



**RECEIVED**

FEB 04 2008

**OPINION COMMITTEE**

**COUNTY AUDITOR**

CAMERON COUNTY, TEXAS

P.O. BOX 3846

BROWNSVILLE, TX 78520

(956) 544-0822; fax (956) 548-9527

FILE # ML-45535-08

I.D.# 45535

**Robert A. Almon**  
**COUNTY AUDITOR**

**RQ-0672-GA**

February 1, 2007

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: *Attorney General Opinion Request as authorized by V.T.C.A., Govt. Code, Sec. 402.042(a)&(b)(8).*

Dear General Abbott,

#### ISSUE

Indigent health care service providers, invoiced the County for fiscal year 2006-07 for \$2,220,929.96 more than the County had anticipated to be paid without the use of future tax revenues.

1. Is this a "debt" within the meaning of Article XI, Section 7 of the Texas Constitution?
2. If it is a "debt" within the meaning of Article XI, Section 7 is it an "unconstitutional debt" prohibited by the Texas Constitution?
3. If it is an "unconstitutional debt" can it be ratified or paid by the Cameron County Commissioners Court?
4. If it is an "unconstitutional debt" is the Cameron County Auditor prohibited from approving the claims under V.T.C.A., Local Govt. Code, Sec. 113.065?

#### FACTS

The undersigned Cameron County Auditor, Rob Almon, was appointed by the District Judges of Cameron County under V.T.C.A., Local Govt. Code, Sec. 84.003. On December 18, 2007, he was administered the oath of office under Sec. 84.007, and is currently the Cameron County Auditor authorized by law. He was not the Cameron County Auditor for relevant times discussed in this Opinion Request.

The County Auditor's Office has been, until Fiscal Year 2007-08, administering the County's Indigent Health Care Program, including reviewing and paying invoices for health care services. Each year for the past unknown number of years the Auditor has discontinued the payment for most health care services when available funds became limited. It is my understanding that after funds became limited priority was placed on paying for gatekeeper physician services. Other Service Providers who had provided or continued to provide health care services, including but not limited to prescription drugs, would not be paid until funds were available at the beginning of the next fiscal year. In other words, after funds set aside for indigent health care were exhausted, indigent healthcare for eligible county residents provided for the remainder of the fiscal year would be paid out of the general tax revenue from the subsequent fiscal year.

On or about May 31, 2007, the County Auditor sent a letter to Indigent Health Care Service Providers advising them, among other things, that the County did not have funds

"... sufficient to keep our program operating in the fashion that provides assistance for all services we have supported in the past few months. Our primary goal is to serve as many people with the funds left. Our first priority is to continue the gatekeeper physician services. Anything that can be feasibly provided in the next fiscal year, based upon your medical opinion, can be addressed then. We are in no way asking you to forego any medically necessary procedures you deem essential. Because the County's program is an 'Assistance' program, and our resource for this assistance is extremely limited, we need to inform those medical service providers that the County's funds are insufficient to cover all of the demands. Our program, once again, becomes fully funded for services beginning September 1, 2007." (A copy of the letter is attached as Exhibit "1")

The minutes of the June 12, 2007, Regular Meeting of the Cameron County Commissioners Court reflect the following: "Mr. Mark Yates, County Auditor, presented to the Court an update on the status of indigent healthcare claims. He stated that the approved budget was \$3,938,844 and through May 31, 2007, \$3,352,430.83 has been spent. He stated that a letter has been sent out to providers asking them to defer claims until the beginning of the new fiscal year." (A certified copy of the minute is attached as Exhibit "2".)

However, beginning September 1, 2007, the County contracted with Valley Baptist Medical Centers in Brownsville and in Harlingen (per authority of V.T.C.A., H & S Code, Sec. 61.029(1)) to ensure that the indigent have access to and receive quality health care services. As part of the agreement the County obligated its ad valorem tax revenues as defined in Chapter 61 of the Texas Health and Safety Code to provide the funding necessary for the non-federal share of the Medicaid supplemental payment program.

The 2006-07 budget approved by the Commissioners Court for payment of indigent health care services (excluding overhead) was \$3,938,843.00. The actual expenditure for fiscal year for this purpose was \$3,918,589.66. This is a total which includes the County's 8% of general tax revenues per V.T.C.A., H & S Code, Sec. 61.037, and the State's allotted matching share per Secs. 61.038 and 61.039.

As of August 31, 2007, the outstanding invoices from health care vendors for health care services to the County's indigent totaled \$2,220,929.96. As of May 31, 2007, the outstanding invoices totaled \$1,611,110.21. It is my understanding that these totals reflect when the service was provided, not when the invoices were received.

For the 2006-07 fiscal year the County had written contracts with three gatekeeper physicians and with UTMB Galveston. Included in the outstanding balance is \$46,515.19 due the gatekeepers and \$40,680.87 due UTMB Galveston. The remaining outstanding balance is based on running accounts with the service providers; that is, the service provider provided the health care service to the eligible county resident and submitted the bill for the health care service to the County.

It is my understanding that by the end of February, 2007, the County had spent eight percent of the general revenue levy for fiscal year 2006-07 as required to qualify for State assistance funds. The State Department of Health determined that the County was eligible for assistance. But, by the end of May the County Auditor had determined that there would be insufficient funds from the County or from State assistance to cover all demands until the next fiscal year.

It is my understanding that after the County's eight per cent and the State's assistance under Sections 61.038 and 61.039 were exhausted in fiscal year 2006-07, the only funds sufficient to meet the indigent care demands would have been the County's fund balance.

### INDIGENT HEALTH CARE LAW

The Indigent Health Care and Treatment Act is found in Chapter 61 of the Texas Health & Safety Code. Subchapter B, Sections 61.021, *et seq.*, apply to eligible county residents who do not reside in the service area of a public hospital or hospital district.

Section 61.033(a) states, in pertinent part: "**To the extent prescribed by this chapter**, a county is liable for health care services provided under this subchapter by any provider; including a public hospital or hospital district, to an eligible county resident." (Emphasis added.)

"To the extent prescribed by this chapter" has two important limitations:

1. The maximum county liability for each state fiscal year for health care services provided by all assistance providers to each eligible county resident is \$30,000, (Sec. 61.035); and,
2. A county's statutory liability for payment to health care providers for health care services provided to eligible county residents ceases each state fiscal year after the state stops providing 90 percent matching funds. (Secs. 61.037, 61.038, & 61.039.)

A county must spend in a state fiscal year at least eight percent of the county general revenue levy for that year to provide health services to eligible county residents, (Sec. 61.037) to qualify for State funds. Thereafter, if the Texas Department of Health fails to provide assistance to an eligible county as prescribed by Sec. 61.038, the county is not liable for payments for health care services provided to its eligible county residents after the county reaches the eight percent expenditure level, (Sec. 61.039). Section 61.038 requires the Texas Department of Health to disburse state funds to eligible counties equal to at least 90 percent of the actual payment for the health care services for the county's eligible residents during the remainder of the state fiscal year after the eight percent expenditure level is reached.

At the beginning of the State's fiscal year, September 1, 2006, the Texas Department of health advised the County that it would provide a maximum of \$1,111,415.20 for its 90% match during the State's 2006-07 fiscal year.

## COUNTY DEBT

Article XI, Section 7 of the Texas Constitution as it applies to county debt provides:

“But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund.”

The term “debt” as used in Article XI, Sec. 7 has been uniformly held by the courts of this State to mean “any pecuniary obligation imposed by contract, except such as were, at the date of the contract, within the lawful and reasonable contemplation of the parties, to be satisfied out of the current revenues for the year, or out of some fund then within the immediate control of the corporation.” *Stevenson v. Blake*, 113 S.W.2d 525, 527 (Tex. 1938); and, A.G. Opinion V-1556 (1952).

### STANDARD TO DETERMINE UNCONSTITUTIONAL DEBT

“A county may incur or assume a financial obligation to pay a sum certain without establishing an interest and sinking fund if it is payable from ‘current revenues.’ Current revenues are those funds which the county has on hand or at its disposal or are anticipated to be received during the current year. **Whether any particular debt is payable from current revenues is a factual question and depends in part upon the contemplation of the parties at the time the debt was incurred and upon the financial condition of the county.** The repayment of the debt during the current year does not necessarily have to be provided for in the budget at the time the debt is incurred. If, as it turns out, the debt is not repaid from current revenues as had been anticipated, the obligation will not be rendered invalid. **The critical question is whether at the time the debt was incurred it was anticipated to be repaid without the use of future tax revenues.**” (Emphasis added.) Brooks, 35 Tex. Prac. Series, Sec. 12.19, Debt – Current Revenues.

### DISCUSSION ON UNCONSTITUTIONAL DEBT

Applying this standard to the facts recited above, the County contemplated paying the health service providers for health services provided to eligible county resident from current revenues as budgeted (\$3,938,843.00).

The debt for health care services provided in fiscal year 2006-07 would not be constitutionally invalid if the Commissioners Court contemplated paying for all indigent health care services rendered in 2006-07 without the use of 2007-08 tax revenues. See for instance, *Guerra v. Rodriguez*, 274 S.W.2d 715, 719-20 (Tex.App. – Austin 1955); *Colonial Trust Co. v. Hill County*, 294 S.W. 516, 517-18 (Tex. 1924); and, A.G. Opinion V-1956.

However, to the extent that the Commissioners Court contemplated paying for 2006-07 indigent health care services with 2007-08 general tax revenues the debt would be unconstitutional, and cannot be ratified or paid by the County. See for instance, *Stevenson v. Blake*, supra, at 107; *Andrus v. Crystal City*, 265 S.W. 550, 552 (Tex. 1924); and, *McNeill v. City of Waco*, 33 S.W. 322, 324 (Tex. 1895).

According to *Brooks*, supra, “the critical question is whether at the time the debt was incurred


it was anticipated to be repaid without the use of future tax revenues." The bottom line is in fiscal year 2006-07 the County did not anticipate paying more than the amount budgeted for indigent health care. And, according to the County Auditor (see, June 12, 2007, minute of the Regular Commissioners Court meeting) after May 31<sup>st</sup>, 2007, the County anticipated paying for 2006-07 indigent health care services, if at all, after all County and State funds set aside for indigent health care in Cameron County for the 2006-07 fiscal year had been spent, with 2007-08 general tax revenues. To the extent that the payment of indigent health care providers is considered a debt within the meaning of "debt" in Art. XI, Sec. 7, these facts would create an invalid debt under Art. XI, Sec. 7.

The May 31<sup>st</sup> letter from the Auditor could also be read to mean that after the remaining 2006-07 limited funds were exhausted, the County would not pay for any indigent health care services provided in 2006-07, which would create no obligation or debt. Two sentences in the letter support this conclusion: "Anything that can be feasibly provided in the next fiscal year, based upon your medical opinion, can be addressed then." And, "Our program, once again, becomes fully funded for services beginning September 1, 2007." This interpretation of the letter, however, conflicts with the explanation of the letter given by the Auditor in the June 12<sup>th</sup>, Regular Meeting of the Commissioners Court that "... that a letter has been sent out to providers asking them to defer claims until the beginning of the new fiscal year."

The other consideration in determining whether a particular obligation is an invalid debt under Art. XI, Sec 7, according to *Brooks, supra*, is the financial condition of the County. However, the financial condition of the County does not appear to be an issue as there were available funds (general fund) to pay the debt, at such times as it was the anticipation of the County to pay the debt without the use of future tax revenues. This element would be relevant if the County did not have sufficient funds to pay the debt because one can not contemplate paying a debt out of current revenues that are insufficient. See for instance, *Toole v. First Nat. Bank of Hemphill*, 168 S.W. 423 (Tex.App. - Galveston 1914)(Contract to drill a water well on the county square created a constitutionally invalid debt because there were no existing nor prospective funds derived from general current revenues available to meet the obligation imposed by the contract. Neither the contractor nor the county could reasonably contemplate payment from current revenues.) Thus "financial condition" is relevant only if other facts support the contention that the County contemplated paying the debt from current revenues, but that current revenues were, without intervening causes, insufficient. ("Without intervening cause" here means that it was contemplated or anticipated that a claim would be satisfied from current funds, but could not be paid from current funds for a cause not known at the time such as failure to collect the taxes, robbery, embezzlement or wrongful diversion of the funds. See, *McNeill, supra*, at 324; and A. G. Opinion V-1556.)

Thank you for your attention to the Request.

Respectfully submitted,



Rob Almon  
Cameron County Auditor

CC: Commissioners' Court  
Pete Sepulveda, County Administrator

COUNTY AUDITOR  
CAMERON COUNTY, TEXAS  
P.O. Box 3846  
Brownsville, Texas 78520  
(956) 544-0822

Mark A. Yates, CPA  
COUNTY AUDITOR

EXHIBIT 1  
May 31, 2007

Dear Service Providers:

The Cameron County Indigent Health Care Program exceeded its local funds by the end of February 2007. At that time, the County had expended \$2.2 Million to serve those who are in need. The State provided an additional \$1.1 Million in supplemental funding to continue the program. The County matched these state funds with an additional 10 percent. Through May 2007, the Indigent Health Care Program has provided \$3.333 Million in funding for health care services. We have served approximately 2,265 individuals averaging a little over \$1,354 each, with about 0.2% of the participants' having total claims exceeding \$30,000.

Although the Texas Department of State Health Services had over \$990,000 in state matching funds that went unspent last year, Cameron County can only draw down up to 20% of the State's annual allocation. Next year, the State will cap the County at 10% of the State allocation, or roughly \$510,000. While our need for resources and services are growing, the help the county is getting at the state level is shrinking.

While we are very grateful for these additional resources, they are not sufficient to keep our program operating in the fashion that provides assistance for all services we have supported in the past few months. Our primary goal is to serve as many people with the funds left. Our first priority is to continue the gatekeeper physician services. Anything that can be feasibly provided in the next fiscal year, based upon your medical opinion, can be addressed then. We are in no way asking you to forego any medically necessary procedures you deem essential. Because the County's program is an "Assistance" program, and our resource for this assistance is extremely limited, we need to inform those medical service providers that the County's funds are insufficient to cover all of the demands. Our program, once again, becomes fully funded for services beginning September 1, 2007.

We appreciate the service you provide, we are expecting to continue to compensate the gatekeeper physicians through the end of the fiscal year. We will inform those physicians who receive our referrals that financial assistance from the County has been exhausted. Please call me if you have any questions at (956) 544-0822.

Sincerely,



Mark A. Yates, CPA  
Cameron County Auditor  
(956) 550-1398 or [myates@co.cameron.tx.us](mailto:myates@co.cameron.tx.us)