



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

September 9, 1994

Honorable Mike Driscoll  
County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

Letter Opinion No. 94-066

Re: Whether a commissioners court may assess a fee to a funeral home to cover transportation and administrative services provided by the county, and related questions (ID# 24298)

Dear Mr. Driscoll:

You ask whether the Harris County Commissioners Court may establish a \$125 fee to be assessed against funeral homes for the transportation of bodies to the Harris County morgue.

As you describe the basis for your request, Harris County has for many years relied upon a group of local funeral homes referred to as the Participating Funeral Homes of Harris County to pick up dead bodies, transport them to the Harris County Medical Examiner, and notify the deceased's next of kin. The Participating Funeral Homes did not charge the county. The economic incentive for this service, however, may have been altered by recent legislation. *See* V.T.C.S. art. 4582b, § 1(M).

Harris County would like to be able to continue to use the services of the Participating Funeral Homes to transport bodies to the medical examiner. The commissioners court would like to pay the funeral homes \$100 to transport each such body. The commissioners court proposes to recoup this expense, and its administrative costs, by charging the sum of \$125 to funeral homes which ultimately are chosen by the next of kin to conduct services. Should the same funeral home both transport the body and be chosen to conduct the services, it would only be charged the \$25 administrative fee, but would not receive the \$100 transport fee.

You first ask whether the commissioners court has the power to levy such a fee. You suggest that it does not, based on the authority of Letter Opinion No. 92-20, issued by this office in June of 1992. We concur.

As you correctly note, the law with respect to this question is summarized in Letter Opinion No. 92-20. In that case, the question was whether the El Paso County Commissioners Court could authorize the El Paso County Medical Examiner to charge a \$35 per day fee to funeral homes for bodies stored at his office. The opinion noted that there was no statutory authority for such a fee.

Counties, as political subdivisions, have only those powers "specifically conferred upon them" by constitution or statute. *Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948). A county may not charge fees without specific statutory authority. *Nueces County v. Currington*, 162 S.W.2d 687, 688 (Tex. 1942); *McCalla v. City of Rockdale*, 246 S.W. 654, 655 (Tex. 1922); *McClellan County v. Boggess*, 137 S.W. 346, 348-49 (Tex. 1911). See also Attorney General Opinions DM-219 (1993); DM-22 (1991). As you inform us that the commissioners court has no such statutory authority, it may not assess the proposed fee.

You further ask whether any contract between the Participating Funeral Homes and Harris County would be subject to the County Purchasing Act, now codified at Local Government Code chapter 262.

You note that section 262.023(a) of the County Purchasing Act states:

Before a county may purchase one or more items under a contract that will require an expenditure exceeding \$15,000, the commissioners court of the county must comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter.

Local Gov't Code § 262.023(a).

You further note that, at \$100 per transfer, the amount expended by Harris County to transport bodies to the Medical Examiner's Office is likely to exceed \$15,000 per annum. Accordingly, it is your view that section 262.023(a) will apply to any contract the commissioners court enters into for this purpose.

While this argument seems plausible, we cannot be certain it is necessarily correct. If the proposed contract were with a single entity, then it would be very likely to exceed the \$15,000 amount set as the lower limit by the County Purchasing Act. It is not clear to us, however, whether the Participating Funeral Homes is an association which would be capable of contracting for its members, or if the various homes would contract for themselves. Nor is it clear to us, if the various funeral homes involved each individually contracted with Harris County, whether any or all would transport so many of the bodies as to trigger the \$15,000 limit. Because the resolution of this question depends upon detailed answers to such factual questions, it is not amenable to resolution in the opinion process.<sup>1</sup>

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<sup>1</sup>We also note that section 262.024(a)(2) of the County Purchasing Act exempts from the necessity of competitive bidding "an item necessary to preserve or protect the public health or safety of the residents of the county." You do not ask, and we do not consider, whether the Harris County Commissioners Court could determine that the transporting of corpses to the medical examiner's office might be necessary to preserve the health or safety of Harris County residents.

**S U M M A R Y**

Absent specific statutory authority, the commissioners court of Harris County may not charge funeral homes a fee to cover the cost of transporting bodies to the office of the medical examiner.

Yours very truly,

A handwritten signature in black ink, reading "James Tourtelott". The signature is written in a cursive style with a long horizontal flourish extending to the right.

**James Tourtelott  
Assistant Attorney General  
Opinion Committee**