



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

July 6, 1988

Honorable Jeffrey L. Van Horn
Criminal District Attorney
Caldwell County
Caldwell County Courthouse
Lockhart, Texas 78644

LO-88-75

Dear Mr. Van Horn:

You ask about the liability of the city of Lockhart under the Indigent Health Care and Treatment Act, article 4438f, V.T.C.S. Specifically, you ask whether the Lockhart Hospital is a "public hospital" for purposes of the act.

The Indigent Health Care and Treatment Act makes a county responsible for health care for indigent residents of the county except for those who reside within the area that a public hospital or hospital district has a legal obligation to serve. V.T.C.S. art. 4438f, §2.01. "'Public hospital' means a hospital owned, operated, or leased by a governmental entity." Id. §1.02(10). See also id. §14.01. A "governmental entity" includes "a county, city, town, or other political subdivision of the state, but does not include a hospital district or hospital authority." Id. §1.02(6). Public hospitals are responsible for indigent health care in the areas they have a legal obligation to serve. Id. §10.02.

You provide no information about the creation of the Lockhart Hospital. Your letter suggests that the hospital is owned by the city itself rather than by a hospital authority created by the city. Therefore, we assume that the hospital is one owned by a governmental entity. You explain, however, that the city of Lockhart has not operated the Lockhart Hospital since 1980. In 1980 the city leased the land, building, and equipment to a private corporation. You tell us that at that time the private corporation purchased the inventory and accounts receivable and assumed the accounts payable. The city retained no control over the operation of the hospital.

In Attorney General Opinion JM-723 (1987) this office considered the responsibility of the city of Bastrop under the Indigent Health Care and Treatment Act. The Bastrop Hospital Authority had been created in 1966. Since 1981, however, the authority had leased the hospital to private entities. We concluded in that opinion that the city of Bastrop was responsible for health care for indigent residents under the Indigent Health Care and Treatment Act. We explained our conclusion as follows:

Section 1.02(10) of the Indigent Health Care Act expressly defines a public hospital as a 'hospital owned, operated, or leased by a governmental entity.' According to section 1.02(6), a governmental entity 'includes a county, city, town, hospital authority, or other political subdivision of the state, but does not include a hospital district.' Since a hospital authority is a governmental entity as the term is defined by section 1.02 and the Bastrop hospital is owned by the hospital authority, we conclude that it is owned by a governmental entity and is a public hospital within the meaning of the Indigent Health Care Act. As a public hospital, the hospital has a duty to provide health care assistance to eligible residents of the city under Title 3 of the act. Since the city created the hospital authority, the city is liable for providing sufficient funding to the public hospital or to the hospital authority to provide the health care assistance required by the act.

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It has been suggested that section 14.01 of the Indigent Health Care Act impliedly exempts the city of Bastrop from the funding requirement of section 12.03 because the Bastrop Memorial Hospital has been leased to a private entity since 1983. We do not agree with that interpretation of section 14.01.

Section 14.01 provides that:

Notwithstanding any other provision of law, if a public hospital owned, operated, or leased by a governmental entity is sold

or leased to another person on or after January 1, 1985, the sale or lease of the public hospital does not affect the governmental entity's obligation to continue to serve residents who were eligible for assistance during the hospital's last full operating year that ended before January 1, 1985, or the obligation to provide the health care services the public hospital provided during that period.

V.T.C.S. art. 4438f, §14.01. The provision merely relates to the effect that a transfer of the ownership or operation of a public hospital after January 1, 1985[,] will have on eligibility standards for health care assistance and on the health care services that are provided.

JM-723 (1987) at 1-2.

Soon after JM-723 was issued, the legislature amended the definition of "governmental entity" in the Indigent Health Care and Treatment Act to exclude hospital authorities. Acts 1987, 70th Leg., ch. 442 § 1(6), at 2020. That amendment affected the specific questions answered in JM-723 because the Bastrop hospital was one owned by a hospital authority. The 70th Legislature did nothing, however, to overrule the conclusion reached in JM-723 that a hospital owned by a governmental entity that had been leased to and operated by a private company since before January 1, 1985, was a "public hospital" for purposes of the Indigent Health Care and Treatment Act. Therefore, we do not reconsider that aspect of JM-723.

It follows from JM-723 that if the Lockhart Hospital is owned by a governmental entity, as defined in section 1.02(6) of the Indigent Health Care and Treatment Act, it is a "public hospital" for purposes of the act even though it is leased by and operated by a private company.

Very truly yours,



Sarah Woelk
Assistant Attorney General
Opinion Committee