



MIKE DRISCOLL
county attorney

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Opinion Committee

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I.D.# 18988

1001 Preston, Suite 634
Houston, Texas 77002-1891
713/755-5101
Fax# 713/755-8924

February 12, 1993

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RQ-506

Hon. Dan Morales
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548

Attention: Ms. Madeleine B. Johnson, Chair
Opinion Committee

Ladies and Gentlemen:

RE: Purchasing for Harris County Hospital
District
C. A. File No. 42,769

The Commissioner of Harris County Precinct One has requested
advice regarding the following question:

Does the Commissioners Court of Harris County have the
authority to require the Purchasing Agent of Harris
County to make purchases by and for the Harris County
Hospital District?

Please supply us with your opinion on the question presented.
A memorandum brief is enclosed.

Sincerely,

MIKE DRISCOLL
County Attorney

Lavergne Schwender
By LAVERGNE SCHWENDER
Assistant County Attorney

MD:LAS:jaa

Enclosure

First Assistant: Marsha L. Floyd • Bureau Chiefs: James E. McKnight, Admin. Services, Jerry B. Schank,
David R. Hurley • Division Chiefs: Dori A. Wind, Harold M. Streicher, Russell L. Drake, Mary J. McKerall,
Donald W. Jackson, Rock W. A. Owens, Frank E. Sanders, Richard S. Hill

MEMORANDUM BRIEF

I. QUESTION PRESENTED

Does the Commissioners Court of Harris County (Commissioners Court) have the authority to require the Purchasing Agent of Harris County to make purchases by and for the Harris County Hospital District (Hospital District)?

II. DISCUSSION

In order to achieve greater efficiency, the Commissioners Court of Harris County, Texas is contemplating the transfer and merger of the purchasing and materials management functions performed by employees of the Harris County Hospital District to the Harris County Purchasing Agent, Mr. Jack R. McCown. The Commissioners Court feels that such a merger will obtain economies of scale not available to the entities singly, will eliminate unnecessary duplication of personnel and effort, and will provide better control over inventory and distribution.

Tex. Health & Safety Code Ann. §281.049 sets forth the purchasing and accounting methods and procedures for the Hospital District and states specifically:

§281.049. Purchasing and Accounting Methods and Procedures

- (a) The commissioners court may prescribe:
 - (1) the method of making purchases and expenditures by and for the district; and
 - (2) accounting and control procedures for the district.
- (b) The commissioners court by resolution or order may delegate its powers under Subsection (a) to the board.
- (c) A county officer, employee, or agent shall perform any function or service required by the commissioners court under this section.
- (d) The district shall pay salaries and expenses necessarily incurred by the county or by a county officer or agent in performing a duty prescribed or required under this section.

Tex. Health & Safety Code Ann. §281.049 (Vernon 1991) (formerly, Tex. Rev. Civ. Stat. Ann. art. 4494n) [Emphasis added.]

The Hospital District was created pursuant to voter approval at an election held on November 20, 1965. On November 24, 1965, pursuant to the authority of the previous statute¹ which contained language similar to the current law quoted above, the Commissioners Court appointed Claude A. Zachry, the Harris County Purchasing Agent, to serve as Purchasing Agent for the newly created Hospital District.

Later, on December 17, 1965, the Commissioners Court again took action pursuant to the authority of the previous statute.² In a unanimous action, the Commissioners Court rescinded its previous order appointing Mr. Zachary, the Harris County Purchasing Agent, as Purchasing Agent for the Hospital District and additionally, ordered that the Hospital District Board of Managers be authorized to work out procedures for purchasing and submit such procedures to the Commissioners Court for approval.

Based on the information submitted to this office, two sets of purchasing procedures were submitted to the Commissioners Court by the Hospital District Board: one set on December 3, 1981, and another set on January 10, 1990. (There may be other sets of purchasing procedures that were submitted prior to 1981, but this office was unable to locate any others.) In each instance, they were submitted to the Commissioners Court and approved, on December 17, 1981, and April 10, 1990, respectively. In accordance with these procedures, the District and its employees have made purchases for and on behalf of the District since 1965.

A review of the language of the "delegation" made by the Commissioners Court on December 17, 1965, raises a question as to what authority, if any, was actually delegated to the Hospital District Board. For, the Commissioners Court merely authorized the Hospital District Board to "work out procedures for purchasing and submit same to the Commissioners' Court for approval." Arguably, inasmuch as the Commissioners Court retained the authority to approve (and therefore, implicitly, disapprove) those purchasing procedures submitted by the Hospital District Board, there was, in fact, no delegation to the Hospital District Board of the actual authority to prescribe the method of making purchases for the Hospital District. Rather, it could be argued that the Hospital

¹ Act of June 4, 1953, 53rd Leg., ch. 266, 1953 Gen. Laws 691, amended by Act of May 18, 1955, 54th Leg., ch. 257, 1955 Gen. Laws 715, 720 repealed by Act of June 14, 1989, 71st Leg., ch. 678, §1, 1989 Gen. Laws 2230, 2543.

² Id.

District Board was assigned a task, the performance of which could be either approved or disapproved by the Commissioners Court.

Assuming, *arguendo*, that there was a valid delegation of the purchasing authority to the Hospital District Board on December 17, 1965, a thorough review of Chapter 281 ("Hospital Districts In Counties Of At Least 190,000") of Subtitle D ("Hospital Districts") of Title 4 ("Health Facilities") of the Texas Health and Safety Code does not reveal any limitation on the Commissioners Court's authority to rescind its delegation made under §281.049 to the Hospital District Board, nor does it reveal any language that would make such a delegation irrevocable. In fact, the Commissioners Court has in the past exercised its authority to rescind such a delegation made under the provisions set forth in §281.049. As previously discussed, the Commissioners Court rescinded its initial order which appointed the Harris County Purchasing Agent as Purchasing Agent for the Hospital District, and, in turn, entered another order wherein the authorization to "work out" procedures was instead delegated to the Hospital District Board, with certain limitations. See, Op. Tex. Att'y Gen. No. M-102 (1967).

An early case in Texas discussed the ability of a legislative body to repeal or rescind previous actions taken by it. In City of Belton v. Head, the court, quoting other language, held that the

. . . power to enact implies the power also to repeal ordinances, unless the right is limited or abrogated by a higher law. All ordinances, too, are subject to repeal, except such as are contractual in their character.

137 S.W. 417,418 (Tex. App.---Austin 1911, no writ) (citations omitted). While the exercise of authority in question was not embodied in an ordinance, the authority to make the delegation in question was granted to the Commissioners Court by the Legislature, much as a city is granted the authority to enact ordinances. Thus, the argument above can certainly be analogized to the situation at hand. And, again, assuming there was a valid delegation of the purchasing authority to the Hospital District Board, it appears no contractual right was created by virtue of such delegation, nor is there apparently any limitation upon the Commissioners Court's authority to rescind its previous delegation.

Therefore, it would appear that the Commissioners Court is free to rescind the prior delegation of purchasing authority (albeit containing limitations) to the Hospital District, and in turn, authorize the Harris County Purchasing Agent to make purchases for the Hospital District. The authorization of the Harris County Purchasing Agent to make Hospital District purchases would be a proper exercise of the Commissioners Court's authority to prescribe the method of making purchases for the Hospital District, as authorized by §281.049. Op. Tex. Att'y Gen. No. M-102

(1967). Reviewing the language contained in §281.049, it would appear that both the rescission and subsequent actions could be effectuated in the same way the previous actions of the Commissioners Court were taken, i.e., through an order being presented to, and voted upon, by the Commissioners Court in each instance.

In addition to the strictly purchasing function, Commissioners Court desires to transfer the materials management function to the Harris County Purchasing Agent, also. This function includes inventory control and distribution. By its nature, this function is inherently contained in the scope of purchasing. Indeed, these activities are performed by the Purchasing Agent for Harris County. The fact that the Hospital District has given the activities two job titles does not dissolve the inherent link in the activities of purchasing, inventory, and distribution. This position is substantiated by the text of §281.049(a)(2) where it is stated that Commissioners Court may prescribe "accounting and control procedures for the district" (cited above).

In the event the Harris County Purchasing Agent is authorized to make purchases for the Hospital District, the Hospital District would be obligated to pay the salaries and expenses necessarily incurred by the County or the Harris County Purchasing Agent in performing those duties prescribed by the statute. See §281.049(d), above.

It is the opinion of this office that the Harris County Commissioners Court has specific legislative authority to require the Harris County Purchasing Agent to make purchases and perform materials management by and for the Harris County Hospital District. This office has been unable to find any statute which would prohibit the Purchasing Agent of Harris County from performing such services.