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JUL 27 2018

OPINION COMMITTEE

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July 17, 2018

RQ-0240-KP

The Honorable Ken Paxton
Attorney General
209 W. 14th St.
Austin, TX 78701

Dear Attorney General Paxton:

On behalf of the Midland County Commissioners Court, I am writing to request an opinion from your office regarding the ability of a County to enter into a written agreement to pay money to certain entities. In my capacity as Midland County Attorney, and under the authority of *Tex. Gov't. Code §402.043*, I ask your opinion regarding the following legal questions.

1. May a county enter into a written agreement with a public school district to pay funds to the district to be used for grounds maintenance, library, and law enforcement?
2. May a county provide funds to a Hospital District to be used to purchase a building to be used as a mental health facility?

The Midland County Commissioners Court is considering a proposal to provide funding to the Midland Independent School District (MISD) and the Greenwood Independent School District (GISD) for certain specified purposes. In each case, the funding would only be provided pursuant to a written agreement that would ensure that the contemplated public purposes are achieved.

Article III, subsection 52(a) of the Texas Constitution provides:

Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever

The purpose of section 52(a) is "to prevent the gratuitous grant of [public] funds to any individual, corporation, or purpose whatsoever." *Byrd v. City of Dallas*, 6 S.W.2d 738, 740 (Tex.

1928). Texas Courts and the Attorney General have recognized, however, that a county does not make an unconstitutional grant of public funds when it spends public funds for a legitimate public purpose to obtain a clear public benefit. *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 740 (Tex. 1995); *Tex. Atty. Gen. Op. KP-0061* (2016). The Attorney General has also recognized that an expenditure that directly accomplishes a legitimate purpose is constitutional even if it incidentally benefits a private entity. *Tex. Atty Gen. Op. No. GA-0078* (2003).

In order for one political subdivision to make a payment to another political subdivision, the expenditure must be within the powers of the entity making the payment. *State ex rel. Grimes Cty. Taxpayers Ass'n v. Tex. Mun. Power Agency*, 565 S.W.2d 258, 265-66 (Tex. Civ. App.--Houston [1st Dist.] 1978, writ dismissed). As long as the purpose of the transfer of funds is to serve a purpose within the powers of the transferring political subdivision, section 52(a) does not prohibit a transfer to another political subdivision.

Texas courts recognize a three-part test to determine whether an expenditure of public funds satisfies section 52(a). Pursuant to this test, a county or other governmental entity must:

- (1) ensure that the transfer is to "accomplish a public purpose, not to benefit private parties;
- (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment; and
- (3) ensure that the political subdivision receives a return benefit. *Tex. Mun. League Intergov'tl Risk Pool v. Tex. Workers' Camp. Comm'n*, 74 S.W.3d 377, 384 (Tex. 2002).

In the case of a county, the initial determination whether a particular expenditure satisfies all three parts of the test is to be made by the Commissioners Court, subject to judicial review for abuse of discretion. *Tex. Atty Gen. Op. Nos. KP-0007* (2015); *GA-0843* (2011).

This office ruled in 2008 that a county would likely violate section 52(a) by "providing a grant or any other financial assistance to a school district or charter school *solely for educational purposes.*" *Tex. Atty. Gen. Op. GA-0664*(2008) (emphasis added). This opinion was, however, directly solely to grants "solely for educational purposes" or for the "general purposes" of a school district.

Unlike the proposed expenditure at issue in GA-0664, the expenditure contemplated by the Midland County Commissioners Court would not be for general purposes or solely for educational purposes. The specific purposes for which the Commissioners Court is considering the expenditures are:

1. Law enforcement
2. Library expenses
3. Grounds keeping on school grounds.

We believe that each of these expenditures fits within a power granted to counties by the Texas legislature. One of the primary duties of a county in Texas is to provide law enforcement through a Sheriff's Office and Constables. *Tex. Const. Art. V, Sec. 23*. MISD currently operates

its own law enforcement agency, the Midland ISD Police Department. GISD does not currently operate a police department but is considering doing so. Both MISD and GISD are open to students who reside in Midland County. It is our opinion that providing funding to a school district to be used for law enforcement purposes is a valid county public purpose and meets the first prong of the three-part test.

Texas counties are also authorized to operate libraries. *Tex. Local Gov't Code 323.001*. Midland County does currently operate the Midland County Library System, which includes two permanent libraries and a bookmobile. It is our opinion that providing funding to a school district to be used solely for library purposes is a valid county public purpose, and meets the first prong of the test.

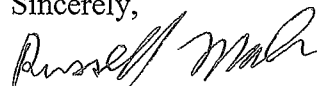
Texas counties are also authorized to operate parks. *Tex. Local Gov't Code §331.001*. Lawns and playgrounds located at public schools have historically been used by the public for recreational activities when schools are not in session. Schools which are part of the MISD system are open to the public during non-school hours and include playground equipment. These school grounds are also used by local organizations for youth sports. It is our opinion that the authority to operate parks is sufficient authority for the Commissioners Court to find a valid county public purpose in providing MISD with funds for maintaining their grounds.

The Midland County Commissioners Court is also considering providing funds to the Midland County Hospital District to be used to purchase a building that would be used as a mental health facility. Texas counties are authorized to establish a hospital and any medical or other health facility. *Tex. Health & Safety Code § 263.021*. A county can also provide health care assistance to residents of an area served by a public hospital. *Tex. Atty. Gen. Op. JM-637 (1987)*.

Additionally, each commissioners court is required to provide for the support of a person with mental illness or an intellectual disability who is (1) a resident of the county, (2) unable to provide self-support, and (3) cannot be admitted to a state mental health or intellectual disability facility. *Tex. Health & Safety Code §615.001*. Counties are also authorized to establish community mental health centers that provide mental health services. *Tex. Health & Safety Code §534.001, et. seq.* It is our opinion that there is sufficient statutory authority for the Commissioners Court to find a valid county public purpose in providing funding to the Midland County Hospital District for purchase and operation of a mental health facility.

Thank you for your assistance. Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,



Russell Malm