



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

March 17, 1995

Honorable Hugo Berlanga  
Chair  
Committee on Public Health  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 95-008

Re: Disposition of a municipal health authority's  
assets upon dissolution (ID# 29868)

Dear Representative Berlanga:

You ask about the disposition of proceeds of a sale or lease of the Edinburg Hospital Authority's "hospital facility to a for-profit entity." You indicate that the hospital authority was created under and is governed by the provisions of chapter 262, Health and Safety Code, and that the authority is contemplating dissolving the district pursuant to section 262.005 thereof.

The focus of your concern appears to be the extent to which chapter 262 or other law places restrictions on the proposed dispositions of the sale or lease proceeds. Specifically, you ask whether the proceeds may be

1. [delivered to a charitable foundation for the promotion of] the public interest in health care accessibility, health care research and education, and related purposes in . . . the Rio Grande Valley of South Texas; and if not,
2. [expended by the authority] for similar public purposes, notwithstanding that the Authority will not be operating a hospital facility; and if not
3. delivered . . . to a health facilities development corporation created by the City of Edinburg pursuant to Chapter 221 of the Health & Safety Code, or to one or more local government corporations created pursuant to article 15281, Section 4A(a), V.T.[C.S.], to aid, assist, or act on behalf of one or more local governments.

Under chapter 262, the governing body of a municipality may by ordinance create a municipal health authority. Health & Safety Code § 262.003. An authority is a "body corporate and politic" "composed . . . of the territory" of the municipality, and governed by a board of directors appointed by the municipality's governing body. *Id.* §§ 262.003, .011 - .012. Although it has no taxing power, an authority may issue bonds secured by "revenues from the operation of one or more hospitals and any other revenues from

owning hospital property,” as well as by mortgages on the authority’s real and personal property. *Id.* §§ 262.003, .041. Section 262.022 provides for the powers of an authority as follows:

(a) The authority may construct, purchase, enlarge, furnish, or equip one or more hospitals. A hospital may be located outside the municipality or municipalities.

(b) The authority may operate and maintain one or more hospitals. The authority shall operate a hospital without the intervention of private profit for the use and benefit of the public unless the authority leases the hospital.

(c) The board may lease a hospital, or part of a hospital, owned by the authority for operation by the lessee as a hospital under terms that are satisfactory to the board and the lessee . . . .

(d) The bond resolution or trust indenture may prescribe procedures and policies for the operation of a hospital. If a hospital is used, operated, or acquired by a nonprofit corporation or is leased, the authority may delegate to the nonprofit corporation or lessee the duty to establish the procedures and policies.

As pertaining to sales, you note that section 262.033 empowers the authority’s board to “sell a hospital or part of a hospital, owned by the authority or close a hospital, or part of a hospital owned or operated by the authority,” also subject to voter approval if an election is petitioned for. Section 262.033 does not, however, speak to the disposition of the proceeds of such sale.<sup>1</sup>

We understand from your request that the disposition of proceeds in question will be done in the context of the authority’s dissolution. Under section 262.005(a), “[a municipal] governing body by ordinance, may”--subject to the voters’ approval should a sufficient number of them petition for an election--“dissolve an authority . . . *if the governing body and the authority provide for the sale or transfer of the authority’s assets and liabilities to the municipality or to another person*” (emphasis added).

The dissolution . . . and the sale or transfer of the authority’s assets and liabilities may not:

- (1) violate a trust indenture or bond resolution relating to the outstanding bonds of the authority; or

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<sup>1</sup>Additionally, section 262.031 provides for sale of “real property acquired by gift or purchase that the board determines is not needed for hospital purposes,” and section 262.032 for sale of property “to a political subdivision for the fair market value” thereof. Sections 262.031 and 262.032 would not appear to apply in the scenario you present, where the authority wishes to sell “its hospital facility to a for-profit entity.” Those sections do not, in any case speak, to the disposition of sale proceeds.

(2) diminish or impair the rights of the holders of outstanding bonds, warrants, or other obligations of the authority.<sup>2</sup>

*Id.* § 262.005(b) (footnote added). Unless an election is petitioned for, the dissolution ordinance “takes effect on the 31st day after” its adoption.

Chapter 262 generally empowers municipal health authorities to provide and operate hospitals. *Id.* § 262.022. We find no express or implied authority in the controlling statutes for the hospital authority here to transfer money to other persons or entities other than in connection with its authority under section 262.022 to provide and operate hospitals, *unless* section 262.005, quoted above, can be construed to validly permit other kinds of transfers in the context of the hospital authority’s dissolution.

In our opinion, transfers under section 262.005 are necessarily limited by the prohibition in article III, section 52 of the state constitution of the legislature’s providing for “grant[s] of public money” to individuals, associations or corporations. The article III, section 52 prohibition on grants to “corporations” includes grants to other public entities. *See San Antonio Indep. Sch. Dist. v. Board of Trustees*, 204 S.W.2d 22 (Tex. Civ. App.—El Paso 1947, writ ref’d n.r.e.). The prohibition is not violated, however, where the expenditure is for a public purpose accompanied by adequate controls to reasonably assure its realization, even if private or other recipient parties benefit. *See, e.g.*, 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW §§ 12.7 - .8 (Texas Practice 1989) (and authorities cited there). But the public purpose served must be a legitimate purpose of the grantor entity. *Harris Co. Flood Control Dist. v. Mann*, 140 S.W.2d 1098 (Tex. 1940).

Thus, the transfer of authority assets to “a municipality or another person” must be for a public purpose of the authority. Again, we find no provisions in chapter 262 specifying other public purposes of the authority than those in section 262.022 authorizing it to provide for and operate hospitals. *Cf.* Tex. Const. art. IX, § 9 (authorizing legislative provision for dissolution of county hospital districts and transference of remaining assets “to another governmental agency . . . embracing such district and using such transferred assets in such a way as to benefit citizens formerly within the district”). Accordingly, a transfer under section 262.005 in the context of the dissolution of the authority that was made for the purposes of providing for and operating hospitals would be valid with respect to article III, section 52, so long as the purposes served were indeed “public” ones. (The latter determination would be for the municipal governing body and the authority’s governing body to make, at least in the first instance.) *See* Health & Safety Code § 262.005.

However, we note that you do not indicate that any of the transfers the authority is considering are specifically for the purpose of providing for and operating hospitals. In

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<sup>2</sup>You indicate, and we assume for purposes of this opinion, that the transfers you ask about would not impair the authority’s bond-related obligations.

line with the above discussion, we do not believe that a section 262.005 transfer “to a municipality or another person” for purposes completely unrelated to the provision and operation of hospitals would be valid, given the public purpose requirements of article III, section 52. On the other hand, whether any given transfer for *health-related purposes*, such as those you ask about, would be sufficiently related to hospital purposes would, in our opinion, involve questions of fact which we cannot resolve. Furthermore, a court in considering these issues would, we think, consider the overall factual scenario. For example, in determining whether to permit transfer of the assets in question for particular uses in the health care area which did not strictly involve hospital purposes, a court might well be influenced by evidence that there were in fact no need for additional resources for the provision and operation of public hospitals in the environs. At any rate, in that factual issues come into play in determining the lawfulness of the particular transfers you ask about, we do not attempt to determine here whether the specific proposed transfers you ask about would be permissible.<sup>3</sup>

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<sup>3</sup>We note specifically that we do not speculate under what circumstances a “local government corporation” created under the Texas Transportation Corporation Act, V.T.C.S. article 1528I—one of the proposed transferees of the authority’s assets you ask about—might have authority to provide health services sufficiently related to hospital purposes to justify transfer of the assets at issue to that entity.

We also note that you indicate that one of the proposed transferees is a “charitable foundation” for the promotion of “the public interest in health care accessibility, health care research and education, and related purposes in . . . the Rio Grande Valley of South Texas.” Although, under section 262.003(c), a municipal hospital authority is “composed” of the territory of the municipality, section 262.022(a) provides that the hospitals it provides or operates “may be located outside the municipality or municipalities.” We do not think section 262.022(a) was intended to empower a municipal health authority to operate a hospital anywhere in the state (or the country); presumably its services must be reasonably centered on the territory of the municipality. Similarly, we believe that the services to be provided by a transferee of the assets must reasonably relate to the territory of the municipality. Determining whether they do so relate, however, would again, we think, require consideration of all relevant facts.

**S U M M A R Y**

The authority of a municipal health authority, under Health and Safety Code chapter 262, to transfer assets upon dissolution "to the municipality or to another person" is circumscribed by the public purpose requirements of article III, section 52 of the Texas Constitution. Whether a given transfer is sufficiently related to the public purposes of an authority--the provision and operation of hospitals--would involve fact questions.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", with a stylized, flowing script.

William Walker  
Assistant Attorney General  
Opinion Committee