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**OPINION COMMITTEE**



FILE # ML-46270-0  
I.D. # 46270

**STATE of TEXAS  
HOUSE of REPRESENTATIVES**

**JOE DESHOTEL**  
STATE REPRESENTATIVE

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**RQ-0845-GA**

November 19, 2009

The Honorable Greg Abbott  
Attorney General of Texas  
Post Office Box 12548  
Austin, Texas 78711-2548

Re: The ability of Spindletop Mental Health Mental Retardation Services to sell or execute a long term lease of a portion of real property transferred to Spindletop Mental Health Mental Retardation Services pursuant to House Bill 1759 and House Bill 1023.

Dear Attorney General Abbott:

Please accept this letter as a request, pursuant to Texas Government Code Section 402.042, for an opinion from your office clarifying whether the transfer of certain real property to Spindletop Mental Health Mental Retardation Services, in accordance with House Bill 1759 and House Bill 1023, will provide Spindletop Mental Health Mental Retardation Services with the authority to sell or execute a long term lease of all or a portion of such real property and use the resulting proceeds to provide community-based physical health, health-related, mental health, or mental retardation services to primarily promote a public purpose of the state.<sup>1</sup>

**Factual Background**

Prior to the 76th Legislature, Regular Session, 1999, the Texas Department of Mental Health and Mental Retardation provided mental health and mental retardation services at the Beaumont State Center (the "Center"). Legislation enacted in that session authorized the transfer of the Center into local governance, leading to the leasing of the center by Spindletop Mental Health and Mental Retardation Services ("Spindletop"). Spindletop wanted to establish ownership but did not have the funds to purchase the former center. Section 1, Chapter 1036 (H.B. 1759), Acts of the 80<sup>th</sup> Legislature, Regular Session, 2007 ("HB 1759"), became law

<sup>1</sup> Spindletop has alleviated or will alleviate any and all other impediments to its proposed course of action and, therefore, only seeks an opinion as to the impacts of HB 1759 and HB 1023, as discussed herein.

**COMMITTEES**

INSURANCE  
MEMBER

BUSINESS & INDUSTRY  
CHAIRMAN

REDISTRICTING  
MEMBER

effective June 15, 2007. HB 1759 authorized the Health and Human Services Commission, the Department of State Health Services ("DSHS"), or the Department of Aging and Disability Services ("DADS") to transfer to Spindletop for non-monetary consideration that certain real property including the tract described in Section 1(h) of HB 1759, consisting of approximately 9.814 acres of land (the "Premises"), for use as a facility to provide community-based mental health and mental retardation services. In accordance with HB 1759, the Department of State Health Services and the Department of Aging and Disability Services transferred the Premises to Spindletop by a Deed Without Warranty dated effective April 3, 2008 (the "Deed").

HB 1759 was amended by Section 1, Chapter 339 (H.B. 1023), Acts of the 81<sup>st</sup> Legislature, Regular Session, 2009 ("HB 1023") effective June 19, 2009. HB 1023 amended HB 1759 by authorizing DSHS, DADS, and Spindletop to amend or supplement the Deed to require Spindletop "to use the property in a manner that primarily promotes a public purpose of the state by using the property to provide community-based physical health, health-related, mental health, or mental retardation services." Thus, HB 1023 authorizes an amendment to the Deed to allow broader use of the Premises. DSHS, DADS, and Spindletop are agreeable to amending the Deed in accordance with HB 1023.

Spindletop operates facilities on only five (5) acres out of the approximate 9.814 acres within the Premises. The excess acreage is undeveloped and unproductive under the current circumstances. Spindletop does not possess, nor will it possess in the foreseeable future, the financial ability to develop or utilize such excess acreage. Thus, Spindletop desires to either sell or execute a long-term lease of the Premises or a portion thereof and use the proceeds there from to provide community-based physical health, health-related, mental health, or mental retardation services. The Premises are adjacent to a hospital and related health care facilities which can develop the excess acreage within the Premises for health-related services, parking or other purposes incidental to providing health-related services.

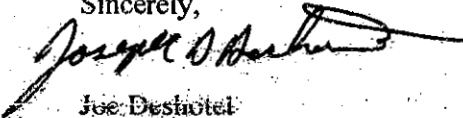
#### Arguments

Spindletop interprets the phrase "use the property", as employed in HB 1023, to include the ability to sell or execute a long-term lease of the Premises and use the proceeds there from "to provide community-based physical health, health-related, mental health, or mental retardation services" to primarily promote the a public purpose of the state. Thus, Spindletop asserts that selling or leasing (long-term) the excess acreage within the Premises and using proceeds for the requisite purposes constitutes a use of the Premises in accordance with HB 1023. Arguably, this is particularly true when the portion of the Premises is sold or leased long-term to an entity providing health-related services. Alternatively, the phrase "use the property", as employed in HB 1023, could be interpreted to require Spindletop to maintain possession of all portions of the Premises. Thus, the proposed amendment to the Deed in accordance with HB 1023 results in some ambiguity.

In light of the foregoing ambiguity, an opinion from your office is requested to clarify the impact of an amendment to the Deed pursuant to HB 1023 and, specifically, whether a sale or long-term lease of a portion of the Premises as presented above will comply with HB 1023.

If you need further information, please do not hesitate to contact me at 409-781-9221.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Deshotel", with a stylized flourish at the end.

Joe Deshotel  
Texas State Representative  
22<sup>nd</sup> Legislative District