



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 16, 2024

The Honorable Bill Moore
Johnson County Attorney
204 South Buffalo Avenue, Suite 410
Cleburne, Texas 76033

Opinion No. KP-0457

Re: Whether Johnson County Emergency Services District No. 1 may operate a county-wide ambulance service (RQ-0513-KP)

Dear Mr. Moore:

You ask about the authority of Johnson County Emergency Services District No. 1 (“ESD”) to “operate a county-wide ambulance service.”¹ As background regarding the creation of the ESD, you tell us that in November 1956, pursuant to article III, section 48-d of the Texas Constitution, the “Johnson County voters authorized the creation of a single, county-wide rural fire district.” Request Letter at 1; *see also* Tex. Att’y Gen. Op. No. WW-0308 (1957) at 4 (discussing the November 1956 election creating the Johnson County Rural Fire Prevention District). You further explain that, in 2003, the Johnson County Rural Fire Prevention District was converted to an emergency services district by section 775.026 of the Health and Safety Code. Request Letter at 1–2; *see also* TEX. HEALTH & SAFETY CODE § 775.026(a) (providing that “[e]ach rural fire prevention district created under former Chapter 794 is converted to an emergency services district operating under this chapter [775]”). You state that the ESD questions “whether it has authority to operate a county-wide ambulance service because” the constitutional provision under which the voters voted to create the Johnson County Rural Fire Prevention District in 1956 did not explicitly authorize the provision of ambulance service. Request Letter at 2. We first consider the history of and legal framework that formerly governed rural fire prevention districts.

History of and Legal Framework Governing Rural Fire Prevention Districts

In 1949, Texas voters approved a constitutional amendment giving the Legislature authority to create rural fire prevention districts. TEX. CONST. art. III, § 48-d(a) (repealed Sept. 13, 2003) (providing “[t]he Legislature shall have the power to provide for the establishment and creation of rural fire prevention districts”). Article III, section 48-d did not specify the services

¹Letter from Honorable Bill Moore, Johnson Cnty. Att’y, to the Off. of the Att’y Gen., Op. Comm. at 1 (Sept. 21, 2023), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2023/RQ0513KP.pdf> (“Request Letter”).

a district could provide, but instead left it to the Legislature to specify the services necessary to implement the provision. *See id.*; *cf. City of Corpus Christi v. City of Pleasanton*, 276 S.W.2d 798, 803 (Tex. 1955) (discussing a constitutional amendment that was not self-enacting and stating that “[b]y the very terms of the Amendment the duty was enjoined upon the Legislature to implement the public policy found therein”). The Legislature did not exercise its authority under section 48-d until 1957, when it enacted article 2351a-6, Vernon’s Texas Civil Statutes.² *See* Acts of 1957, 55th Leg., R.S., ch. 57, § 1, 1957 Tex. Gen. Laws 130–35. Relevant here, that legislation also validated, ratified, and confirmed certain rural fire prevention districts created prior to 1957. *See id.* at 134.

A 1973 amendment to article 2351a-6, section 11, gave rural fire prevention districts the general authority to “operate and provide emergency ambulance service”³ Act of May 21, 1973, 63d Leg., R.S., ch. 260, § 1, 1973 Tex. Gen. Laws 609, 612. In 2002, the Senate Committee on Intergovernmental Relations issued an interim report recommending that all existing rural fire prevention districts be converted to emergency services districts because, in part, they “provide similar services; *both can provide emergency medical services and/or fire services[.]*” *Senate Comm. on Intergovernmental Relations, Interim Report 78th Legislature* at 91 (2002), available at https://senate.texas.gov/cmtes/77/c520/IGRReport_2002.pdf (last visited Oct. 17, 2023) (emphasis added). The Seventy-eighth Legislature acted upon the recommendation by passing Senate Bill 1021, codified in relevant part at Health and Safety Code section 775.026. *See* Act of June 20, 2003, 78th Leg., R.S., ch. 1204, § 1.003, 2003 Tex. Gen. Laws 3419, 3420. Texas voters repealed article III, section 48-d of the Texas Constitution that same year. *See* Tex. S.J. Res. 45, 78th Leg., R.S., 2003 Tex. Gen. Laws 6226.

We next consider the authority of an entity converted from a rural fire prevention district to an emergency services district pursuant to section 775.026.

Entities originally created as rural fire prevention districts and converted to emergency services districts may provide ambulance service to the same extent as entities originally created as emergency services districts.

Section 775.026 of the Health and Safety Code provides that “[e]ach rural fire prevention district created under former Chapter 794 is converted to an emergency services district operating under . . . chapter [775].” TEX. HEALTH & SAFETY CODE § 775.026(a). At the time of conversion, from a rural fire prevention district to an emergency services district, all authority of a rural fire prevention district ceased, and the district had only the authority of an emergency services district,

²The provisions of article 2351a–6 governing rural fire prevention districts were eventually codified, without substantive change, as chapter 794 of the Health and Safety Code. *See* Act of May 16, 1989, 71st Leg., R.S., ch. 678, § 1, 1989 Tex. Gen. Laws 2230, 3122.

³We find nothing in that legislation that indicates this authority was intended to apply only to districts created after its effective date. *See generally* Act of May 21, 1973, 63d Leg., R.S., ch. 260, § 1, 1973 Tex. Gen. Laws 609, 612. Rather, the amendment appears to have applied to all districts then existing and subsequently created.

The general authority of a rural fire prevention district to operate and provide ambulance services remained in state law until the successor to article 2351a-6 was repealed in 2003. *See* Act of May 16, 1989, 71st Leg., R.S., ch. 678, § 1, 1989 Tex. Gen. Laws 2230, 3127 (enacting Texas Health and Safety Code subsection 794.031(11)); Act of June 20, 2003, 78th Leg., R.S., ch. 1204, § 3.001(2), 2003 Tex. Gen. Laws 3419, 3422 (repealing Texas Health and Safety Code chapter 794).

no more, no less. As a general rule, an emergency services district operating under chapter 775 may provide ambulance service.⁴ *See* TEX. CONST. art. III, § 48-e (providing that an emergency services “district may provide emergency medical services, emergency ambulance services, rural fire prevention and control services, or other emergency services authorized by the Legislature”); TEX. HEALTH & SAFETY CODE §§ 775.003 (authorizing the organization of emergency services districts as provided by article III, section 48-e of the Texas Constitution), 775.031(a) (setting out various powers in order for an emergency services district to “provide emergency services”). Thus, a court would likely conclude that an emergency services district, even one that was converted from a rural fire prevention district like the ESD, may generally provide ambulance service because the statutory text says it can. *Hogan v. Zoanni*, 627 S.W.3d 163, 169 (Tex. 2021) (providing “the statutory text is the ‘first and foremost’ indication of the Legislature’s intent” (quoting *Greater Hous. P’ship v. Paxton*, 468 S.W.3d 51, 58 (Tex. 2015))).

⁴This general rule may not apply in certain districts with overlapping territory. *See* TEX. HEALTH & SAFETY CODE §§ 775.020, .0205 (both prohibiting duplicative services in certain districts with overlapping territory). The general rule may also be inapplicable in an emergency service district created to provide limited services. *See id.* § 775.031(d) (providing that an emergency service district “is not required to perform all the functions authorized by [chapter 775]” but instead “may be created to provide limited services”). You do not provide any information indicating these exceptions apply to the ESD. *See generally* Request Letter.

S U M M A R Y

Section 775.026 of the Health and Safety Code provides that each rural fire prevention district created under former chapter 794 of that Code is converted to an emergency services district operating under chapter 775. Emergency services districts operating under chapter 775 of the Health and Safety Code generally have authority to provide ambulance service. Thus, a court would likely conclude that an emergency services district, even one that was converted from a rural fire prevention district like the Johnson County Emergency Services District No. 1, may generally provide ambulance service because the statutory text says it can.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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