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OPINION COMMITTEE

COUNTY OF KARNES

ROBERT L. BUSSELMAN
COUNTY ATTORNEY
101 N. PANNA MARIA, STE. 10
KARNES CITY, TEXAS 78118
830-780-3736

FILE # ML-41505-00
I.D. # 41505

July 3, 2000

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0259-JC

Re: Request for Attorney General Opinion Regarding Whether a Medical Clinic Owned by the Karnes County Hospital District and Leased to Doctors in Private Practice Is Subject to Local Ad Valorem Taxes for Tax Years 1996 Through 1999.

Dear General Cornyn:

On behalf of the Karnes County Hospital District (KCHD), I am hereby requesting an opinion as to whether the land and improvements which comprise a medical clinic located in Karnes County, Texas on the same 20 acre tract upon which the hospital is located, and is connected to the hospital by a covered sidewalk in very easy walking distance, taxes are exempt from property taxes levied by local taxing units in the tax years 1996 through 2000.

The Karnes County Hospital District (KCHD) was established pursuant to the authorization of Article IX, §9 of the Texas Constitution and Tex. Rev. Civ. Stat. Ann. article 4437e, §16 (Vernon 1976). KCHD is a special district taxing entity with boundaries and taxing authority coterminous with the boundaries of Karnes County. KCHD owns approximately 20 acres of land in Karnes County upon which the Otto Kaiser Memorial Hospital and the clinic has been constructed. The taxable status of the hospital is not

in dispute.

The 20 acres was donated by Mrs. Otto Kaiser, therefore, the name "Otto Kaiser Memorial Hospital". The Bonnstetter Professional Building and the hospital building are built on the same 20 acre tract.

A new medical clinic, separate from the hospital, but located on the same 20 acres and connected by a covered sidewalk, was completed in 1986. This building is known locally as the "Bonnstetter Professional Building". In this request for opinion the Bonnstetter Building will be referred to as "the clinic". In the sample leases and policies which are attached to this request for opinion, the clinic/Bonnstetter Building is also referred to as the "Kaiser Medical Center" (distinguished from the "Kaiser Hospital"). The cost to construct the clinic was just under \$500,000.00. The clinic is located near the hospital, but is not attached to the hospital, except as above stated. The clinic contains four offices constructed to serve as doctor's offices. The proceeds used to construct the building included money donated by Dr. and Mrs. Bonnstetter, under their wills specifically to help attract doctors to the area. The records of the Karnes County Appraisal District (KCAD) currently reflect the following regarding the clinic:

1. Only the improvement is considered taxable at this time, and the land is listed as being tax exempt.
2. The taxable value of the improvement is listed at \$256,880.
3. The clinic is listed as having 7,677 square feet.
4. The tax rate for each of the years in dispute is

approximately \$2.73/100.

KCHD contends that the clinic is tax exempt not only because it is owned by KCHD, but also because the use being made of the property increases the income to the hospital, which is a benefit to the residents of Karnes County. KCAD contends that Texas law prohibits a property tax exemption in cases such as this, where a medical clinic is leased to private physicians who operate the clinic for private gain.

For each of the tax years in dispute you are asked to assume the following. The clinic has been leased to physicians who are engaged in private medical practice. The business agreement between KCHD and the physicians is a lease agreement. In recent years, the total amount of lease payments paid by three physicians to the KCHD is approximately \$19,800 per year in total. As part of the incentive package offered to the doctors, the clinic is offered to the doctors for the first twelve months of practice at no charge. After the first twelve months the clinic is leased to the doctors at a below-market rate. The physicians do not receive a percentage of laboratory fees, and the hospital does not pay the physicians' salaries. The fees that the patients pay cover the physician' salaries. The fees that the patients pay cover the physicians' office expenses. If there were no physicians leasing the clinic, the hospital would experience a significant loss of income from laboratory fees and X-ray fees.

You are asked to assume the following facts:

1. The doctors have the sole authority to fix compensation and salaries paid to people they employ at the clinic.
2. The doctors have the sole authority to employ or

discharge people who work for them at the clinic.

3. The doctors have the sole authority to set charges for their services to the public at the clinic.
4. The doctors have no written agreement with KCHD regarding the fees charged for the doctors' services at the clinic.
5. The doctors realize private benefits from their operation of the clinic.
6. Dr. Harold J. Bonnstetter and Rose Bonnstetter donated the amount of \$80,418.31 to build the building to encourage and attract doctors to the area.

The contractual lease agreements are drawn, by restricting the lab equipment owned by each physician, to encourage each physician to refer all patients needing X-rays and lab work to the hospital. The hospital provides all water and sewer service, and janitorial services and all maintenance on the premises without cost to the physicians. All laboratory work and major diagnostic work is encouraged by the restrictions in the policies to be sent to Otto Kaiser Hospital.

Attached to this request for opinion are Lease Agreements and Kaiser Medical Center Policies which are applicable to the subject property and the facts presented. These documents are submitted for the following physicians and businesses which have occupied the clinic:

Dr. Saldana
Dr. Ramirez
Dr. O'Connor

The attached documents entitled "Lease Agreement" and "Kaiser Medical Center Policies" (or some variation of such) are the only written agreements between the physicians and KCDH which existed on January of each of the tax years involved.

In addition, a copy of the by-laws of the Board of Directors of the KCHD has been provided for your review and information.

In summary, then, the following questions are presented:

1. Is the clinic (the Bonnstetter Building) taxable pursuant to Texas law under the facts presented?
2. Is the land on which the Bonnstetter building is constructed also taxable as real property pursuant to Texas law under the facts presented?
3. If the real property is tax exempt, is the leasehold interest taxable?

Your opinion regarding these difficult issues is respectfully requested. The affected parties (KCHD and KCAD) have been invited to further brief these issues.

Sincerly Yours,

A handwritten signature in black ink, appearing to read 'R. Busselman', written in a cursive style.

Robert L. Busselman

RLB:dkv



COUNTY OF KARNES

**ROBERT L. BUSSELMAN
COUNTY ATTORNEY
101 N. PANNA MARIA, STE. 10
KARNES CITY, TEXAS 78118
830-780-3736**

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July 21, 2000

The Honorable John Cornyn
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

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OPINION COMMITTEE

*RQ-0259-jc
brief*

Re: Request for Attorney General Opinion Regarding Whether a Medical Clinic Owned by the Karnes County Hospital District and Leased to Doctors in Private Practice Is Subject to Local Ad Valorem Taxes for Tax Years 1996 Through 1999. Submitted by Robert L. Busselman, County Attorney of Karnes County, Texas.

STATE'S BRIEF

To the Honorable John Cornyn:

STATEMENTS OF THE FACTS

The facts are outlined in detail in the request for attorney's general opinion and will here be presented in a condensed version.

1. Karnes County Hospital District is a hospital district created by the Legislature whose boundaries are co-terminous with the county boundaries of Karnes County.

2. The Medical clinic building was built on property owned by the hospital board and is adjacent to and connected to the main building of the hospital.

3. The clinic building is leased to medical doctors under a lease arrangement at below market price, the hospital maintains the property and furnishes all water and gas. The leases to the doctors provide that the doctors may have only very limited

laboratory equipment. Therefore most and all x-rays and lab work needed to be performed is performed by the hospital.

4. There are no doctors located in the county other than the three whose offices are located in the clinic building.

5. The census of the hospital is such that the income from such census is insufficient to support the hospital and the hospital relies heavily on x-ray and lab fees for support to supplement the tax income.

6. The doctors are sole proprietors in that they set their own rates, they set their own employees' compensation, and have full authority in deciding who they shall and who they shall not hire.

7. The income to the hospital from the services generated from the x-ray and lab services is used to directly offset the income to the hospital from ad valorem taxes.

8. The doctors are required to be on an on call status and rotate the on call periods.

ARGUMENT AND AUTHOITIES

1. The Vernon's Ann. Texas Civ. St. Art. V.T.C.A., Tax Code, Section 11 provides that all property in the State of Texas shall be taxable unless excmpt for Sec. A(a), except as provided in the subsection (b) & (c), property owned by this State or a political subdivision of this State is exempt from taxation if the property is used for public purposes.

2. The test set out in Grand Prarie Hospital vs. Tarrant Appraisal District 730 S.W.2d 851 (Tex. App.-El Paso 1987) at page 851, the Court defined to some extent follows:

"Therefore, the test is whether the property in question is held only for public purposes and is devoted exclusively to the use and benefit of the public. Satterlee 576 S.W. 2nd at 779.

Attorney General's Opinion DM-188 Dec. 1992 on page 8, concerning leased property owned by the Amarillo Jr. College District purchased for future expansion even though leased to students and employees was still held to be tax exempt.

3. Corporation of San Felipe D. Austin v. State (1921) 111 T. 108, 229 S.W. 845. Property used for government purposes not necessarily exempt: the test under the Constitution being whether it is devoted to public use.

CONCLUSION

In the above recited authorities, it appears that the arguments can be made that the district, without the gift from Dr. and Mrs. Bonnstetter would never have built a clinic building, therefore the clinic building being built, partially with funds donated by Dr. and Mrs. Bonnstetter together with tax money resulted due to the testamentary gift from Dr. and Mrs. Bonnstetter. The intent purpose of Dr. and Mrs. Bonnstetter was to provide a place for doctors to practice medicine in order to attract doctors to the county and therefore utilize the hospital to its fullest extent.

The hospital in providing the facilities to the doctors, paying for some of the utilities, and making it available at a below commercial rate, and requiring, through the restrictions, the use by the physicians of the hospital facilities appears to be or for a public purpose. The property was acquired purely for the

purpose of generating income to the hospital district by helping to attract and keep Doctors in the county and to market the services of the hospital through the Doctors.

As to the question of whether or not the leasehold should be taxed, is not addressed in this brief.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'R. Busselman', written over a faint circular stamp or mark.

Robert L. Busselman
County Attorney
Karnes County, Texas