



THE STATE OF TEXAS
 County Attorney
 County of Sabine
 P.O. Box 1783
 Hemphill, Texas 75948

(409) 787-2988
 FAX (409) 787-3884

Robert G. Neal, Jr.
 Sabine County Attorney

Emy Bland
 Legal Assistant

RECEIVED
 MAR 21 2006
 OPINION COMMITTEE

RECEIVED
 MAR 20 2006
 OPEN RECORDS DIVISION

RQ-0466-6A

March 8, 2006

Greg Abbott
 Texas Attorney General
 P O Box 12548
 Austin, Texas 78711-2548

FILE # ML-044697-06
 I.D. # 44697

RE: Request for an Attorney General Opinion

Dear Mr. Abbott:

Enclosed please find questions that the commissioners court of Sabine County has requested an opinion by the Attorney General's office.

Prior to sending these questions to your office, our office submitted these questions to Hospital Board's Attorney and offered him an opportunity to respond to those questions. A copy of his response and cited authorities is enclosed for your convience.

If you need additional information, please feel free to give me a call. Your assistance in this matter is appreciated.

Sincerely,

Robert G. Neal, Jr.
 Sabine County Attorney

Attorney General Questions

- 1) Is the Sabine County Hospital District, which reportedly intends to maintain an ambulance for transporting patients only, required to dispatch this ambulance on an emergency call? (if there is no other ambulance service within the county providing emergency ambulance services.)
- 2) Can the Sabine County Hospital District contract with a physician to provide a complete utilization review and analysis of the emergency room to maximize hospital efficiency and improve healthcare and perform a study for a future hospital operating room and pay the physician a consulting fee of \$85,000.00 If so, does the hospital have to publicly bid this contract? May the hospital district board of directors restrict its discussion of this contract to closed sessions?
- 3) Can the Sabine County Hospital District located within a medically underserved area and a health professional shortage area, enter into a contract with a physician agreeing to pay the physician the sum of \$6,250.00 per month for a period of up to ten months should the physician be unable to organize his practice under a rural health clinic designation. The purpose of the contract was to induce the physician to practice in this area. The physician and the hospital board stated that they believed the practice would be approved and qualify as a rural health clinic. The physician's clinic would be his private practice but the physician would also be performing emergency room services and services to patients in the Sabine County Hospital for compensation.

DAVIS & DAVIS

A PROFESSIONAL CORPORATION

Attorneys and Counselors at Law

POST OFFICE BOX 1588 AUSTIN, TEXAS 78767

9TH FLOOR - ARBORETUM PLAZA I - SUITE 950

9442 CAPITAL OF TEXAS HIGHWAY

AUSTIN, TEXAS 78759

ALEXIS J. FULLER, JR.
SHAREHOLDER

FAX 512-343-0121

512-343-6248

February 28, 2006

Robert G. Neal, Jr.
Sabine County Attorney
P.O. Box 1783
Hemphill, Texas 79548

Re: Sabine County Commissioners Court Request for an Attorney General Opinion

Dear Mr. Neal:

This letter is in response to your correspondence of February 14, 2006, wherein you informed me of the Sabine County Commissioners Court request for an attorney general opinion. You offered the Sabine Hospital Board and its attorney an opportunity to review the minutes and issues therein. I will briefly respond in this letter to each issue in the order in which it was raised. Please note that the correct terminology for the term "closed meeting" is "executive session." The Board meets in an open meeting and may adjourn for purposes of meeting in executive sessions, not closed meetings.

1. Is the Sabine County Hospital District, which reportedly intends to maintain an ambulance for transporting patients only, required to dispatch this ambulance on an emergency call if there is no other ambulance service within the county providing emergency ambulance services?

Section 774.003 of the Texas Health and Safety Code provides that emergency ambulance service may be provided by the commissioners court of a county. *See* attached. The commissioners court may enter into exclusive agreements with a hospital district or other agency or entity to provide efficient emergency ambulance service in the county and may expend county funds to defray the expense of operating and maintaining emergency ambulance service in the county. Likewise, a hospital district is authorized but not required to provide ambulance service. *See* Atty. Gen. Op. H-976 (1977), attached. In addition, the attorney general found the provision of ambulance service to be an auxiliary function of a hospital district and determined that a district could undertake it, but did not have the exclusive duty to do so. *See* Atty. Gen. Op. C-759 (1966), attached.

DAVIS & DAVIS

A PROFESSIONAL CORPORATION

Attorneys and Counselors at Law

2/28/2006

2. Can the Sabine County Hospital District contract with a physician to provide a complete utilization review and analysis of the emergency room to maximize hospital operating room and pay the physician a consulting fee of \$85,000. If so, does the hospital have to publicly bid this contract? May the hospital district board of directors restrict its discussion of this contract to closed sessions?

Pursuant to Chapter 2254 of the Tex. Gov't Code, Sabine County Hospital District may contract with a physician to provide professional and consulting services and pay him a fair and reasonable price. See Section 2254.003 Tex. Gov't Code, attached.

Section 2254.003 provides that a governmental entity may *not* select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but *shall* make the selection and award:

- (1) on the basis of demonstrated competence and qualifications to perform the services; and
- (2) for a fair and reasonable price.

The consulting fee of \$85,000 for Dr. Packard to perform a complete utilization review and analysis of the emergency room also includes the doctor's relocation costs and a recruiting fee to induce the doctor and his family to move to the community. The \$85,000 fee is a fair and reasonable amount to pay for a quality physician of Dr. Packard's caliber who has years of extensive experience in managing, staffing, and providing emergency room services. The District was advised early in the search that the total recruitment package for a physician to move to a remote rural location could be up to \$400,000, which is well above the final negotiated offer to Dr. Packard.

Not only does the Hospital District not have to publicly bid this contract, pursuant to Section 2254.003, Tex. Gov't Code, the governmental entity *may not* select a provider based on public bids.

With respect to whether the hospital district board may restrict its discussion of this contract to closed sessions, Tex. Gov't Code Section 551.071(2) permits a governmental body to consult in an executive session with its attorney on matters which require attorney-client privileged matters where it is the attorney's duty to preserve the confidences of a client.

In addition, Tex. Gov't Code Section 551.087 does not require a governmental body to conduct an open meeting to deliberate the offer of a financial or other incentive to a business prospect that the governmental body seeks to have locate in the area and with

DAVIS & DAVIS

A PROFESSIONAL CORPORATION

Attorneys and Counselors at Law

2/28/2006

which the governmental body is conducting economic development negotiations. Dr. Packard's emergency room consulting agreement constitutes an offer of financial incentive to a business prospect that the governmental body seeks to have locate in the area. Dr. Packard's job description includes the following:

(a) PHYSICIAN shall supervise and assist in the establishment of a fully functioning hospital operating room to support and enhance the delivery of emergency healthcare to the patients of Sabine County Hospital.

As you can see, part of the doctor's job description consists of economic development for the Hospital District, which may be discussed in executive session with the Hospital District's attorney.

3. Can the Sabine County Hospital district located within a medically underserved area and a health professional shortage area enter into a contract with a physician agreeing to pay the physician a sum of \$6,250.00 per month for a period of up to ten months should the physician be unable to organize his practice under a rural health clinic designation. The purpose of the contract was to induce the physician to practice in this area. The physician and the hospital board stated that they believed the practice would be approved and qualify as a rural health clinic. The physician's clinic would be his private practice but the physician would also be performing emergency room services and services to patients in the Sabine County Hospital for compensation.

Sabine County Hospital may pay a physician a fair and reasonable price to provide personal services pursuant to Tex. Gov't Code Section 2254.003. The fact that Sabine County Hospital is located in a medically underserved area and a health professional shortage area makes it more likely than not that Dr. Packard will be able to establish his practice under a rural health clinic designation. Although Sabine County Hospital District does not expect to have to pay this subsidy to the doctor, it was necessary to include this sum in the contract for Dr. Packard to be guaranteed a certain level of income so that he could justify moving his practice and family to this community. The rural health guarantee was a determining factor in Dr. Packard's decision to relocate to Sabine County.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Alex J. Fuller, Jr.

AJF/gl
Enclosure