



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

August 13, 1969

Honorable Homer R. Taylor
County Attorney
Wharton County Courthouse
Wharton, Texas 77488

Opinion No. M-448

Re: Authority of the Commissioners
Court to sell Nightingale
Hospital, a county hospital.

Dear Mr. Taylor:

Your recent letter requests the opinion of this office as to whether the Commissioners Court of Wharton County has the authority to sell Nightingale Hospital which is operated by Wharton County as a county hospital.

You state in your letter that the hospital was established in 1939 pursuant to the authority of Article 4478, Vernon's Civil Statutes, after a vote of the qualified property tax paying voters of the county. The relevant portions of Article 4478 read as follows:

". . . Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital and shall have the following powers:

"1. To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings.

"2. To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital. The plans for such erection, alteration, or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.

"3. To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary

to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.

"4. To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital and for all other necessary permanent improvements in connection therewith; to do all other things that may be required by law in order to render said bonds valid.

"5. To appoint a board of managers for said hospital.

"6. To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital, and apply the same in accordance with the terms of the gift."

It appears from the quoted language that once the electorate has voted to establish a county hospital, the commissioners court is required to establish and maintain such hospital. The powers conferred upon the commissioners court by Article 4478 do not include the power to sell a county hospital that has been established under said Article.

The courts of this State, and this office, have repeatedly held that the commissioners court has only such powers as are conferred upon it by the Constitution and statutes, either expressly or by necessary implication. Childress County v. State, 127 Tex. 343, 92 S.W.2d 1011 (1936); Von Rosenberg v. Lovett, 173 S.W. 508 (Tex.Civ.App. 1915, error ref.); Roper v. Hall, 280 S.W. 289 (Tex.Civ.App. 1925, no writ). We find no statute or constitutional provision which expressly or by necessary implication authorizes the Commissioners Court of Wharton County to sell the county hospital.

We recognize that Articles 4494j, 4494k and 4494m, Vernon's Civil Statutes, purport to authorize certain counties to sell county hospitals. These statutes are restricted to counties having a specified population or a specified population and assessed property evaluation. Wharton County does not come within the limits specified in these statutes.

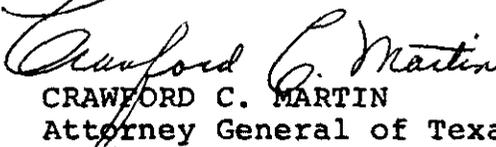
You are therefore advised that in our opinion no authority

exists for the Commissioners Court of Wharton County to sell the county hospital.

S U M M A R Y

The Commissioners Court of Wharton County does not have either express or implied authority to sell the county hospital established pursuant to Article 4478, V.C.S.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by W. O. Shultz
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
George Kelton, Vice-Chairman
David Longoria
Arthur Sandlin
Jim Swearingen
Bill Allen

HAWTHORNE PHILLIPS
Executive Assistant

W. V. GEPPERT
Staff Legal Assistant