



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

October 26, 1966

Hon. Clarence L. Darter
County Attorney
Childress County Courthouse
Childress, Texas

Opinion No. C-776

Re: Proper distribution of
certain assets between
county and newly estab-
lished hospital district,
and related questions.

Dear Sir,

You have requested an opinion in regard to the
above matter. We quote from your request as follows:

"Under the provisions of Article 4494q-43,
an election was recently held in Childress County,
and the Childress County Hospital District was
created. . . .

"Previously, Childress County had operated
a County Hospital, and under Section 2 of the
act authorizing the Hospital District, certain
of the assets of the County Hospital are to be
transferred to the Hospital District, the wording
of the statute being 'There shall be transferred
to it the title to all lands, buildings, improve-
ments and equipment in anywise pertaining to the
hospitals or hospital system owned by Childress
County.'

"Certain funds and accounts receivable exist
which have been accumulated during the existence
of the County Hospital, and the question arises
as to whether these funds and accounts should
also be transferred by Childress County to the
Hospital District. The funds and accounts are
as follows:

"1. Interest and sinking funds. The County
Hospital was purchased and improved with funds
derived from the sale of permanent improvement
bonds, and approximately \$116,000.00 remains un-
paid upon these bonds. Childress County has

created an interest and sinking fund, with a present balance of \$30,619.00 in connection with its permanent improvement bonds.

"In 1963 the County Hospital was air-conditioned and permanent improvement bonds were issued in connection with such expenditures. \$14,000.00 of these bonds are outstanding. The sum of \$14,000.00 from the operating revenues of the County Hospital has been placed in a savings account designated as an interest and sinking fund for these particular bonds.

"2. Accounts Receivable. During its existence the County Hospital placed upon its books a number of accounts. The amount of money that may be realized from these accounts is uncertain, although some percentage of the accounts are likely to be paid.

"3. County Hospital Operating Funds. On the day the Childress County Hospital District was created, the County Hospital had the total sum of \$37,017.37 in its possession, which represented revenue from operations of the hospital. \$10,774.67 of this total sum was in a regular checking account, and the balance thereof is represented by time deposit certificates and savings accounts issued in the name of the County Hospital, and bearing interest."

Subsequent to the opinion request, we have learned from your office, and the office of your county judge, that Childress County has never levied any taxes for the operation of the County Hospital. Consequently, the question of whether tax money is present in the assets and accounts involved, and what effect the presence of tax money would have upon disposition of the assets and accounts, is not present in this opinion.

Article 4494g-43, Vernon's Civil Statutes, authorizes the creation of the Childress County Hospital District. Section 2 of said Article is quoted in part as follows:

"The District herein authorized to be created shall take over and there shall be transferred to it title to all lands, buildings, improvements and equipment in anywise pertaining to the hospitals or hospital system

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owned by Childress County and any city or town within such County. . . . Such District shall assume full responsibility for providing medical and hospital care for its needy inhabitants and shall assume the outstanding indebtedness which shall have been incurred by any city or town or by Childress County for hospital purposes prior to the creation of said District."

The above quoted Section of Article 4494q-43 does not provide for the disposition of the assets and accounts in question.

In regard to the interest and sinking funds in the instant case, it is our opinion that Bexar County Hospital District v. Crosby, 160 Tex. 116, 327 S.W.2d 445 (1959) would control the disposition of this fund. The Court stated, (page 448):

"As between the city and the county on the one hand and the District on the other, the effect of the assumption by the latter of payment of the bonds should be construed as an assumption of the payment of so much of the bonds as cannot be retired by the sinking funds on hand. It is our view that the custody of the sinking fund heretofore accumulated should remain in the City and County, with the requirement that such funds, including all interest which may have accumulated from the investment thereof, be applied toward retirement of the bonds first maturing." (Emphasis added)

The Court in the Bexar case, supra, held that the hospital district could not compel the City and County to transfer the Interest and Sinking Fund but the fund could be voluntarily transferred as long as the fund was used to retire the outstanding indebtedness regardless of who had custody of the fund. The Interest and Sinking Fund in the instant case may be treated in the same manner.

Prior to creation of the Childress County Hospital District, the accounts receivable and the operating expense fund were property of the county and subject to the control of the Commissioners Court. Article 4484, Vernon's Civil Statutes, provides, in part, as follows:

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" . . .the board shall certify all bills and accounts, including salaries and wages, and transmit them to the Commissioners Court, who shall provide for their payment in the same manner as other charges against the county are paid." (Emphasis added)

Article 4485, Vernon's Civil Statutes, provides, in part, as follows:

"He /Hospital Superintendent/ shall collect and receive all moneys due the hospital, keep an accurate account of the same, report the same at the monthly meeting of the board of managers, and transmit the same to the county collector." (Emphasis added)

In a prior opinion this office ruled that revenues from operation of a county hospital should be delivered to the county treasurer for deposit by such county. Attorney General's Opinion No. V-1265 (1951).

Based upon the statutes providing for the disposition of these funds prior to the establishment of the hospital district and the fact that the legislature was silent concerning these assets and funds in the enabling act (Article 4494g-43), it is our opinion that the accounts receivable and the operating expense fund are the property of Childress County and must remain with the county. Harris County Flood Control Dist. v. Mann, 135 Tex. 239, 140 S.W.2d 1098 (1940) p. 1103-1104.

You also requested an opinion from this office on the validity of a proposed contract to distribute these funds between the county and the district. A copy of the contract was attached to your opinion request. In light of the above stated, the only matter which may be disposed of by mutual agreement are the interest and sinking funds to retire the outstanding bonds. The county can relinquish custody of these funds to the Hospital District, but the funds, and all interest resulting from the investment thereof, can only be used to retire the outstanding bonds first maturing regardless of whether it is transferred to the district or remains with the county.

S U M M A R Y

Either Childress County or the Childress County Hospital District may have custody of

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the interest and sinking funds established to retire the hospital bonds so long as the sinking funds, and all interest from the investment thereof, are used to retire the outstanding bonds first maturing. Bexar County Hospital District v. Crosby, 160 Tex. 116, 327 S.W.2d 445 (1959).

The accounts receivable and the operating expense fund of Childress County Hospital are county property and cannot be transferred to the hospital district by contract.

Yours very truly,

WAGGONER CARR
Attorney General

By: 
James C. McCoy
Assistant

JCMcC:sck

APPROVED:
OPINION COMMITTEE

W. O. Shultz, Chairman

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APPROVED FOR THE ATTORNEY GENERAL
BY: T. B. Wright