



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 19, 1998

The Honorable Michael P. Fleming  
Harris County Attorney  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

Letter Opinion No. 98-024

Re: Authority of the Harris County Hospital District  
to expend funds for the temporary housing of visiting  
army medical personnel (RQ-1067)

Dear Mr. Fleming:

You inform us that the Harris County Hospital District (the "hospital district") wishes to enter into an agreement with the United States Army, whereby six physicians and fourteen nurses and paramedical personnel on active military duty would render surgical and other trauma health care to indigent patients at the district's Ben Taub General Hospital, for a period of 60 days. The army would pay the salary and travel expenses of its visiting personnel, and the hospital district asks whether it may pay for, or reimburse, the temporary housing expenses of visiting army medical personnel.

You inform us that the hospital district is a county-wide district established under article IX, section 4, of the Texas Constitution and chapter 281 of the Health and Safety Code. It is required to assume full responsibility for providing medical and hospital care to indigent inhabitants of the county<sup>1</sup> and is governed by a board of managers (the "board") appointed by the Harris County Commissioners Court.<sup>2</sup>

Section 281.028 of the Health and Safety Code authorizes the board to "appoint doctors to the district's staff and hire technicians, nurses, and other employees the board considers advisable for the district's efficient operation." The board has the implied power under this provision to do what is reasonable and necessary to perform this duty.<sup>3</sup> We believe that this section provides statutory authority for the board to enter into the kind of agreement you describe if the board considers it "advisable for the district's efficient operation."<sup>4</sup> However, you are concerned that the

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<sup>1</sup>Tex. Const. art. IX, § 4.

<sup>2</sup>Health & Safety Code § 281.021(c).

<sup>3</sup>Attorney General Opinion M-223 (1968) at 2 (overruled in part by Attorney General Opinion DM-317 (1995)).

<sup>4</sup>We answer your question in general terms, without reviewing any contract provisions. We cannot interpret  
(continued...)

hospital district's payment of the temporary housing expenses of the visiting army personnel might violate article III, section 52 of the Texas Constitution, which prohibits a political subdivision from granting public money or a thing of value to "any individual, association or corporation."

The purpose of article III, section 52 is to prevent political subdivisions from making a grant as a mere charity or gratuity, but it does not invalidate an expenditure that incidentally benefits a private interest if it is made for the direct accomplishment of a legitimate public purpose.<sup>5</sup> The political subdivision must receive adequate consideration for its expenditure, and controls must be in place to assure that the public purpose will be carried out.<sup>6</sup> The same factors apply in determining whether a state-level expenditure is consistent with article III, section 51 of the Texas Constitution, which prevents the legislature from spending or authorizing the expenditure of public funds for private gain.<sup>7</sup>

The courts and the opinions of this office have addressed article III, section 52, in connection with the payment of public employees' work-related expenses from public funds. In *Brazoria County v. Perry*, 537 S.W.2d 89 (Tex. Civ. App.--Houston [1st Dist.] 1976, no writ), the county paid a deputy sheriff's salary and costs of schooling while he attended a law enforcement training program necessary to certification as a peace officer. The funds paid to the deputy for this purpose represented "expenditures for the direct accomplishment of a legitimate public purpose"<sup>8</sup> and therefore did not violate article III, section 52.

Attorney General Opinion DM-317 (1995) considered whether article III, section 52 of the Texas Constitution prohibited a county from spending public funds to bring an applicant for the position of forensic pathologist to the county for an interview. The opinion concluded that the county could pay travel and related expenses of a prospective employee when the expenditure was for "county business," for example, if it furthered the county purpose of making the most efficient use of public funds during the interview process. In addition, sufficient controls over the expenditure would have to exist to ensure that the public purpose would be carried out. The determination that

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<sup>4</sup>(...continued)

contract provisions in the opinion process, but we can address the board's authority to agree to a particular contract term, if the question can be answered as a matter of law. Attorney General Opinion DM-192 (1992) at 10 n.14.

<sup>5</sup>*Brazoria County v. Perry*, 537 S.W.2d 89, 90-91 (Tex. Civ. App.--Houston [1st Dist.] 1976, no writ); Attorney General Opinion DM-317 (1995) at 3.

<sup>6</sup>Attorney General Opinion JM-516 (1986) at 2.

<sup>7</sup>Attorney General Opinion JM-916 (1988) at 1-2.

<sup>8</sup>*Perry*, 537 S.W.2d at 91. See also Attorney General Opinion WW-638 (1959) (Texas Commission on Alcoholism may pay all expenses of its education director while attending Yale Summer School of Alcohol Studies).

the expenditure served a public purpose and that adequate controls were in place was for the commissioners court in the first instance, subject to judicial review for abuse of discretion.<sup>9</sup>

Other opinions have found a public purpose in providing housing for public employees and other persons. Attorney General Opinion MW-391 (1981) concluded that residential property owned by the Department of Corrections served a public purpose when the department provided it to employees as a form of compensation.<sup>10</sup> Attorney General Opinion H-289 (1973) determined that the Texas Parks and Wildlife Department could provide food and housing for participants in a federally-authorized Youth Conservation Corps without violating article III, section 51 of the Texas Constitution.

We believe that the hospital district may pay for the temporary housing expenses of visiting army medical personnel, if the payment is for the direct accomplishment of a legitimate public purpose, if the district receives adequate consideration for its expenditure, and if appropriate controls are in place to assure that the public purpose will be carried out. The hospital's payment of the temporary housing expenses of visiting army medical personnel appears to be consideration given in exchange for their services. The board of managers must determine whether the services it will receive under the agreement would be an adequate exchange for the housing costs and any other consideration the hospital district may agree to provide. This determination is for the board of the hospital managers in the first instance, subject to judicial review for abuse of discretion.

You also ask whether the hospital district may charge its patients for the medical, nursing, and health care services rendered by visiting army medical personnel. Section 281.071 of the Health and Safety Code provides that charges for patient care are to be in proportion to the patient's financial ability and may not exceed "the actual per capita cost of maintenance." You state that there seems to be no basis for requiring patients to pay for services rendered by army medical staff because the district is not paying them a salary.<sup>11</sup> Even if their housing expenses may be paid, you believe it is unlikely that the legislature intended these indirect expenses to be included in the "actual per capita cost of maintenance" of the patient under section 281.071(b).

We do not find any evidence that the legislature intended the construction you propose. Provisions on the costs of "maintenance" of patients are found in numerous statutes on

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<sup>9</sup>Attorney General Opinion DM-317 (1995) overruled Attorney General Opinion M-223 (1968) to the extent of inconsistency.

<sup>10</sup>Attorney General Opinion MW-391 (1981) at 2 (construing Tax Code § 11.11, providing exemption from property tax for public property used for a public purpose).

<sup>11</sup>Although you have stated that the army medical personnel will care for *indigent* patients, the provision you cite applies to charges paid by a non-indigent patient. We assume for purposes of your question that the visiting army medical personnel may in fact provide care to patients who are not indigent.

hospitalization charges in Texas and elsewhere,<sup>12</sup> and cases construing these provisions accept various methods of establishing the costs of maintenance.<sup>13</sup> In our opinion, the board of directors has authority to establish how the “actual per capita cost of maintenance” is to be determined pursuant to its authority to “manage, control, and administer the hospital or hospital system of the district”<sup>14</sup> and to “adopt rules governing the operation of the hospital or hospital system.”<sup>15</sup> If the board has reasonably determined that employees’ work-related expenses are a component of the “actual per capita cost of maintenance,” it may include the housing expenses of the visiting army medical personnel in determining patient charges. The board’s determination would be subject to judicial review for abuse of discretion.<sup>16</sup>

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<sup>12</sup>Health & Safety Code §§ 263.082, .083 (county hospitals and other health facilities); 552.016 (state mental health hospitals); 593.074 (mental retardation facilities); *Klein v. County of Hudson*, 455 A.2d 583 (N.J. 1980) (construing statute on cost of maintenance of indigent patients at state facilities); *State v. Schmidt*, 97 N.W.2d 493 (Wis. 1959) (construing statute on cost of maintenance, care and treatment of patients in county hospitals).

<sup>13</sup>*Lokey v. State*, 291 S.W. 966 (Tex. Civ. App.--Dallas 1927, no writ) (statute providing that patients in state hospital “be kept and maintained at the expense of the state”); *Klein*, 455 A.2d 583; *Schmidt*, 97 N.W.2d 493.

<sup>14</sup>Health & Safety Code § 281.047.

<sup>15</sup>*Id.* § 281.048.

<sup>16</sup>The commissioners court may prescribe “accounting and control procedures for the district” or may delegate that power to the board of managers. Health & Safety Code § 281.049. We do not know whether the accounting and control procedures applicable to the Harris County Hospital District include a review of the district’s method of determining the costs of maintenance for its patients.

S U M M A R Y

The Harris County Hospital District may agree with the United States Army to have army medical personnel on active military duty render surgical and other trauma health care to indigent patients at a district hospital for a period of 60 days, if the hospital district board of managers considers it "advisable for the district's efficient operation." The army would pay the salary and traveling expenses of the visiting personnel. Article III, section 52 of the Texas Constitution would not prevent the board from paying for the temporary housing expenses of the visiting army medical personnel, if the payment is for the direct accomplishment of a legitimate public purpose, if the district receives adequate consideration for its expenditure, and if appropriate controls are in place to assure that the public purpose will be carried out. This determination is for the board of the hospital managers of the hospital district in the first instance, subject to judicial review for abuse of discretion.

Charges for patient care provided by the hospital district are to be in proportion to the patient's financial ability and may not exceed "the actual per capita cost of maintenance." The board of managers has authority to establish how patient charges are to be determined and to decide whether employees' work-related expenses, such as the housing charges of the visiting army medical personnel, is a component of the "actual per capita cost of maintenance" of patients in the hospital.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee