



**THE ATTORNEY GENERAL
OF TEXAS**

November 29, 1990

**JIM MATTOX
ATTORNEY GENERAL**

Honorable David M. Williams
County Attorney
San Saba County Courthouse
San Saba, Texas 76877

LO-90-99

Dear Mr. Williams:

You ask about the authority of San Saba County to guarantee a loan from a bank to a private business. You have provided us with a copy of the minutes of a special meeting of the San Saba County Commissioners Court held on December 19, 1988, indicating that the court at that meeting adopted a resolution that "San Saba County guarantee the \$75,000 loan to San Saba National Bank for San Saba Hospital for a term of 120 days." You have also supplied a copy of a document, titled "Specific Guarantee," dated December 20, 1988, and signed by the county judge, purporting to be an agreement by the county to guarantee payment of a \$75,010 loan from the San Saba National Bank (hereinafter, the "bank") to Rural Health Associates, Inc.

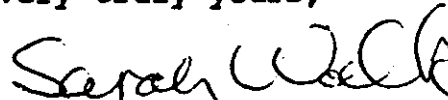
You advise that San Saba Memorial Hospital (hereinafter, the "hospital") was operated as a county hospital until the mid-1970s when it was sold by the county to a private entity. That entity then mortgaged the hospital to the bank. When it subsequently defaulted on the loan, it surrendered the hospital property to the bank. The bank then established a corporation, wholly-owned by the bank, to operate the hospital. The bank, or its wholly-owned corporation, eventually agreed with Rural Health Associates, a private firm, for the latter's operation of the hospital. Rural Health Associates then borrowed \$75,010 from the bank, which loan was purportedly guaranteed by the county under the terms of the above-mentioned document titled "Specific Guarantee." Shortly after receiving the proceeds of the loan, however, Rural Health Associates stopped operating the hospital and defaulted on the loan. You say the county has had "no legal interest" in the hospital since the county sold the facility in the mid-1970s.

We think it is clear that the purported guarantee by the county of the bank's loan to a private entity would violate the provisions of the Texas Constitution prohibiting a county from lending its credit. See Tex. Const. art. III, § 52 ("Except as otherwise provided . . . the Legislature shall have no power to authorize any county . . . to lend

its credit"); art. XI, § 3 ("No county . . . shall . . . in anywise loan its credit").¹

Because the guarantee contract violates article III, section 52, and article XI, section 3, it is void and unenforceable against the county. Parties contracting with the county are charged with knowledge of the law, and if they enter into a contract which the county has no authority to make, they do so at their own risk. Galveston H. & S. A. Ry. Co. v. Uvalde County, 167 S.W.2d 305 (Tex. Civ. App. - San Antonio 1942, writ ref'd want merit). In that regard, you point to paragraph 4 of the guarantee contract in which the county purports to waive its defenses to enforcement of its guarantee. You ask whether the waiver is effective. We think it is clear that the county may not avoid those constitutional limitations by stating that it will not raise them in its own defense. The purpose of those provisions is to prohibit the use of public funds for private purposes. Counties do not have the option of waiving those provisions. Baldwin v. Travis County, 88 S.W. 480 (Tex. Civ. App. - 1905, writ ref'd), and Limestone County v. Knox 234 S.W. 131 (Tex. Civ. App. - Dallas 1921, no writ) (county contract which is void because the county had no authority to make it cannot be made valid by ratification).

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section



Rick Gilpin, Chairman
Opinion Committee

Prepared by: William Walker

APPROVED: OPINION COMMITTEE

RG/SW/WW/mc

Ref.: RQ-2109

ID-10412

1. Nothing you have said in your request indicates that any of the exceptions listed in article III, section 52, to the prohibition stated there would be relevant to the situation you are concerned about. See exceptions in section 52 for insurance, waterway improvement, irrigation, drainage, road construction, and "investment." We note, too, that article III, section 52-a, empowers the legislature to provide for the lending of public money for certain developmental purposes, but we find no legislative authorization under section 52-a for the county's loan guarantee you describe.