



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 22, 1995

The Honorable John T. Montford  
Chair

Finance Committee  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 95-088

Re: Whether the salary and expenses of the medical examiner's office are authorized medical and hospital care expenses which can be funded by the Lubbock County Hospital District (ID# 32192)

Dear Senator Montford:

You have requested an opinion from this office regarding the authority of the Lubbock County Hospital District to fund the salaries and expenses of the Lubbock County Medical Examiner's Office. On behalf of the Lubbock County Commissioners Court and the Lubbock County Hospital District, you specifically ask whether the salaries and expenses of such office can be funded by the hospital district as authorized medical and hospital care expenses.

Article IX, section 9 of the Texas Constitution authorizes the creation of county hospital districts and provides:

The Legislature may by general or special law provide for the creation, establishment, maintenance and operation of hospital districts composed of one or more counties or all or any part of one or more counties with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes; providing for the transfer to the hospital district of the title to any land, buildings, improvements and equipment located wholly within the district which may be jointly or separately owned by any city, town or county, *providing that any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants . . . .* [Emphasis added.]

Such districts may be created by either general or special laws. *Moore v. Edna Hosp. Dist.*, 449 S.W.2d 508 (Tex. Civ. App.—Corpus Christi 1969, writ ref'd n.r.e.); see V.T.C.S. 4494q; see also 2 GEORGE D. BRADEN, THE CONSTITUTION OF THE STATE OF

TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS 662-63 (1977) (explaining article IX, section 9). Thus hospital districts derive their authority from the constitution and the act enabling each particular district. See Attorney General Opinion M-171 (1967). Both sources of authority direct the districts to assume full responsibility for the provision of medical and hospital services to the needy inhabitants of the county in which such districts are located. Accordingly, the expenditure of taxes levied for hospital purposes is limited to the use set forth in the constitution. *Bexar County Hosp. Dist. v. Crosby*, 327 S.W.2d 445 (Tex. 1959).

In Texas, a hospital district is significant for two reasons. First, such a district is considered as a separate political subdivision apart from county government with its own authority to levy taxes and issue bonds. Second, the creation and existence of a hospital district relieves the county of its responsibility to care for the medical needs of indigents and generally precludes the county from spending county funds for medical purposes. 36 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 26.20 (Texas Practice 1989). As a special district, a hospital district may only exercise those powers that are "expressly delegated to it by the legislature, or which exist by clear and unquestioned implication." *Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 946 (Tex. 1940). The Texas Supreme Court has stated that such implied powers are those that are "indispensable to . . . the accomplishment of the purpose" for which the district is created and that "[p]owers which are not expressed and which are merely convenient or useful" may not be exercised by the district. *Id.* at 947; see Attorney General Opinion JM-258 (1984).

Opinions of this office have consistently held that the purpose for which a hospital district is created should be narrowly construed in keeping with the purpose as set forth in article IX, section 9 of the Texas Constitution. For example, in Attorney General Opinion JM-258 this office considered whether a hospital district may lease a portion of its physical plant to private physicians. Although the district was expressly authorized to acquire and manage physical plant facilities in furtherance of hospital purposes and to provide care for the needy residing in the district, it was concluded that there existed no express or implied authority to lease such facilities for private use. *Id.* at 3. However, the opinion noted that a hospital district may contract with a private hospital and physicians for laboratory testing to be conducted with hospital equipment. This second situation was considered to be within the purpose of a hospital district because laboratory testing was considered a hospital function. *Id.*; Attorney General Opinion M-912 (1971).

The Lubbock County Hospital District was created by special act. V.T.C.S. art. 4494q; see Act of May 17, 1967, 60th Leg., R.S., ch. 484, 1967 Tex. Gen. Laws 1095, amended by Act of May 29, 1987, 70th Leg., R.S., ch. 905, 1987 Tex. Gen. Laws 3073;

Act of May 26, 1993, 73d Leg., R.S., ch. 677, 1993 Tex. Sess. Law Serv. 2515. Article IX, section 9 of the constitution and the enabling legislation direct the district to assume full responsibility for providing medical care for the district's residents and needy inhabitants. While the office of the county medical examiner would seem to share in this responsibility, we conclude that such office does not provide medical or hospital care for the residents of the county.<sup>1</sup> See Attorney General Opinion M-256 (1968) (hospital district lacked authority to expend funds for building and operating a "Crime Lab"); see also Attorney General Opinion H-31 (1973) (hospital district lacked authority to assume duties and functions of city and county health departments). Therefore, we further conclude that no express or implied authority exists to fund the salary and expenses of the office of the county medical examiner.

Furthermore, article 49.25 of the Code of Criminal Procedure provides for the establishment of the office of county medical examiner:

Subject to the provisions of this Act, the Commissioners Court of any county having a population of more than one million and not having a reputable medical school as defined in Articles 4501 and 4503, Revised Civil Statutes of Texas, shall establish and maintain the office of medical examiner, and the Commissioners Court of any county may establish and provide for the maintenance of the office of medical examiner. Population shall be according to the last preceding federal census.

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The commissioners court *shall establish and pay* the salaries and compensations of the medical examiner and his staff.

Code Crim. Proc. art. 49.25, §§ (1), (4) (emphasis added).<sup>2</sup> Hence, pursuant to article 49.25, the commissioners court is expressly vested with the authority to establish and fund the office of county medical examiner.

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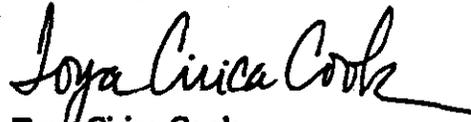
<sup>1</sup>Quite the contrary, the duties of the coroner, or the more modernly known term medical examiner, evolved from 'tak[ing] inquests of all violent, sudden and casual deaths' within the county to the more limited responsibility of determining the cause of death. The office of the medical examiner has certain responsibilities concerning organ transplants, autopsies, and cremations. See 36 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 26.9 (Texas Practice 1989).

<sup>2</sup>The only significant changes that have occurred since the adoption of the medical examiner statute is a gradual elimination of any population requirement before a county may establish a medical examiner's office. *Id.* Every county is authorized to establish an office of medical examiner and multiple

**S U M M A R Y**

Article IX, section 9 of the Texas Constitution, together with special or general enabling legislation, authorizes the creation of hospital districts for the purpose of providing medical and hospital care for the needy inhabitants of the county or counties in which such districts are located. The salary and expenses of the medical examiner's office are not authorized medical and hospital expenses which can be funded by a county hospital district.

Yours very truly,



Toya Cirica Cook  
Assistant Attorney General  
Opinion Committee

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*(footnote continued)*

counties may agree to establish a medical examiner's district to serve participating counties. Code Crim. Proc. art. 49.25, §§ (1), (2).