OFFICE OF THE COUNTY ATTORNEY
Potter County, Texas

SCOTT BRUMLEY
COUNTY ATTORNEY

CIVIL DIVISION

DAVID G. KEMP
First Assistant County Attorney
C. WADE OVERSTREET
Civil Division Chief
PHILLIP M. CARTER
CHARLES GRIFFIN
SHIRLEY VESSEL, AVIS SNYDER
Paralegals

Writer's direct e-mail:
davidkemp@co.potter.tx.us

January 26, 2010

FILE # ML-46321-10
I.D. # 46321

RQ-0856-GA

Hon. Greg Abbott
Attorney General of Texas
Attention: Opinion Committee
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Re: Amarillo Hospital District
Procedure for Ad Valorem Tax

Dear General Abbott:

On behalf of the Amarillo Hospital District, we request your opinion regarding taxing authority.

BACKGROUND

The Amarillo Hospital District (" AHD" or "District") was created in 1959 pursuant to Article IX, Section 5(a) of the Texas Constitution, with the stated purpose of such creation being the assumption of the responsibility of providing medical and hospital care for indigent persons. TEX.CONST. Art. IX, § 5(a). The organic statute provides that AHD is a "body politic and corporate" whose functions "are governmental and public" with the "full responsibility for providing medical and hospital care for the district's needy and indigent residents." TEX. SPEC. DIST. CODE ANN. §§ 1001.002, 1001.101 (Vernon Pamphlet 2009); Tri-*City Fresh Water Supply Dist. No. 2* v. *Mann*, 142 S.W. 2d 945, 946 (Tex. 1940). [1]

In order to fund its responsibilities, the District is authorized to impose a property tax "for the benefit of the district" and such tax may be "used to (1) [pay debt]; (2) provide for the operation and maintenance of the hospital." § 1001.401 (a); § 1001.401(c). In fact, the Texas Constitution intends that a hospital district be able to fund its maintenance and operations via a property tax. Op. Tex. Att'y Gen. No. JC-0220 (2000).

In February, 1996, AHD sold and transferred its hospital, Northwest Texas Hospital, and other assets to Universal Health Systems of Amarillo, Inc., a Texas corporation and wholly owned subsidiary of Universal Health Services, Inc., a Delaware corporation ("UHS"). As part of the consideration for the sale, and pursuant to Chapter 61 of the Texas Health & Safety Code,

1 All statutory references following are to TEX. SPEC. DIST. CODE ANN. (Vernon Pamphlet 2009) unless otherwise indicated.

500 South Fillmore Street, Room 303
Amarillo, Texas 79101
Telephone: (806) 379-2255 Telecopier: (806) 379-2267

UHS agreed with AHD to assume and perform the District's obligation to provide for healthcare services to the indigent and needy residents of the District.

The 1996 sale of NWTH did not relieve AHD of this obligation, and the proceeds of the sale were placed into an account used by AHD to pay for indigent health care programs. It was estimated that the proceeds plus earnings would be sufficient to fund indigent care for 25 years (2021), without the necessity of levying a property tax. Accordingly, since 1996, the District has continued to adopt an annual budget but has had no fiscal need to set a rate or levy a tax.

Had it chosen to do so, earlier authority from your office holds that the District could have levied a tax for its purposes even though the District did not own or operate a hospital. In 2000, under nearly identical circumstances to AHD, the AG said that the mission of the Garza Hospital District was broader than merely operating a hospital; that it had a broader mandate to provide medical care, not merely to own a hospital. If the District incurred expenses related to providing medical care to the District's needy residents, then the District could continue to tax:

> *"The tax is authorized for the district's maintenance and operating expenses, not those of a hospital. Thus it is not limited to maintenance and operation expense of a physical hospital, but instead relates more broadly to the lawful expenses of the hospital district."*
> --Op. Tex. Att'y Gen. No. JC-0220 at 6.

To support that conclusion, the AG discussed several provisions in the enabling legislation of the Garza Hospital District, much of which is the same or similar to AHD enabling legislation. The enabling legislation for AHD, as with the Garza Hospital District, prohibits any other entity from assessing a tax for medical or hospital care within the boundaries of the district. TEX. CONST., art. XI, sec. 5(a); § 1001.102. The opinion reasoned that if no other entity can assess a tax to care for the indigents, because that mandate is shifted to the district, then it is unreasonable to expect the Constitution to assign such a mandate without giving the district a corresponding ability to pay for it:

> *"Again, if the District has the responsibility for indigent medical care, it must pay for it; it can only reasonably do that if the tax is available for that purpose...Authority to levy and use proceeds for the District's needy residents' hospital and medical care is neither limited to nor contingent on ownership or operation of a physical hospital....Thus, a hospital district must arrange and pay for medical care even when it does not own or operate a hospital."*
> --JC-0220, at 8. (emphasis added).

Not owning a hospital does not yield a district without expenses; a need to tax could exist even after selling a hospital, in order to pay both for indigent care and other authorized programs the District may elect. A day will come when AHD finds a fiscal necessity for tax revenue.

QUESTION PRESENTED

Mindful of this eventuality, the District asks its question: What process does the District follow for setting a rate after several years of not doing so?

DISCUSSION

The Tax Code does not contemplate that a governmental entity having a property tax would cease that tax and then re-start it. Consequently, the mandatory provisions for setting a

500 South Fillmore Street, Room 303
Amarillo, Texas 79101
Telephone: (806) 379-2255 Telecopier: (806) 379-2267

current year rate presume that there will always be a 'prior', 'last' or 'preceding' tax year to be used in the mandatory calculations, comparisons, and notices. For example:

- The formula for calculation of effective tax rate begins with *last year's* levy. TEX. TAX CODE ANN. § 26.04 (c) (1) (Vernon 2008).
- The order adopting the tax must include specific language "if the . . . order sets a tax rate that . . . will impose an amount of taxes to fund maintenance and operation expenditures of the taxing unit that exceeds the amount of taxes imposed for that purpose in the *preceding year.*" TEX. TAX CODE ANN. § 26.05(b) (Vernon Supp. 2009).
- The published notices of a public hearing on a tax increase must include a comparison of the proposed tax rate to "*the preceding* tax year"). *Id.* at § Sec. 26.06 (b).

The calculation of an effective tax rate and rollback rate when no tax has been collected for the previous year presents a particular challenge for the District. An attempt to follow the literal language of the statute in calculating the effective tax rate and the rollback rate yields an absurd result: both the effective tax rate and the rollback rate are equal to zero. This is apparent if the formulas specified in the Tax Code are followed, with the assumption being that zero percent is the value for last year's tax levy:

EFFECTIVE MAINTENANCE AND OPERATIONS RATE =

LAST YEAR'S LEVY – LAST YEAR'S DEBT LEVY – LAST YEAR'S JUNIOR COLLEGE LEVY

Divided by (CURRENT TOTAL VALUE – NEW PROPERTY VALUE)

With a tax levy of zero %, this formula simplifies to:

$$0 \div (\text{PROPERTY VALUE}) = 0\%$$

--TEX. TAX CODE ANN. § 26.012 (9) (Vernon 2008).

The figure of zero percent for "Effective Maintenance and Operations Rate" then becomes the basis for calculating the Rollback Rate:

ROLLBACK RATE = (EFFECTIVE MAINTENANCE AND OPERATIONS RATE X 1.08) + CURRENT DEBT RATE

$$= (0 \times 1.08) + 0 = 0\%$$

--*Id.*, § 26.04 (c) (2).

In short, the adoption of <u>any</u> tax rate would subject the District to a rollback election. *Id.* at § 26.07 (a). While this may be only a mathematical curiosity, it has the potential to derail the responsibility of the District to provide indigent care were an election to be held, and the tax rate "rolled back" to the effective rate, i.e., zero.

500 South Fillmore Street, Room 303
Amarillo, Texas 79101
Telephone: (806) 379-2255 Telecopier: (806) 379-2267

All of the above suggests that a better option exists rather than to try to apply Chapter 26 of the Tax Code when no tax has been adopted over the past several years.

The courts are generally required to strictly construe and enforce tax statutes. Therefore, one might argue that Texas law simply does not allow AHD to restart its taxes, and that AHD taxes have inadvertently been entirely eliminated. However, the rules of construction also require legal interpretations that produce just, reasonable, and feasible results. TEX. GOV'T CODE ANN. § 311.021 (Vernon 2005). Where the Constitution and chapter 1001 of the Special District Code impose responsibilities on AHD, it is legally inconsistent, unreasonable, and not feasible to construe the tax statutes so as eliminate a district's ability to pay for its mandated responsibilities.

The voters approved the formation of the Amarillo Hospital District, with the authority to assess and collect an *ad valorem* tax on all property within the boundaries of the District. From 1959 to 1996, the AHD consistently followed the law by adopting an annual budget and then adopting a tax rate, which when applied to the assessment roll, would produce sufficient revenue to meet the budget. Since 1996, the AHD has continued to lawfully adopt an annual budget, but due to the sale proceeds or corpus, it has not set a tax rate or assessed a tax due to no fiscal necessity. This is consistent with the principle that a taxing entity must to a reasonable extent set its tax rate to cover its budget. Interestingly, the referendum on the sale of the hospital simply addressed the question of whether to sell; it was silent on taxes. So arguably, the taxing authority of the AHD was unaffected by that vote and remains intact.

In light of this, the solution is to put the District in the posture of a new entity setting its budget and tax rate for the very first time, *without reference to* any prior tax rate, effective rate calculation, or notice/roll back calculation during that first tax year. [2] Subsequent tax rates would then be adopted pursuant to the provisions of Chapter 26 of the Tax Code. In response to the argument that the taxpayer is not protected, there are constitutional and statutory provisions that offer comfort. First, the Texas Constitution provides that before the District adopts a tax rate that exceeds the preceding year's rate, it must "give notice of its intent to consider an increase in taxes and [hold] a public hearing on the proposed increase." TEX. CONST. art VIII, § 21. [3] Second, the Special District Local Laws Code limits the amount of ad valorem tax the District may impose to 75 cents on each $100 valuation. § 1001.401. Finally, it is worth emphasizing that the use of the tax revenue is limited to the purposes of the District, i.e., "operating hospital facilities and providing medical and hospital care for the district's needy residents." SPEC. DIST. LOCAL LAWS CODE § 1004.101 (Vernon Pamphlet 2009).

Given these protections, this approach balances the protection and interest of the taxpayers while still allowing the District to fulfill the responsibilities set out for it in Texas law.

CONCLUSION

In re-instituting an ad valorem tax, the District should proceed as if a tax rate had not been previously adopted, i.e., as a new tax entity would do. In subsequent years, the tax rate would be set according to the full provisions of Chapter 26, Tax Code. This approach produces a just, reasonable, and feasible result that allows the District to obtain revenue to fund its mandated duties when the need arises.

---

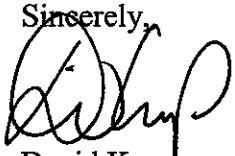
2 This solution is suggested in a letter dated November 24, 2009, from the Texas Comptroller to Mr. Marcus Norris, Amarillo City Attorney. The letter refers to the Truth in Taxation materials for 2000. A copy of the letter is attached to this request.

3 We suggest that there are provisions of Chapter 26 of the Tax Code that could and probably should be followed to the extent possible in order to assure the public is informed of the proposed tax increase.

500 South Fillmore Street, Room 303
Amarillo, Texas 79101
Telephone: (806) 379-2255 Telecopier: (806) 379-2267

We look forward to your opinion.

Sincerely,



David Kemp
Assistant County Attorney

c: Mr. Marcus Norris – City of Amarillo

500 South Fillmore Street, Room 303
Amarillo, Texas 79101
Telephone: (806) 379-2255 Telecopier: (806) 379-2267

SUSAN COMBS
TEXAS COMPTROLLER of PUBLIC ACCOUNTS
P.O. Box 13528 • Austin, TX 78711-3528

November 24, 2009

Mr. Marcus Norris
City Attorney
City of Amarillo
509 SE 7th Avenue, Suite 303
Amarillo, Texas 79101-2539

Dear Mr. Norris:

We received your request for a written response concerning the calculation of the tax rate for the Amarillo Hospital District. We have spoken to Robert Mott with the law firm of Perdue, Brandon, Fielder, Collins & Mott. His firm represents the City of Amarillo on property tax matters, and he will be in touch with you about the calculation.

Please note that the publication entitled "Truth-In-Taxation" that was published by our office in July 2009 addresses the issue. On page 4, the following explanation can be found: "A taxing unit that did not levy property taxes in 2008 is not required to comply with truth-in-taxation laws in 2009 unless it levied the additional sales tax to reduce property taxes in 2008. However, the Comptroller's office recommends that a new unit consider publishing similar notices and holding a public hearing to inform taxpayer of its intention to levy a property tax."

I believe that this explanation answers the questions that you raised in your correspondence. Thank you for asking for our input.

Sincerely,

Deborah S. Cartwright
Director
Property Tax Assistance Division

cc: Robert Mott, Perdue, Brandon, Fielder, Collins & Mott, L.L.P.