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OPINION COMMITTEE

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Attorney General of Texas
 Opinions Committee
 P.O. Box 12548
 Austin, TX 78711-2548

RQ-0189-JC

FILE # ML-41278-00
 I.D. # 41278

Re: Whether a hospital district governed by Chapter 286 of the Texas Health and Safety Code is authorized to hold an election to increase the tax rate set in its conversion election

Dear Sir or Madam:

The Chambers County Public Hospital District No. 1 has asked me to submit the following request for an Attorney General's opinion:

- (1) Does a hospital district governed by Chapter 286 of the Texas Health and Safety Code have the authority to call an election subsequent to the election creating the hospital district to increase the tax rate to the level of the maximum tax rate allowed by Chapter 286?
- (2) If a hospital district does have such authority, what procedures should be followed for conducting the election?

The Chambers County Public Hospital District No. 1 ("District") was organized under Texas Civil Statute art. 4494o, now Chapter 282 of the Texas Health and Safety Code. In 1991, pursuant to Texas Health and Safety Code §§ 282.121-282.127, the District held an election at which the District voters voted to convert to a district operating under Article IX, Section 9 of the Texas Constitution, which would be subject to the provisions of Chapter 286 of the Texas Health and Safety Code. The ballot proposition for converting the District also included a levy of annual taxes as required by statute. The statute permitted the voters to authorize a levy not to exceed 75¢ on each \$100 valuation of taxable property. The proposition presented to the District voters in the 1991 election authorized a tax rate for the new Chapter 286 District set at 40¢ on each \$100 valuation of taxable property in the District, which was the maximum tax rate for the old Chapter 282 District. The Board of Directors of the Chambers County Public Hospital District No. 1 would like to hold an election to raise its maximum tax rate from 40¢ to 75¢ as allowed by §286.161(b).

Texas Health and Safety Code § 286.161(b) permits voters of a hospital district governed by Chapter 286 to approve a tax rate not to exceed 75¢ on each \$100 valuation of all taxable property in the district. Chapter 286 includes in the ballot proposition for creating a hospital district authorization of a tax rate not to exceed 75¢ on each \$100 valuation. However, Chapter 286 of the Health and Safety Code is otherwise silent on whether and how a hospital district can raise the maximum tax rate when the tax rate

limit set at the election creating the district, or in this case converting the district, was not set at the maximum rate allowed by law. The 75¢ tax rate limit contained in the statute implies that a hospital would have the authority to hold an election to raise the maximum property tax rate to the statutory limit.

Under Chapter 286, the voters of the District set the limit for the maximum property tax rate. The District Board may impose taxes annually in an amount not to exceed the rate cap set by the voters. Permitting the District residents to vote now on whether or not to raise the rate above 40¢ but within the statutory cap of 75¢ preserves the balance of legislative and local control implicit in Chapter 286. The circumstances of a hospital district and the health care needs of the population may change dramatically over the years, and a hospital district may require additional tax revenue in order to continue providing services to its residents. Chapter 286 recognizes local control over hospital governance and it would be entirely consistent with the statute to permit the Board of Directors to go back to the electorate to allow them to make the decision to alter the tax rate within the statutory cap. It is in the best interest of those residents for a hospital district's voters to have the opportunity to decide if the cap on the hospital district's tax rate needs to be raised to the maximum allowed by the Health and Safety Code.

The Chambers County Public Hospital District No. 1 is in a unique situation. Most, if not all, other hospital districts formed under Chapter 286 have a maximum tax rate of 75¢, the maximum allowed under the statute. To the best of our knowledge, the issue of holding an election to raise the cap on the tax rate has not arisen before. The District believes that, based on the reasons discussed above, it does have the authority under the statute to hold an election to raise the cap on its tax rate, and would like a confirmation from the Attorney General that it has such authority before it proceeds with an election.

Health and Safety Code §§286.021-286.027 lay out the procedure for an election to create a hospital district, which includes provisions to set the initial tax rate. The District feels that, since the cap on the tax rate was set in the election to create the District, the most logical course of action is to follow the notice and ballot procedures in Chapter 286 for the initial election and adapt them to an election to raise the cap on the tax rate. The District would issue an election order and give notice of the election in accordance with §§286.024 and 286.025 and adapt the ballot proposition in §286.026 to apply to the maximum tax rate only. As this is a familiar procedure used by many hospital districts, the District thinks that this would be the most reasonable method of holding an election to raise the District's maximum tax rate.

Thank you in advance for your assistance in resolving these issues.

Sincerely,



Charles S. Brack