



FILE # ML-42056-01

I.D. # 42056

KERR COUNTY ATTORNEY

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*RQ-0398-JC*

22 June 2001

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OPEN RECORDS DIVISION

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

OPINION COMMITTEE

RE: Whether or not a county has the authority to provide direct financial assistance from its general tax revenues to various non-profit social service programs sited within the same county.

Dear General Cornyn:

A question has arisen in Kerr County as to whether or not the county has the authority to expend funds from its general revenue fund to assist several non-profit organizations sited in Kerr County. Specifically, the county has been funding several non-profit organizations that assist Kerr County children. The legal authority is unclear as to whether or not the county is legally able to expend these funds. Enclosed with this letter is a legal brief detailing the factual situation and an overview of the relevant law addressing this matter.

Kerr County respectfully requests that you forward this question to your opinions committee for review and reply in accordance with *Texas Government Code 552.306*.

Sincerely,

David M. Motley  
Kerr County Attorney

**REQUEST FOR ATTORNEY GENERAL'S OPINION  
BRIEF**

**ISSUE:**

Does a county have the authority to provide direct financial assistance from its general tax revenues to such non-profit entities like Families & Literacy, Child Advocacy Place, Big Brothers & Sisters, K'Star, Hill Country Crisis Council and CASA (Court Appointed Special Advocates)?

**STATEMENT OF FACTS:**

Kerr County has been annually funding several non-profit entities over the years. The county has entered into contracts with these non-profits. The contracts detail how much money the non-profit will receive, the obligations of the non-profit to the county, the performance standards and the right to inspect financial records to ensure compliance with the contract. The common thread that exists throughout the various non-profits is that they serve children's needs.

The foregoing is a detail of each non-profit's obligation to the county and the amount the county funds the non-profit:

**CASA (Court Appointed Special Advocates):** provides guardians ad litem for use by the courts in appropriate cases relating to juvenile matters, family studies and performs certain investigation services as requested by the county. The county funds CASA \$3,000 annually.

**Hill Country Crisis Council:** provides intake and referral services for persons seeking family violence protective orders from the county attorney's office, maintains a safe shelter for children and maintains a "batterer's prevention program" designed to counsel and treat those who commit family violence. The county funds the Crisis Council \$5,000 annually.

**Child Advocacy Place:** provides a facility where children who are victims of sexual or physical abuse and their non-offending family members can be evaluated by law enforcement for evidence gathering. It also allows the children, their families and law enforcement a place where they can prepare for their court appearances. The county funds the Child Advocacy Place \$3,000 annually.

**K'Star:** provides for short-term emergency shelter, food, clothing, counseling, education and residential placement for runaway and at-risk children. The county funds K'Star \$5,000 annually.

**Big Brothers & Sisters:** provides positive adult role models to children from single-parent families. The county funds Big Brothers & Sisters \$3,000 annually.

**Families & Literacy:** provides parent/child education for the use by the courts in juvenile matters. Specifically, if a judge places a defendant on community supervision, the judge must require the defendant to demonstrate to the court whether the defendant has a certain educational skill level. If the judge finds that the defendant has not attained the educational skill level, the judge must require, as a condition of community supervision, that the defendant attain that level of educational skill. See *Texas Code of Criminal Procedure Article 42.12, Section 11 (c)*. The county funds Families & Literacy \$2,000 annually.

### **LEGAL AUTHORITIES & ANALYSES:**

#### **County Government Expenditure Law**

There are three legal impediments that counties must overcome before they are able to expend county funds. First, counties cannot grant public money or any thing of value in aid of, or to any individual, association or corporation whatsoever. See *Texas Constitution Article III, Section 52*. Second, counties only have those powers that the state constitution and statutes have conferred upon it. See *Canales v. Laughlin*, 214 S.W.2d 451 (Tex. 1948). Third, counties have an implied authority to spend public funds as is necessary to exercise the powers expressly conferred on the county by the state constitution and statutes. See *Travis County v. Colunga*, 753 S.W.2d 716, (Tex.Civ.App.-Austin 1988, writ denied) and *Anderson v. Wood*, 152 S.W.2d 1084, (Tex. 1941). No express or implied legal authority can be found to fund the said children's programs.

Counties may expend their funds that benefit private interests if the funds are made for the direct accomplishment of a legitimate public purpose and the county has attached conditions to the expenses to ensure that the public purpose is executed. See *Brazoria County v. Perry*, 537 S.W.2d 89, (Tex.Civ.App.-Houston [1<sup>st</sup> Dist.] 1976, no writ) and *Tex. Atty. Gen. Op. No. JM-1229* (1990). Whether a particular expenditure will serve a public purpose is a determination for the commissioners court to make, not the Texas Attorney General's Office. See *Tex. Atty. Gen. Op. No. JC-0080* (1999). The question becomes does the funding of these programs fulfill a legitimate public purpose?

In *Tex. Atty. Gen. Op. No. JC-0080*, the issue was whether or not the county had the authority to expend its funds to pay registration fees for county officials to attend a state association conference. The county

in question contended that the county officials' attendance at the conference accomplished a public purpose because the training and education the officials received increased their competency in their public positions. The Attorney General's Office agreed. *See id.* at 3.

It can be argued that the facts in *Tex. Atty. Gen. Op. No. JC-0080* are different than Kerr County's facts, thereby yielding a different conclusion. In *JC-0080*, the county expenditures for registration fees fulfill the public purpose of ensuring that the county officials are competent in their duties; duties that are expressly or impliedly conferred upon the officials. In Kerr County's facts, there seems to be no public purpose tied to express or implied powers.

### **County Authority for Providing for Paupers**

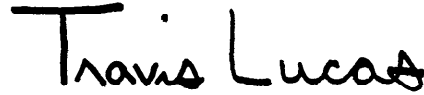
*Texas Local Government Code Section 81.027* allows counties to provide for the support of paupers (residents of their county who are unable to support themselves). Certain children could be classified as paupers under the right factual scenario. A pauper child might be one who has parents who are unable to provide necessary resources for him or one who does not have parents at all. Under these two possible scenarios, the county might be able to fund the aforementioned programs under the pauper authority. However, no caselaw can be found to support this argument.

### **CONCLUSION:**

It is unclear whether or not a county has the authority to expend public funds on the social programs as described above. County government expenditure law, coupled with the Attorney General's opinions discussed above, suggest that a county might not be able to fund such programs. Furthermore, it is unclear whether or not a county could fund the programs under the county authority for assisting paupers. Perhaps a county could fund some of the said programs under the pauper authority given the right factual scenarios.

WHEREFORE PREMISES CONSIDERED, Kerr County respectfully requests that the Honorable John Cornyn address these issues and render an opinion in a manner that will allow Kerr County to know whether or not it can spend public funds on these social programs.

Respectfully Submitted,

A handwritten signature in black ink that reads "Travis Lucas". The signature is written in a cursive style with a large, prominent "T" at the beginning.

TRAVIS LUCAS

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