



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 18, 1996

The Honorable Carl E. Lewis
County Attorney
Nueces County Courthouse, Room 206
901 Leopard
Corpus Christi, Texas 78401-3680

Letter Opinion No. 96-076

Re: Whether the Corpus Christi Regional Transit Authority may provide financial assistance to an organization that provides emergency medical transportation services by helicopter (RQ-843)

Dear Mr. Lewis:

You ask this office whether the Corpus Christi Regional Transit Authority (the "RTA") may provide financial assistance to an organization which provides emergency medical transportation by helicopter. You note that the RTA was established pursuant to former article 1118x, V.T.C.S., and that section 6(w) of article 1118x, now codified at section 451.067 of the Transportation Code, provides that "[a]n authority in which the principal municipality has a population of less than 300,000 may provide emergency medical services." According to the most recent census, Corpus Christi, the principal municipality of the RTA, has a population of 257,453. See Bureau of the Census, U.S. Dep't of Commerce, 1990 Census of Population: General Characteristics: Texas 6 (1992).

In your view, the principal difficulty with the provision of such financial assistance to the entity which provides emergency services by helicopter is that helicopters do not appear to come within the statutory definition of mass transit, formerly found in section 2 of article 1118x and now codified at section 451.001 of the Transportation Code. We disagree. Assuming *arguendo* that helicopters may be used in the provision of emergency medical services, what section 451.067 permits is the provision of such services by the RTA, not the donation of public funds by the RTA to some other entity. Moreover, while we are aware that the legislative history of former section 6(w) may indicate that the legislature intended to permit such donation of public funds, see Senate Comm. on Transportation, Bill Analysis, S.B. 94, 72d Leg. (1991), any such intention is forbidden by article III, section 52 of the Texas Constitution.

Article III, section 52(a) provides in relevant part:

Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town, or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association, or company.

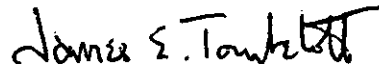
This office has repeatedly interpreted article III, section 52 to require that expenditures of public funds must be for a public purpose, that there must be adequate contractual or other controls to ensure that the public purpose is carried out, and that the political subdivision expending the funds must receive an adequate quid pro quo. See Attorney General Opinions DM-317 (1995) at 3, DM-268 (1993) at 3, DM-256 (1993) at 2, JM-1229 (1990) at 6, JM-1030 (1989) at 3, JM-516 (1986) at 2, JM-324 (1985) at 2. Ordinarily, resolution of these questions is left to the discretion of the political subdivision, subject to judicial review. Attorney General Opinions DM-317 (1995) at 3, DM-256 (1993) at 2. However, as we have recently pointed out, article III, section 52 prohibits political subdivisions from making outright gifts of public funds. Letter Opinion No. 96-035 (1996) at 1.

As we understand the legislative history you have provided us, former section 6(w) was adopted in hopes that it would provide the "necessary legislative authority" for the RTA "to provide financial and managerial support" to the Nueces County Emergency Medical Services ("EMS"). Senate Comm. on Transportation, Bill Analysis, S.B. 94, 72d Leg. (1991). However, as we have noted, as a constitutional matter there can be no such legislative authority for the mere donation of public funds by the RTA. But former section 6(w) does permit the RTA to operate emergency medical services. Moreover, section 451.054(a) gives an RTA "any power necessary or convenient to carry out this chapter or to effect a purpose of this chapter," and section 451.055 provides that an RTA "may contract with any person." These sections provide authority for the RTA to contract with the EMS to provide emergency medical services, so long again as such a contract is for a public purpose, provides adequate controls, and gives the RTA an adequate quid pro quo. How such services are provided, whether by helicopter or otherwise, is, in our view, left to the sound discretion of the contracting parties.

S U M M A R Y

Article III, section 52 of the Texas Constitution does not permit the gratuitous donation of public funds by the Corpus Christi Regional Transit Authority (the "RTA") to an organization which provides emergency medical services. Since, however, the RTA does have authority under section 451.067 of the Transportation Code to provide emergency medical services, it may contract with another entity for the provision of those services.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee