



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 21, 1994

Honorable Michael G. Mask
County Attorney
Jack County Court House, Third Floor
Jacksboro, Texas 76458

Letter Opinion No. 94-006

Re: Disposition of surplusage in an interest
and sinking fund account (ID# 17797)

Dear Mr. Mask:

You have asked this office how certain funds held in an interest and sinking fund account created to pay bond obligations undertaken for the construction of the former Jack County Hospital—now the Jack County Hospital District (d/b/a Faith Community Hospital) (the "district")—are to be disposed of. You ask whether the funds rightly belong to Jack County (the "county") or to the district, and what uses may be made of them.

Your assumption is that this question requires the construction of section 5.01 of S.B. 130, Acts 1987, 70th Leg., ch. 16 (1987), concerning the conveying of certain real property, improvements, funds, taxes, and reserves of the county to the district. We disagree. In our view, this question is governed by *Bexar County Hospital District v. Crosby*, 327 S.W.2d 445 (Tex. 1959), as well as Attorney General Opinions DM-66 (1991) and JM-142 (1984).

In *Bexar County Hospital District*, the Texas Supreme Court stated that a hospital district holds "in trust for the bondholders taxes levied specifically to retire certain bonded indebtedness." *Bexar County Hosp. Dist.*, 327 S.W.2d at 448. Accordingly, such funds may be used for no purpose save "the retirement of that bonded indebtedness." *Id.* (citations omitted). Attorney general opinions from this office relying upon *Bexar County Hospital District* have therefore held that "absent specific statutory authority to the contrary, monies in an interest and sinking fund may be used for no other purpose than the one for which it was created." Attorney General Opinion DM-66 (1991) at 4; Attorney General Opinion JM-142 (1984); *see also* Attorney General Opinions H-1254 (1978); M-841 (1971).

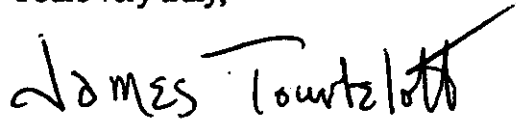
While at one time this office opined that surpluses in a sinking fund which remained after the retirement of bonds "may be expended for the same 'public improvements' for which the bonds were originally issued," Attorney General Opinion MW-97 (1979) at 2 (citation omitted), that view was specifically overruled by Attorney General Opinion JM-142. The general rule is that, absent specific statutory direction otherwise, such funds should be refunded to the taxpayers. Attorney General Opinion JM-142 at 7.

While you have provided us with information concerning the creation of the district, you have not provided us with the original authorization for the bonds which financed the construction, extension, and furnishing of the hospital. Accordingly, we do not know whether as a factual matter provision was made therein for any surplusage in the sinking fund. If, however, no such provision was made, the excess in the sinking fund should be refunded to the taxpayers by whatever method you find most expeditious.

S U M M A R Y

If no explicit provision was made at the institution of an interest and sinking fund for the disposition of any surplusage after the retirement of the bonded indebtedness for which the fund was established, such surplus should be refunded to the taxpayers.

Yours very truly,

A handwritten signature in black ink that reads "James Tourtelott". The signature is written in a cursive style with a long, sweeping flourish at the end.

James Tourtelott
Assistant Attorney General
Opinion Committee