RICHARD CLARK
Criminal District Attorney
Yoakum County, Texas
P. O. BOX 359 • Plains, Texas 79355
(806) 456-7479 • (806) 456-7480 • (806) 456-2441 Fax

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Ms. Nancy S. Fuller
Attorney General of Texas
Chair, Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-45098-07
I.D. # 45098

RE: May a county own or operate a medical clinic in an adjacent county without the consent of the adjoining county?

Dear Ms. Fuller:

We respectfully request your opinion about the above issue that arises under Chapter 263 of the Texas Health & Safety Code. The Health & Safety Code is the latest installment in the statutory revision program begun in 1963 and conducted in accordance with the provisions of Chapter 323 of the Government Code. Article 4478 V.T.C.S., from which a county commissioners' court previously derived the authority to establish a county hospital, was repealed and recodified in large part in Chapter 263 of the Code.

Yoakum County Hospital (the "Hospital"), was created by Yoakum County pursuant to the above statutory authority to provide medical services to the people of Yoakum County. It is located in Denver City, Texas, which sits on the border of Yoakum County and neighboring Gaines County. We request your opinion as to whether the Hospital can establish and/or operate a clinic in a neighboring county under Chapter 263 or otherwise.

Prior to submitting this Opinion Request, diligent research was performed to address this issue, starting with a thorough review of the plain language of Chapter 263 of the Health & Safety Code. Nothing in the statute explicitly prohibits a county hospital from operating a clinic in an adjacent county. Although no language in the statute squarely addresses our issue, several sections of Chapter 263 of the Health & Safety Code provide insight into the issue.

According to the Texas Supreme Court, the primary objective when construing a statute is to give effect to the Legislature's intent. *McIntyre v. Ramirez,* 109 S.W.3d 741, 745 (Tex. 2003). If the plain and common meaning of the statutory language is unambiguous, the Court

will interpret the statute according to its plain meaning. *Id.* If the statute is ambiguous, the Court may consider other matters in ascertaining the Legislature's intent, including the objective of the law, the legislative history, and the consequences of a particular construction. *Id.*

Chapter 263, as a whole, is ambiguous concerning operation beyond county boundaries. Determining legislative intent requires consideration of the objectives of the law and the consequences of particular constructions. Chapter 263 begins with a provision §261.001 describing cooperation of two counties in forming a joint county hospital system. Section 263.080 states that a county hospital "shall" admit a resident of an adjacent county if there is a contract between the counties.

Section 263.050 gives the board of managers of a county hospital the authority to establish and operate "an outpatient department or a free dispensary and clinic at the hospital or in the municipality located nearest the hospital." *Health & Safety Code Section 263.050(1).* Construing the predecessor statute (Article 4478, V.T.C.S.), the Attorney General determined that Liberty County could purchase equipment for a clinic upon voter authorization to establish a hospital, without having to establish and operate a hospital. *Op. Atty. Gen. 1940, No. 0-2580-A.*

Although the statute has been revised since the time of this Opinion, it appears to be the only Opinion addressing a county hospital's ability to operate a clinic. Section 263.050 and this Opinion appear to provide some latitude for a county in establishing a medical clinic, although Section 263.050 suggests that a clinic must be in the municipality nearest to the hospital. It should be noted that, unlike Section 263.050(2), which allows for the establishment and operation of a clinic "located in the county," Section 263.050(1) contains no such limitation. Based on principles of statutory construction, this omission could be taken as some evidence of legislative intent to allow a county hospital to establish and operate a clinic in an adjacent county under Section 263.050(1).

Section 263.05 leaves open whether the "municipality nearest the hospital" must be inside the county. Obviously it can be an argument also made based on rules of statutory construction and the overall purpose of Chapter 263, that the municipality does not have to be in the county. It is a rule of statutory construction that every word **excluded** from a statute must be presumed to have been **excluded** for a purpose. *Quick v. Austin,* 7 S.W.3d 109, 123 (Tex 1998); *Laidlaw Waste Sys., Inc. v. City of Wilmer,* 904 S.W.2d 656, 659 (Tex. 1995). That "in the county" was purposefully excluded is supported by its **inclusion** in the following Section, 263.050(a)(2). This suggests that the Legislature made a conscious distinction between the two provisions. Therefore, the exclusion "in the county" from Section 263.050(a)(1) can be deemed purposeful absent clear legislative intent otherwise.

Section 263.080 of the statute also demonstrates legislative intent to allow a county hospital to provide care that includes residents of adjacent counties. In summary, Section 263.080 allows a county hospital to provide care to residents of adjacent counties provided there is sufficient provision of care for the residents of the county with the hospital, and provided that the adjacent county has contracted with the board of managers of the county hospital for treatment of its residents. *Health & Safety Code, Section 263.080(1)-(3).* There do not appear to be any court opinions or Attorney General Opinions construing this section of the statute.

Section 263.001 provides the further support for legislative intent to allow a county hospital to provide care in an adjacent county. It states:

> (a) Two or more adjacent counties may act together to carry out the purposes of this chapter and construct one or more hospitals for their joint use as provided by this chapter for a single county if:
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> (1) each of the counties has fewer than 15,000 inhabitants; and
> (2) the Texas Board of Health approves.
>
> (b) The counties acting together have the same powers and liabilities under this chapter as a single county.

It appears that this section has only been interpreted in one legal opinion. *Glasscock v. Wells*, 171 S.W. 782 (Tex. Civ. App. 1914, error refused). In that case, the court differentiated between a hospital operated jointly by a city and a county, and a county hospital. *Id.* Although Sections 263.001 and 263.080 together demonstrate legislative intent to allow county hospitals to serve residents of adjacent counties, the sections do not speak to the issue of medical clinics, and are therefore not determinative on the issue raised in this Opinion Request.

The overriding general purpose of Chapter 263 is to ensure access to health care services for all citizens of Texas, regardless of where they live, and that the statute provides counties a mechanism and flexibility for doing so in response to demographic variability. This theme pervades the Chapter. Section 263.023 is titled, "Construction of Hospital to Avoid Inadequate Care in Certain Counties." Section 263.028 allows lightly populated counties to contract with an assortment of care providers. Section 263.001 allows counties to create joint county hospital systems, implicitly recognizing that operating independently may be impractical for some counties. Finally, Section 263.080 forces county hospitals to admit patients from adjacent counties in certain circumstances, supporting the overall goal of providing care to those in need, regardless of their county of residence.

Section 263.022(c), is one of only a few sections added to Chapter 263 since the early part of the 20th Century. It was added in 1987 and reads as follows:

> (b) In order to accomplish any purpose authorized in this chapter the Commissioners Court may purchase or lease real or personal property or both in the county. **If considered necessary for hospital purposes the Commissioners Court may purchase or lease real or personal property or both in an adjacent or adjoining county and operate same for the care and treatment of persons suffering from any illness, disease or injury, subject to the provisions of this chapter.** Nothing herein shall be construed to grant the Commissioners Court the power to acquire such real property in an adjacent or adjoining county by condemnation proceedings. However, this subsection does not affect the authority of the Commissioners Court to acquire real property and easements in its own county by condemnation proceedings. Acts 1987, 70th Leg., ch. 737, § 1.

In 1989 the Legislature codified V.A.C.S. Art. 4478 into the Health & Safety Code, and, in the process, slightly revised Section 263.022 (c) to state as follows:

> Subject to this chapter, the commissioners court may purchase or lease real or personal property, or both, in an adjacent county if the court considers the purchase or lease necessary for hospital purposes. The commissioners court may not acquire real property in an adjacent county by condemnation. Acts 1989, 71st Leg., ch. 678, § 1.

The current Section 263.022(c) and the predecessor version fit in with the broad purpose of Chapter 263 described above; to encourage the development of health care services by counties, and to provide counties flexibility in providing health care to those in need.

Section 263.080 does not appear to limit Section 263.022(c). Section 263.080 is phrased such that, under certain circumstances, a county hospital **must** admit patients from an adjacent county. It does not prohibit counties from providing services on their own volition. According to the Court, "Every word excluded from a statute must... be presumed to have been excluded for a purpose." *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540, 24 Tex. Sup. Ct. J. 265 (Tex. 1981). Further, "Additional language is read into a statute 'only when it is necessary to give effect to the clear legislative intent.'" *Id.* (citing *Mauzy v. Legislative Redistricting Bd.*, 471 S.W.2d 570, 572 (Tex. 1971)).

This rule of construction applies to interpreting Section 263.022(c) in the context of Chapter 263 as a whole. There is no prohibition against operating a clinic in an adjacent county, and there is no requirement that a county must have a contractual arrangement for any services provided at a location in an adjacent county.

Finally, the power to own and operate a clinic in an adjacent county can be inferred from the express powers granted by the Legislature in Section 263.022(c), and throughout Chapter 263 as a whole. Political subdivisions of the State have only such powers as are granted by statute, but this includes powers necessarily implied as incident to the express powers given. *Harris County Water Control & Improv. Dist. v. Houston,* 357 S.W.2d 789 (Tex. Civ. App.—Houston [1st Dist.] 1962, writ ref'd n.r.e.) Political subdivisions' implied powers have long been recognized by the courts and the Attorney General.[1] The implied power to operate a clinic in an adjacent county flows logically from the express power to own or lease property in an adjacent county, and from the general purpose of Chapter 263.

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[1] Tex. Att'y Gen. Op. No GA-0188 states, "A hospital district may only exercise those powers expressly delegated to it by the legislature, or those existing by clear and unquestioned implication." *See Mascarenhas v. Meridian Hosp. Auth., 560* F.2d 683, *685* (5th Cir. 1977) (citing *Tri-City Fresh Water Supply Dist. No. 2 v. Mann,* 142 S.W.2d 945,946 (Tex. 1940) with respect to the authority of special districts); *Jackson County Hosp. Dist. v. Jackson County Citizens for Continued Hosp. Care*, 669 S.W.2d 147,154 (Tex. App. Corpus Christi 1984, no writ); Tex. Atty Gen. Op. Nos. GA-0102 (2003) at 4, JC-0268 (2000) at 1."

Section 263.022 has been interpreted by courts and the Attorney General in a number of opinions, although there does not appear to be any authority construing Section 263.022(c) specifically. However, this section of the statute suggests legislative recognition of the necessity of establishing and/or operating facilities in an adjacent county if it is "necessary for hospital purposes." *Health & Safety Code, Section 263.022(c).*

Because the plain language of Chapter 263 does not squarely address the issue presented, a thorough review of case law and Attorney General Opinions has been conducted in an attempt to address our question. In one case relating primarily to a county's ability to lease facilities for use by doctors, an appellate court stated, "Article 4478 clearly gives the Commissioners' Court power to establish a county hospital and "any medical or other health facilities." *Sullivan v. Andrews County,* 517 S.W.2d 410, 412 (Tex. Civ. App. El Paso 1974, writ ref'd n.r.e.).

The Attorney General addressed this same issue in a 1976 Opinion. *Op. Atty. Gen. 1976, No. H-1033.* In this Opinion, the Attorney General determined that, "Waller County may build and maintain a medical clinic without submitting the decision to a vote of the people." *Id.* at 9. Earlier in the Opinion, the Attorney General stated:

> Although it might be argued that the statute's grant of authority to the commissioners' court "subject to the provisions of this chapter" requires an affirmative vote in a bond election as a prerequisite to the establishment of any hospital or other medical facility, it is our view that the statute confers broad authority upon a county to "establish" such facilities. *Id.* at 4.

The overriding general purpose of Chapter 263 is to ensure access to health care services for all citizens of Texas, regardless of where they live, and that the statute provides counties a mechanism and flexibility for doing so in response to demographic variability. This theme pervades the Chapter. Section 263.023 is titled, "Construction of Hospital to Avoid Inadequate Care in Certain Counties." Section 263.028 allows lightly populated counties to contract with an assortment of care providers. Section 263.001 allows counties to create joint county hospital systems, implicitly recognizing that operating independently may be impractical for some counties. Finally, Section 263.080 forces county hospitals to admit patients from adjacent counties in certain circumstances, supporting the overall goal of providing care to those in need, regardless of their county of residence.

Taken together, the legal authorities we have reviewed suggest that a county has significant discretion to establish and operate medical clinics, both in and outside of county boundaries. The plain language of the statute suggests that there may be some limitations on the location of medical clinics in adjacent counties, but the statute does not speak directly to this point. Based on this ambiguity, we respectfully request your opinion as to the following question: Can a county hospital establish and/or operate a medical clinic in an adjacent county, without the consent of the adjacent county whether under the authority of Chapter 263 of the Health & Safety Code or otherwise?

Thank you for your consideration of this matter.

Yours,

RICHARD CLARK
Criminal District Attorney

RC/cd
Cc: Hon. Jim Barron
Clay Taylor
Darinda McWhirter

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