

**Office of the Criminal District Attorney
Bastrop County, Texas**

**BRYAN GOERTZ
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RQ-0122-GA

October 23, 2003

RECEIVED

OCT 27 2003

Office of the Attorney General for the State of Texas
ATTN: Opinions Committee Division
William P. Clements Building
P.O. Box 12548
Austin, Texas 78711

FILE # MI-43296-03

I.D. # 43317

OPINION COMMITTEE

RE: The effect of Article XI, Section 7 of the Texas Constitution on Bastrop County's ability to accept sole responsibility for all costs, damages and expenses associated with litigation which might arise in the administration of its 9-1-1 services through another entity.

Dear Opinions Folks:

The Bastrop County Commissioners Court met in a special session on September 30, 2003 to discuss two agenda items. One item involved considering the renewal of the County's contract with the Bastrop Central Appraisal District ("BCAD") for its assistance with 9-1-1 addressing, database program management and office space. This contract was (re)negotiated, apparently with much trouble, in May 1996 and has been renewed annually under its present terms since 2000.

Very simply, under the agreement, BCAD, in addition to providing office space, assigns two full-time employees to work exclusively in carrying out the functions and implementation of the enhanced 9-1-1 emergency telephone system data and addressing program – briefly, to get emergency services quickly and efficiently to area residents. More specifically, duties include:

- (1) providing physical addresses to unincorporated areas of the county,
- (2) maintaining data necessary for the State's enhanced 9-1-1 database for the County and municipalities located in the County, and
- (3) coordinating, developing and maintaining digital maps (Geographic Information System coverages) necessary for emergency service operations for the County and municipalities.

In return, the County agrees to compensate BCAD in an amount not to exceed \$99,956.00. (The BCAD employees receive better benefits through BCAD and do not want to become county employees.)

The D.A.'s office was asked to review the agreement with BCAD again for the 2003-2004 contract year. With minor changes, our office approved everything but the final paragraph – which we are concerned may be prohibited by Article XI, § 7 of the Texas Constitution. The paragraph in dispute

reads as follows:

Article 14. Defense of BCAD

At its sole expense, the County shall defend BCAD, its officers, employees, and agents against any claim, suit or administrative proceeding arising out of an act or omission of the County's officers, employees, or agents under this contract. County shall be solely responsible for all costs, expenses, and damages associated with any litigation which may arise from the installation, operation or administration of 9-1-1 services in Bastrop County, so long as BCAD is performing its duties in good faith under this contract. Neither BCAD nor any other taxing unit in Bastrop County shall be responsible for any such costs, expenses or damages.

We are concerned that this may be an impermissible "indemnification" under Article XI, Section 7 of the Texas Constitution. See, for example, T. & N.O.R.R. Co. v. Galveston County, 141 Tex. 34, 169 S.W.2d 713 (1943) and Attorney General Opinion DM-467 (February 2, 1998). The Bastrop County Commissioners court has directed us to seek an opinion from the Attorney General's Office.

Other facts which may, or may not, be useful in your evaluation include:

- (a) Bastrop County does maintain a general fund none of which is budgeted for the payment of indemnity or liability claims. It also maintains an interest-and-sinking fund, every penny of which has been promised for the payment of existing debt.
- (b) Bastrop County Commissioners Court *did not* "at the time of" approving the contract "adopt an order" levying [any additional] "sufficient tax for future years to pay this debt" per George W. Brown, Jr. v. Jefferson County, Texas et al., 406 S.W.2d 185 (Tex. 1966).
- (c) "[O]ther taxing units" providing funding for the Bastrop County Appraisal District include municipalities, school districts, a utility district and a water district.
- (d) This arrangement is renewed on an annual basis.

While we realize that the Attorney General does not construe contracts, we would request that you render an opinion on the following question:

Does Article XI, Section 7 of the Texas Constitution prohibit a commissioners court from agreeing, under a contract between the county and the Bastrop Central Appraisal District, that the county be solely responsible for all costs, expenses, and damages associated with any litigation which might arise from the installation, operation or administration of 9-1-1 services in Bastrop County so long as BCAD is performing its duties in good faith under this contract?"

Thank you very much for your help, your time – and your guidance.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Bogart".

Barbara Bogart

Assistant District Attorney

CMRRR # 7002 2030 0000 1764 0918

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Bastrop County, Texas*

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OCT 14 2003

OPINION COMMITTEE

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October ⁹~~8~~, 2003

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Office of the Attorney General for the State of Texas
ATTN: Opinions Committee Division
William P. Clements Building
P.O. Box 12548
Austin, Texas 78711

**RE: Renewal of Bastrop County's 9-1-1 Contract with Bastrop County Appraisal District
Specifically: Concern involving possible indemnification**

Dear Opinions Folks:

The Bastrop County Commissioners Court met in a special session on September 30, 2003 to discuss two agenda items. One item involved considering the renewal of the County's contract with the Bastrop Central Appraisal District ("BCAD") for its assistance with 9-1-1 addressing, database program management and office space. This contract was (re)negotiated, apparently with much trouble, in May 1996 and has been renewed annually under its present terms since 2000.

Very simply, under the agreement, BCAD, in addition to providing office space, assigns two full-time employees to work exclusively in carrying out the functions and implementation of the enhanced 9-1-1 data and addressing program. The County agrees to compensate BCAD in an amount not to exceed \$99,956.00. (The BCAD employees receive better benefits through BCAD and do not want to become county employees.).

The D.A.'s office was asked to review the agreement again for the 2003-2004 contract year. With minor changes, our office approved everything but the final paragraph – which we have deemed to be an unconstitutional "debt" under Article XI, § 7 of the Texas Constitution. The paragraph in dispute reads as follows:

Article 14. Defense of BCAD

At its sole expense, the County shall defend BCAD, its officers, employees, and agents against any claim, suit or administrative proceeding arising out of an act or omission of the County's officers, employees, or agents under this contract. County shall be solely responsible for all costs, expenses, and damages associated with any litigation which may arise from the installation, operation

or administration of 9-1-1 services in Bastrop County, so long as BCAD is performing its duties in good faith under this contract. Neither BCAD nor any other taxing unit in Bastrop County shall be responsible for any such costs, expenses or damages.

We are reading this as an impermissible "indemnification" under T. & N.O.R.R. Co. v. Galveston County, 141 Tex. 34, 169 S.W.2d 713 (1943) and Attorney General Opinion DM-467 (February 2, 1998). The Bastrop County Commissioners court has directed us to seek an opinion from the Attorney General's Office.

Other facts which may be significant in your assessment include:

- (a) Bastrop County does maintain a general fund none of which is budgeted for the payment of indemnity or liability claims. It also maintains an interest-and-sinking fund, every penny of which has been promised for the payment of existing debt.
- (a) The Bastrop County Commissioners Court *did not* "at the time of" approving the contract "adopt an order" levying [any additional] "sufficient tax for future years to pay this debt" per George W. Brown, Jr. v. Jefferson County, Texas et al., 406 S.W.2d 185 (Tex. 1966).
- (c) This contract is renewed on an annual basis.

I have enclosed a copy of the contract in its entirety.

Would you please render an opinion on the following question:

Does Article 14, the above-quoted paragraph from the contract proposed to the County of Bastrop, in fact, require Bastrop County to indemnify BCAD within the meaning of Article XI, section 7 of the Texas Constitution?

Thank you very much for your help and your time.

Sincerely,



Barbara Bogart
Assistant District Attorney

CHRRR # 7002 2030 0000 1764 6901