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RQ-0537-KP

April 25, 2024

Office of the Attorney General Ken Paxton
Attention: Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

Re: Interpretation of Texas Government Code § 551

Dear Attorney General Paxton,

With this letter, I respectfully ask that you provide a formal written opinion regarding the following issues.

Background

The Hood County Hospital District (“District”) is set up under Chapter 1042 of the Texas Special District Local Laws Code. Such special districts are considered governmental bodies under Chapter 551.001(3)(H) of the Texas Government Code. They are thus subject to the Texas Open Meetings Act under that chapter.

The District posted notice on November 9, 2023, of their meeting to be held on November 17, 2023. (See Exhibit A.) This notice was not amended. Underneath the listed agenda items was a list of reasons why the District might adjourn into executive session.

On November 13, 2023, Hood County Judge Ron Massingill, a member of the District board, sent notice to other board members that the District would convene into executive session at the November 17 meeting to discuss hiring a law firm. (See Exhibit B.) On the date of this letter, the District had sufficient time to amend the agenda to include this item with at least 72 hours’ notice, according to Chapter 551.043 of the Government Code.

On November 16, 2023, I notified the judge that the proposed item was not on the agenda, and that the District should not take up that item since it wasn’t posted. (See Exhibit C.) The judge, after conferring with District board president Christy Massey, responded that the District would proceed with the executive session the following day.

On November 17, 2023, the board did in fact convene into executive session. Two board members objected and left the meeting, but a quorum moved forward. (See Exhibit D.) President Christy Massey stated that the language at the bottom of every District agenda allows the District to convene into an executive session without additional notice.

Question 1

Is it proper for a governmental body to convene into executive session to discuss a tax rate election and hiring a law firm to facilitate this process, as outlined in Exhibit B? Under Chapter 551.071 of the Texas Government Code, the language states an executive session may be proper in some circumstances for a governmental body to conduct a private consultation with *its* attorney. (Emphasis added.) Does a discussion to hire a law firm fit under any provision under § 551.071?

Question 2

Does the boilerplate language at the bottom of each agenda allow the District to convene an executive session during any meeting without additional notice? Is this adequate notice under § 551.041? Your office has repeatedly opined that governmental bodies must give notice of agenda items, including executive session items. See Tex. Att’y Gen. Op. JC-0057 (1999); Tex. Att’y Gen. Op. GA-0511 (2007). These opinions have tracked case law in Texas dating back at least as far as *Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 958 (Tex. 1986). Other opinions have stated similar things. For instance, “The Act also requires advanced written notice of all meetings held by a governmental body. Tex. Gov’t Code Ann. § 551.041. The notice requirements also apply to executive sessions, and the notice must be sufficiently specific to alert the general public to the topics to be considered.” *Weatherford v. City of San Marcos*, 157 S.W.3d 473, 485 (Tex. App.--Austin 2004).

Thank you for your attention to these questions. We look forward to hearing your response.

Respectfully,



Matthew A. Mills
Hood County Attorney

Exhibit A

HOOD COUNTY HOSPITAL DISTRICT
BOARD OF DIRECTORS
November 17th, 2023, at 12:00 NOON
Hood County Courthouse
2nd Floor Courtroom
100 E Pearl Granbury, Texas 76048
Amended AGENDA

GENERAL SESSION:

1. Call to Order
2. Consider for Approval and Take Appropriate Action- Minutes of October 27th, 2023, General Session Meeting
3. Unfinished Business
 - 3.1 Discuss and Take Appropriate Action-Jail Inmate Concerns
4. New Business
 - 4.1 Review Hood County Hospital District Investment Policy, specifically, Annual Review paragraph along with the Hood County Hospital District Bylaws Section 5.8 and make recommendations to resolve any conflicting language, if any conflict exists.
 - 4.2 Consider for Approval and Take Appropriate Action-Financial Reports
 - 4.3 Consider for Approval and Take Appropriate Action-Reports from County Judge Massingill
 - 4.4 Consider for Approval and Take Appropriate Action-Indigent Operations
 - 4.5 LGMC CEO Report
5. Adjourn

Judge Ron Massingill

Date

11-9-2023

The Hood county Hospital District reserves the right to adjourn into Executive session at any time during the course of this meeting to discuss any of the matters listed, as authorized by Texas Government Code Sections, 551.07L (Consultation with Attorney), subsection 551.071(2) (Consultation with Attorney on legal matters that are not related to litigation), 551.072 (Deliberations about Real property), 551.073 (Deliberations about Gifts and Donations), 55L.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.087 (Economic Development). Before any closed meeting is convened, the Presiding officer will publicly identify the section or sections of the Act authorizing the closed meeting. All final votes, actions, or decisions will be taken in open meeting. Notice is hereby given that a quorum of the Hood County Commissioners Court MAY be present during this meeting.

Exhibit B



HOOD COUNTY JUDGE RON MASSINGILL

100 E. Pearl Street
Granbury, Texas 76048
817-579-3200 • FAX: 817-579-3213



November 13, 2023

Dear Board:

Please be advised that Mr. Clark Kimball from McCall Parkhurst & Horton will be attending our Board meeting on Friday, November 17, 2023.

We will go into Executive Session to discuss the Voter-Approval Tax Rate Election (Implementation of M&O Tax Rate) and the possibility of his firm representing our hospital district.

Best,

Ron Massingill
Hood County Judge

SCOPE OF ENGAGEMENT

- (1) Prepare and review documents necessary or appropriate to conduct the authorization and execution of such documents
- (2) Review any legal issues relating to the conduct of the Election
- (3) Prepare a Notice of Election and coordinate the posting and publication of such documents
- (4) If requested, attend meetings with District officials and the Board of Directors
- (5) Prepare and review documents necessary or appropriate to conduct the authorization and execution of such documents
- (6) Review any Notice of Public Meeting to District Board and prepare any related issues

Our duties in this engagement are limited to those expressly set forth in this letter and we are not engaged in writing to perform other services, our duties do not include, but are not limited to, the following:

- (1) Drafting state constitutional or legislative amendments
- (2) Planning for trials or other litigation
- (3) Calculating the District's effective tax rate or voter approval of tax

Exhibit C

Hospital agenda item

Matt Mills <MMills@Co.hood.tx.us>

Thu 11/16/2023 4:37 PM

To:ckimball@mphlegal.com <ckimball@mphlegal.com>;Brenda Lampert <blampert@co.hood.tx.us>;Ronald Massingill <rmassingill@co.hood.tx.us>;Nannette Samuelson <NSamuelson@co.hood.tx.us>

I just got a call and e-mails from Nannette about the Hospital District agenda for tomorrow. I'm not really sure my role in all that, but I can answer questions when asked. I looked at the agenda and didn't see an item that pertains to the judge's letter sent out on November 13. I don't believe the catch-all at the bottom of the agenda about executive session would permit the county or district to go into executive session on something unrelated to the posted agenda items. If the agenda didn't get updated from the one I had e-mailed to me, perhaps it would be better to put this discussion on a later agenda. I'm e-mailing now so that Mr. Kimball doesn't have to take a trip to Granbury from Dallas to not get an agenda item heard.

I'm writing this on short notice, so if there's an angle I missed, I apologize. This is my take based on the information I have at the moment.

Matthew A. Mills
Hood County Attorney
Ph: 817 579-3216
Fx: 817 579-3218

HOSPITAL AGENDA ITEM EMAIL

Brenda Lampert <blampert@co.hood.tx.us>

Thu 11/16/2023 5:01 PM

To:ckimball@mphlegal.com <ckimball@mphlegal.com>;Kevin Andrews <KAndrews@co.hood.tx.us>;Nannette Samuelson <NSamuelson@co.hood.tx.us>;Jack Wilson <JWilson@co.hood.tx.us>;Dave Eagle <deagle@co.hood.tx.us>;Matt Mills <MMills@Co.hood.tx.us>
Cc:Ron Massingill (ron@bnmdallas.com) <Ron@bnmdallas.com>

Good afternoon,

Please see the dictated response from Judge Massingill:

I have discussed the email with Christy Massey, President of Hood County Hospital District. She has been the president for many years and disagrees with Matt Mills, who is not the attorney for Hood County Hospital District. We are asking Mr. Clark Kimball to attend as we will be going into executive session.

Christy Massey, President
Ron Massingill

Brenda Lampert
Assistant Court Administrator
Hood County Court
Tel: (817) 579-3200
Fax: (817) 579-3213

Exhibit D

HOOD COUNTY HOSPITAL DISTRICT
BOARD OF DIRECTORS
November 17th, 2023-12:00 PM
Hood County Courthouse
2nd Floor Courtroom
100 E Pearl Granbury, Texas 76048

AMENDED MINUTES

Members Attending: **Commissioner Kevin Andrews, Commissioner Dave Eagle, David Kuban, Monty Lewis, Christy Massey, Judge Ron Massingill, Commissioner Nannette Samuelson, Terry Stamper, Commissioner Jack Wilson (12:03)**

Other Attendees Present:

**Sheriff Roger Deeds
Clark Kimball
Krista Lash**

General Session

1.0 Call to Order

1.1 The meeting was called to order at 12:00 PM and a quorum was established.

2.0 Consider for Approval-Minutes of October 27th, 2023, General Session Meeting

Action: A motion to approve the Minutes of October 27th, 2023, General Session Meeting was made by Terry Stamper and seconded by Dr. Kuban. Motion carried 8-0.

3.0 Unfinished Business

3.1 Discuss and Take Appropriate Action-Jail Inmate Concerns

3.1.1 Sheriff Deeds reported that there is currently a female inmate that is pregnant and requires going to a specialist for special treatment.

There is a male inmate with Leukemia that requires special care. A male inmate that needs surgery for arthritis. Dr. Bishop will get involved with that inmate's care to determine his medical need for the surgery. Finally, there is one other male inmate that got angry, hit the wall, and broke his hand, and now requires orthopedic treatment. Otherwise, everything is running smoothly.

Action: A motion to approve Sheriff Deeds report was made by Commissioner Eagle and seconded by Commissioner Andrews. Motion carried 9-0

4.0 New Business

- 4.1** Review Hood County Hospital District Investment Policy, specifically, Annual Review paragraph along with the Hood County Hospital District Bylaws Section 5.8 and make recommendations to resolve any conflicting language, if any conflict exist.

- 4.1.1** Aspects of Hood County Hospital District Investment Policy, specifically, Annual Review paragraph along with the Hood County Hospital District Bylaws Section 5.8 and make recommendations to resolve any conflicting language, if any conflict exist discussed.

Action: A motion was made by Christy Massey to update the Bylaws Section 5.8 C. to read “The board should adhere and enact to and review annually the investment policy and receive a report on financial investments at least quarterly” and seconded by Judge Massingill. Motion carried 9-0

- 4.2** Consider for Approval and Take Appropriate Action-Financial Reports

- 4.2.1** Justin Bowden reported that business as usual. Total Indigent write off was \$31,186.81 which is a little lower than normal. They are still waiting on BMY to reach out regarding their audit. They will most likely not hear from them until the summer of 2024. There is adequate money in the accounts. There is \$125,676.47 in the Indigent Account and \$142,830.89 in the General Fund account.

Action: A motion to accept the Financial Report was made by Commissioner Andrews and seconded by Commissioner Samuelson. Motion carried 9-0.

- 4.2.2** After completing some research Commissioner Samuelson requested that the word scholarship be added on the statement of net assets and on the statement of cash flow as it pertains to the Powell accounts.

Action: A motion to accept that the word scholarship be added on the statement of net assets and on the statement of cash flow as it pertains to the Powell accounts was made by Commissioner Samuelson and seconded by Commissioner Andrews. Motion carried 9-0.

- 4.3** Consider for Approval and Take Appropriate Action- report from County Judge Massingill.

4.3.1 Judge Massingill reported that he received a letter from Gary Kitchens, the Vice President with First National Bank of Granbury, that handles investments regarding a \$850,000.00 treasury note that is coming due at the end of January 2024. The letter states that the First National Bank of Granbury has pledged \$3,000,000.00 bond that will cover the hospital funds that we keep in the bank. The amount is currently covered under \$250,000.00 by FDIC. The pledge will now cover over the \$250,000.00.

Judge Massingill reported that the Hood County Hospital District currently has an investment consisting of five securities with the par value of \$1,915,000.00. There are also two US Treasury notes and three agency bonds. These investments will mature in 2024 and 2025.

Action: A motion to accept Judge Massingill's report was made by Terry Stamper and seconded by Dr. Kuban. Motion carried 9-0.

4.4 Consider for Approval and Take Appropriate Action- Indigent Operations

4.4.1 Krista Lash presented the Indigent Operation report for the month of June.

- Termed-2
- Applications Received -29
- Pending-0
- Applications Renewed 3
- Applications Denied-3
- Medicaid Eligible-0
- Active Clients -74
- There were 21 clients seen in Dr. Hedge's office and 3 clients were seen in NP Desiree Lester's office, 0 clients in NP Larry Hess's Office and 0 clients in NP Crystal Hall's office.
- Approved Inmates-7
- Denied Inmates-4 (Not a Hood County Resident)
- Termed Inmates-1

Action: A motion to approve the Hood County Indigent Report was made by Terry Stamper and seconded by Dr Kuban. Motion carried 9-0

4.5 LGMC CEO Report

4.5.1 No Report

Action: No Action Necessary

EXECUTIVE SESSION

4.5.2 Report from Judge Massingill requires Executive Session.

An objection was made by Commissioner Eagle and Commissioner Samuelson that it was not appropriate to adjourn into an Executive Session as the particular item was not listed on the agenda. Commissioner Eagle and Commissioner Samuelson exited the room and did not attend the Executive Session.

Christy Massey stated that at the bottom of every HCHD agenda the terminology delineating the legal options of adjourning into Executive Session(s).

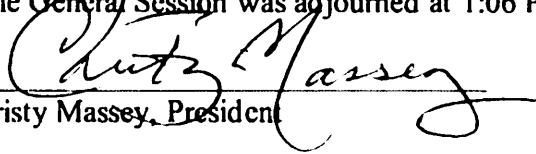
The meeting was adjourned for Executive Session at 12:35 P.M. under Texas Government code section 551.071.

Executive Session closed at 1:05 P.M. with no action taken.

The open meeting was reconvened at 1:05. P.M.

Action: No Action taken during Executive Session per Christy Massey.

5.0 Following this the General Session was adjourned at 1:06 P.M.


Christy Massey, President

March 22, 2024
Date

Next Meeting will be held at the Hood County Annex 1 Meeting Room 200 Deputy Larry Miller Dr St. Granbury, Texas 76048 January 12th, 2024, 12:00 Noon.