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Opinion Committee

The Honorable John Cornyn  
Texas Attorney General  
Office of the Attorney General  
P. O. Box 12548  
Austin, Texas 78711

Re: Whether Bexar County is prohibited by Tex. Health & Safety Code §574.106 (Texas Mental Health Code) from paying fees incurred pursuant to contract with and charged by Kerr County for certain mental health hearings held in Kerr County by Kerr County personnel.

Dear General Cornyn,

A disagreement has arisen between Kerr County and Bexar County as to the proper interpretation of Tex. Health & Safety Code §574.106, and related statutes. As we are unable to find any authority that would clarify how this section is to be interpreted under the circumstances that exist in our case, we are asking your office for assistance in reaching a resolution of the issue.

The attached brief will set out our position in more detail, but in summary, the basis of our disagreement is as follows: Kerr County and Bexar County both have state mental hospitals located within their boundaries. Frequently, for one reason or another, Bexar County citizens must be involuntarily committed to the Kerrville State Hospital, or Kerr County citizens to the San Antonio State Hospital. In order to avoid the necessity of personnel from one county having to travel to the other county to hold the hearings that are required under the Texas Mental Health Code (Tex. Health & Safety Code, Subtitle C), the two counties have for several years held these hearings for each other, pursuant to a contract, which is renewed annually. This contract provides that each county is to reimburse the other for the "reasonable and necessary costs" assessed by the county holding the hearings.

Around October of 1998, Bexar County began to withhold contract payments for the court costs assessed by Kerr County related to holding medication petition hearings ( See Tex. Health & Safety Code §Chapter 574) on Bexar County citizens, arguing that Section 574.106

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of the Mental Health Code prohibited their payment of court costs for any matter other than the original commitment. Apparently they interpret this statutory provision to require that court costs may only be assessed to the home county for the original commitment, and that medication petitions, as "ancillary" or "subsidiary" actions, must be held at no cost to the home county.

Kerr County takes exception to this analysis. Although the Texas Mental Health Code does require that a mental health commitment be in place before a hearing can be held on the issue of whether the patient may be involuntarily medicated, these medication petitions are entirely separate proceedings, which are filed separately and are given different cause numbers from the commitment proceedings. Medical petitions are not filed in every mental health case, nor are they necessary in every case. For various reasons, which are set out and elaborated upon in our attached brief, Kerr County takes the position that both the Texas Mental Health Code and Kerr County's written contract with Bexar County authorize fees to be assessed and billed to Bexar County for hearings held on medication petitions as well as on all commitments (temporary and extended), and that Bexar County is obligated to pay all the amounts which have been billed pursuant to that contract.

We respectfully request that you forward this request to your opinions committee for review and reply, and that such reply be provided at the earliest possible time. Until this matter is resolved, the contract at issue (which expired on September 30, 1998) cannot be renewed. Thank you in advance for your kind attention to this matter.

Best regards,



David M. Motley  
Kerr County Attorney