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DEC 22 2011

OPINION COMMITTEE

December 7, 2011

FILE # ML-46911-11
I.D. # 46911

RQ-1033-GA

The Honorable Greg Abbott
Attorney General
c/o Jason Boatright
Office of the Attorney General
State of Texas
Post Office Box 12548
Austin, TX 78711-2548

Re: Request for Opinion Regarding Authority of Hospital District

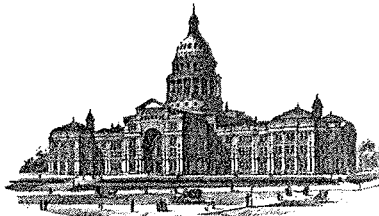
Dear General Abbott:

I request your opinion as to whether Angleton Danbury Hospital District (the "District") has the authority to fulfill its responsibility to provide hospital care for the District's needy residents by selling the facility in which the District operates a hospital and entering into a lease arrangement for that facility without disruption to the hospital services provided by the District. Set forth below is an outline of the factual background, and my understanding of the legal analysis.

Background

The District exists under, and its authority is derived from, Chapter 1002 of Special Districts Code. The District currently operates a 64-bed, general hospital known as Angleton Danbury Medical Center (the "Hospital"), which serves the communities of Angleton, Danbury, Rosharon, and the surrounding areas. Currently, the District owns the facility in which the Hospital is licensed and operates. Hospital management is considering a proposal for the District to sell the facility to an unrelated third party in exchange for fair market value and for the District to enter into a long-term lease agreement with such third party providing for the District to lease the facility in exchange for fair market value. It is anticipated that the transaction would cause no disruption to the services provided by the Hospital.

¹42 C.F.R. §411.357(a). ²42 U.S.C. §1395nn. ³42 U.S.C. §1001.952(b). ⁴42 U.S.C. §1320a-7(b). ⁵Chapter 102 of the Texas Occupations Code.



I recognize that, as a general matter, political subdivisions in Texas, such as the District, are deemed to have only authority expressly granted to them, and implied and incidental powers are narrowly construed. The necessary analysis is to determine if the proposed sale and lease arrangement fits within the authority granted to the District by its governing statutes and, if the applicable statutes do provide or imply such authority, to determine if the proposed sale and lease arrangement fits within the constraints imposed by the Texas Constitution.

It appears clear that the District has the statutory authority to sell and/or lease a facility in which the District provides hospital care to the District's needy residents. In particular, the Special Districts Code provides that:

- Under Section 1002.101, the District "has full responsibility for providing medical and hospital care for the district's needy residents";
- Under Section 1002.103(a), the board of the District "has all powers necessary, convenient, or incidental to carry out the purposes for which the District was created";
- Pursuant to Section 1002.103(b), the board of the District "has the complete management and control of all the business of the District, including the power to negotiate and contract with any person to purchase or lease land, to construct and equip a hospital system, to operate and maintain a hospital or hospitals, and to negotiate and contract with other political subdivisions of the State or private individuals, associations, or corporations for those purposes; all as may be determined to be necessary or desirable by the board" (emphasis added);
- Under Section 1002.104(a), the District is to provide health care services to [district residents] by purchasing, constructing, acquiring, repairing or renovating buildings and improvements and administering the buildings and improvements for hospital purposes" (emphasis added); and
- Under Section 1002.351(b), the board of the District shall impose the [property] tax to ... acquire necessary sites for hospitals or the hospital system by gift, purchase, lease, or condemnation (emphasis added).

In addition, a general law applicable to the District permits the governing body of a hospital district by resolution to order the sale, lease, or closing of all or a part of a hospital owned or operated by the hospital district, including real property if the transaction is in the best interest of the residents of the District. (emphasis added) (*See* Tex. Health & Safety Code Ann. § 285.051(a)).

Thus, based on the foregoing statutory provisions, the District has broad authority to sell its current hospital facility and/or lease that facility in which to provide hospital care to the District's needy residents.

I note that it is common practice for hospitals to lease the facilities in which they operate. In particular, I also note that, in the Texas Administrative Code chapter governing hospital licensing at 25 TAC § 133.2, an "applicant" for a hospital license is defined as "the person legally responsible for the operation of the hospital, whether by lease or ownership, who seeks a hospital license from the department." (emphasis added).

With respect to whether the proposed sale and lease of the District's Hospital facility complies with the constraints imposed by the Texas Constitution, it appears that such an arrangement is consistent with the requirements of Article IX, Section 9, of the Texas Constitution in that the District will continue to "assume full responsibility for providing medical and hospital care for its needy inhabitants" and the proposed arrangement allows the District to continue to serve a "hospital purpose."

A number of Attorney General Opinions have concluded that hospital districts have statutory and constitutional authority to lease real property to or from third parties provided that certain conditions were met. For instance, in Opinion No. JC-0220, the Attorney General concluded the Garza Hospital District ("GHD") was authorized to close its hospital if the GHD Board of Directors determined that closing the hospital was in the best interest of GHD's residents and the Board otherwise complied with the statutory procedures, and that GHD was authorized to lease its hospital facilities to a private hospital system for the operation of a clinic to provide hospital care to GHD's needy inhabitants if the Board determined that the lease was in the best interest of GHD's residents.

Based on the foregoing, I believe the proposed arrangement for the District to sell the facility in which the District operates a hospital and enter into a lease arrangement for that facility, complies with the express, implied and incidental powers of the District under the applicable statutes and the Texas Constitution. Please let me know if you agree with the foregoing conclusions. I look forward to receiving your response as promptly as possible. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Dennis Bonnen". The signature is written in a cursive, flowing style.

Dennis Bonnen
District 25