . ."

Article 4494-1, V. C. S., provides, in part, as follows:

"Sec. 2. The Board of Managers shall be composed of seven (7) members; three (3) of this number shall be appointed by the Commissioners Court of such county, three (3) shall be appointed by the governing body of such city or town, and one shall be appointed by the Commissioners Court of such county and the governing body of such city or town acting jointly as one appointive body. The Commissioners Court of such county shall appoint to the Board one member for a term of office expiring at the end of two (2) years from date of appointment, one member for a term of office expiring four (4) years from date of appointment, and one member for a term of office expiring six (6) years from date of appointment. In like manner, the governing body of such city or town shall appoint to the Board one member for a term of office ex-

piring two (2) years from date of appointment, one member for a term of office expiring four (4) years from date of appointment, and one member for a term of office expiring six (6) years from date of appointment; and similarly, the Commissioners Court and the Governing body of such city or town, acting together as an appointive body, shall appoint one member for a term of office expiring six (6) years from date of appointment. Thereafter, at the expiration of each term of office of the members so appointed to such Board, the Commissioners Court and the governing body of such city or town acting jointly as an appointive body, shall each respectively make, and continue to make, similar appointments to such Board for a term of office of six (6) years each. Any vacancy occurring during the term of office of any member, whether by resignation or death, shall be filled for the unexpired portion of such term by the particular appointive body previously making the appointment of the resigning or deceased member.

"Sec. 4. Such Board of Managers shall have full and complete authority to enter into any contract connected with or incident to the establishment, erection, equipping, maintaining or operating such hospital or hospitals, and in this connection shall have authority to disburse and pay out all funds set aside by such county and such city or town for purposes connected with such hospital or hospitals, and such action by such city or town as though such action had been taken by the Commissioners Court of such county or governing body of such city or town.

"Sec. 5. Once each year such Board of Managers shall prepare and present to such Commissioners Court and the governing body of such city or town a complete financial statement of the financial status of such hospital or hospitals, and shall submit therewith a proposed budget of the anticipated financial needs of such hospital or hospitals for the ensuing year. On the basis of such financial statement and budget

the Commissioners Court of such county and the governing body of such city or town shall appropriate or set aside for the use of such Board of Managers in the operation of such hospital or hospitals the amount of money which seems proper and necessary for such purpose.

"Sec. 7. In connection with the erection and equipping of such hospital or hospitals said Board of Managers shall have the authority to determine the manner of expending any funds that may have been provided by such county and such city or town for such purpose, whether by the issuance of bonds or other obligations, or by appropriations from other funds of such county and city or town, it being the intention by this Act to grant to such Boards the complete authority to manage and control all matters affecting such hospitals, reserving to such county and city or town the right only to appoint members to such Board of Managers and to approve the annual budget hereinabove provided for." (Emphasis ours)

In Sutherland Statutory Construction, Vol. 2, pages 541-543, it is stated:

"General and special acts may be in pari materia. If so, they should be construed together. Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling."

In the case of Fortinberry v. State (Tex. Com. App.) 238 S.W. 147, a specific statute which declared that no person shall be eligible to the office of mayor unless he possesses the qualifications of an elector and shall have resided 12 months next preceding the election within the limits of the city would control a general statute that no person shall be eligible to any state,

county, precinct or municipal office in this State unless he shall have resided in this State for a period of 12 months and 6 months in the county, precinct or municipality in which he offers as a candidate next preceding the election. This case quotes as its authority the following language of the case of Cole v. Cobolini, 106 Tex. 492, 170 S.W. 1036:

"With one statute negative in character, and relating to particular classes of cases over which a certain jurisdiction is directly denied, and another statute, affirmative, and defining that jurisdiction in general terms, no doubt can be indulged as to the construction to be applied. In such a case the question of an implied repeal of the particular statute is not to be seriously considered. It will be construed as constituting an exception to the general statute, under the settled rule, though the language of the latter is, literally, broad enough to include that to which its negative provisions apply. In this manner both statutes will be given effect and each allowed its appropriate field of operation."

Also, in the case of Townsend v. Terrell, 16 S.W.(2d) 1063 (Tex. Com. App.) the court said:

"It is only where acts are so inconsistent as to be irreconcilable that a repeal by implication will be indulged. If there exists such conflict, then there is a presumption of the intention to repeal all laws and parts of laws in conflict with the clear intention of the last act. This is necessarily true where both acts cannot stand as valid enactments.

"This rule of construction has found frequent and apt illustration where one of the supposedly conflicting statutes was general in its terms and the other specific. In such a case it is universally held that the specific statute more clearly evidences the intention of the Legislature than the general one, and therefore that it will control. In such a case both statutes

are permitted to stand - the general one applicable to all cases except the particular one embraced in the specific statute. . ."

Applying this principle to the instant case, it is noted that the Legislature in the enactment of Article 4494-1, supra, excepted City-County operated hospitals from the provisions of Articles 1659 and 2368a, inasmuch as the authority for entering into contracts and expending funds which have been provided for hospital use by such county has been delegated to the Managers of such county operated hospital.

The provisions of Arts. 1659 and 2368a, V. C. S. or any other statute do not require the Board of Managers of a City-County hospital to advertise for competitive bids before they purchase supplies, equipment, etc. for the hospital, but on the contrary, we believe the provisions of Art. 4494-1, V. C. S. clearly authorize said Board to purchase said items without asking for competitive bids.

Further, it would be impossible for a Board of Managers of a City-County hospital to comply with the provisions of Arts. 1659 and 2368a if they were advertising for competitive bids. Art. 1659 is only applicable to counties, and Art. 2368a is only applicable to cities and counties when the county is "acting through its Commissioners' Court" and when the city is acting through its governing body.

Whether good business management by the Board of Managers of the City-County hospital's affairs requires the advertisement for competitive bids before supplies, equipment, etc. are purchased for the said hospital, is a matter within the discretion of said Board of Managers, and whether said Board should be required to do so, is for the Legislature to determine.

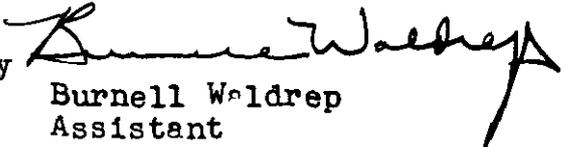
It is our opinion that the Board of Managers of a City-County hospital operating under the provisions of Art. 4494-1, does not have to advertise for bids for materials and supplies in excess of \$150.00 or on contracts in excess of \$2,000.00 as provided in Articles 1659 and 2368a, V. C. S.

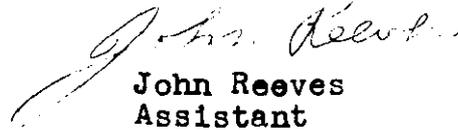
SUMMARY

A Board of Managers of a City-County hospital operating pursuant to Article 4494-1, V. C. S., does not have to advertise for bids for the purchase of materials and supplies in excess of \$150.00, and is not required to advertise for bids on contracts in excess of \$2,000.00.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By   
Burnell Waldrep  
Assistant

  
John Reeves  
Assistant

BW:JR:mw

APPROVED:

  
FIRST ASSISTANT <sup>us</sup>  
ATTORNEY GENERAL