



COLLIN COUNTY

OFFICE OF COUNTY AUDITOR
2300 Bloomdale Road • Suite 3100
McKinney, Texas 75071
(972) 548-4731 • Metro (972) 424-1460
Fax (972) 548-4696

RECEIVED

APR 04 2014

OPINION COMMITTEE

March 28, 2014

The Honorable Greg Abbott
Office of the Attorney General
Opinion Division
P.O. Box 12548
Austin, Texas 78711-2548

RECEIVED

APR 03 2014

OPEN RECORDS DIVISION

RQ-1193-GA

FILE # ML-47546-14

I.D. # 47546

RE: Request for opinion concerning the North Texas Behavioral Health Authority's authority to participate in certain vendor solicitation and scoring procedures of Texas Department of State Health Services for provider services pertinent to the Authority's service area

Dear General Abbott:

I am requesting your opinion on the following issues concerning the North Texas Behavioral Health Authority (NTBHA):

Does the NTBHA have authority to participate in the vendor solicitation and scoring procedures conducted by the Texas Department of State Health Services (DSHS) when such procurement is to provide services within the NTBHA service area and when such services would directly impact NTBHA's ability to perform its legislated mission?

Factual Background

The NTBHA is the local behavioral health authority covering a seven county region located in North Texas. The region includes Dallas, Ellis, Collin, Hunt, Navarro, Rockwall and Kaufman counties. This region is referred to as the NorthStar Region by DSHS. The NTBHA was created in 1999 by acts of the Texas Department of Mental Health and Mental Retardation (TDMHMR) and the Texas Commission on Alcohol and Drug Abuse (TCADA), said acts memorialized in an Agreement, (termed "Operations Agreement") a copy of which is attached to this request as Exhibit "A". The NTBHA was originally named the Dallas Area North Star Authority (DANSA) and you will notice

the attached documents refer to DANSA rather than NTBHA. DANSA changed its name to NTBHA in 2006 to reflect its larger geographic coverage rather than just the Dallas area.

A local behavioral health authority is an entity created by TDMHMR and TCADA under the authority of Texas Health and Safety Code Section 533.0356. Texas Health and Safety Code Section 533.0356 is attached with Exhibit "B". A local behavioral health authority is charged with planning and oversight of mental health and substance abuse services in a specific region of Texas. There are several local behavioral health authorities established within Texas by acts of TDMHMR and TCADA. However, this opinion request is made only on behalf of NTBHA and no other local behavioral health authority.

As mentioned above, the NTBHA is the local behavioral health authority covering a seven county region in North Texas. The region is referred to as the NorthStar Region by DSHS. One of the services provided to the NorthStar region is that of a behavioral health organization which manages clinical programs, protocols, processes, and health practices for the constituents of the NorthStar region who seek mental health and substance abuse counseling. The actual services are provided by a vendor selected by DSHS, but NTBHA provides oversight and management of those services. This selection of a vendor to serve the NorthStar Region was last bid by DSHS in 2005 by a procurement process conducted by DSHS and the winning vendor selected was a company doing business as "Value Options". A copy of the current contract between DSHS and Value Options is attached for informational purposes as Exhibit "C". The contract sets out the provider responsibilities of Value Options as well as the management and oversight duties and functions of NTBHA which manages the delivery of these services for the NorthStar region.

In 2013, DSHS announced that it would seek proposals from qualified providers for these services for a contract period covering the 2015 and 2016 years. As a result of the procurement announcement by DSHS, NTBHA requested to participate in the vendor solicitation and scoring process. NTBHA, as the end user and manager of the services provided by the selected provider, desired to provide guidance and input to DSHS in order to help secure the necessary proper services for the NorthStar region, based upon its collective experience in managing prior providers and its knowledge of the needs in the NorthStar region.

NTBHA was informed by DSHS that NTBHA would not be allowed to participate in the bidding and scoring process because DSHS believed NTBHA's participation would be a conflict of interest. A copy of the email response from DSHS to NTBHA has been attached as Exhibit "D". (The names of the persons on the email have been redacted.) NTBHA is of the opinion no such conflict of interest arises by virtue of its providing expertise and cooperation in the bidding and scoring process over providers for which it will exercise managerial authority. Additionally, the NTBHA believes that it

is essential to participate in the bidding and scoring process of these services in order to perform its legislative mandates and functions as a local behavioral health authority.

Legal Authority

As a local behavioral health authority, NTBHA has “all the responsibilities and duties of a local mental health authority provided by Section 533.035” of the TEXAS HEALTH AND SAFETY CODE. TEXAS HEALTH AND SAFETY CODE Section 533.035 is attached with Exhibit “B”. Section 533.035(c) charges a local behavioral health authority with the following responsibilities and duties:

The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

- (1) assembling a network of service providers;
- (2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health or mental retardation services; and
- (3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

It is clear that the legislature intended a local behavioral health authority to have significant responsibility for the services to be provided to the constituents of its service area. The statute imposes a duty on a local behavioral health authority to ensure the best use of public money in procuring services for a local service area. In addition, the statute references its role in “procuring services for a local services area, including a request for proposal or open-enrollment procurement method.” TEXAS HEALTH AND SAFETY CODE Section 533.035 (c)(3). NTBHA believes these statutory mandates provide implied authority to participate in the vendor solicitation and scoring procedures for health services provided within its service region in order to carry out its legislative mandate.

As your office is aware, case law and Attorney General Opinions have held that “implied authority” of various local governments, administrative agencies, and state agencies exists in order to carry out specific powers delegated to the entity. Administrative agencies have the “powers as are expressly granted to them by statute together with those necessarily implied from the authority conferred or duties imposed.” See, *Stauffer v. City of San Antonio*, 344 S.W.2d 158, 160 (Tex. 1961). Additionally, the Texas Attorney General has opined that “agencies also have implied powers to do that which is necessary to carry out the specific powers delegated.” See Op.Tex. Att’y Gen. No. GA-0649 (2008). The NTBHA suggests that its implied powers grant it authority to participate in the procurement solicitation and scoring process for the services which directly affect its legislated mandates.

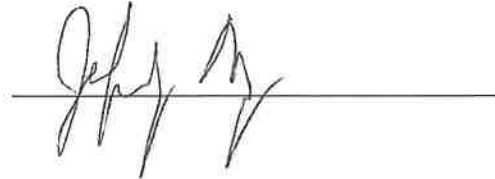
Lastly, there appear to be no statutes, regulations, or written policies of DSHS which would prevent NTBHA from working collaboratively with DSHS in forming

General Abbott
March 28, 2014
Page 4 of 4

procurement solicitation and scoring processes for services to be provided within NTBHA service region over which NTBHA exercises supervisory control.

Your opinion on these issues is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey M. Abbott", is written over a solid horizontal line.

Enclosures:

Exhibit "A" - NTBHA Formation Documents

Exhibit "B" - TEXAS HEALTH AND SAFETY CODE Sections 533.0356 and 533.035

Exhibit "C" - Current contract between DSHS and provider of services to NorthStar area.

Exhibit "D" - email from DSHS refusing NTBHA participation in bidding and scoring
(*redacted to remove names*)