

**RUSSELL W. MALM**  
**MIDLAND COUNTY ATTORNEY**  
500 N. Loraine, Suite 1103  
Midland, Texas 79701  
(432) 688-4490  
FAX (432) 688-4931

April 23, 2021

The Honorable Ken Paxton  
Attorney General  
209 W. 14<sup>th</sup> St.  
Austin, TX 78701

RQ-0406-KP  
FILE# ML-48950-21  
I.D.# 48950

Dear Attorney General Paxton:

On behalf of Midland County Judge Terry Johnson, I am writing to request an opinion from your office concerning a contract between Midland County and a vendor. Midland County owns a multi-purpose facility known as the Midland County Horseshoe. The Midland County Horseshoe is a multi-purpose facility that is leased out to host a variety of events, including livestock shows, rodeos, equestrian competitions, concerts, sporting events, trade shows, conventions, community events, quinceañeras, and wedding receptions. It also hosts the annual Midland County Fair. The facility is managed by an independent contractor.

The original contract was with Dooley Management Company (DMC), and had a 5 year term. At that time Dooley Management Company was owned by Mike and Tammy Dooley. This contract was awarded after the County went through a request for proposal process. The County has since renewed the contract with Dooley Management three times but did not go through another bidding or request for proposal process before those renewals.

In my capacity as Midland County Attorney, and under the authority of *Tex. Gov't. Code §402.043*, I ask your opinion regarding the following legal questions.

1. Must a county comply with the competitive procedures of *Tex. Loc. Gov't Code, Chapter 262, Subchapter C* before renewing or extending a contract for management of a county facility that was originally awarded through a request for proposals?
2. If you answer the first question affirmatively, does failure to comply with Chapter 262 render the renewal contract void?
3. Does a County contract become void or voidable if the vendor is sold during the terms of the contract?

4. Is the answer to the second question different if the contract contained language acknowledging that the company will be sold?

In 2005, Midland County entered into a contract with DMC for management and the provision of concessions at the Midland County Horseshoe. The original contract was for a period of 5 years, and contained language stating that “the agreement may renew for an additional specific time frame by the written and mutual consent of both parties.” A copy of the contract is enclosed as Exhibit A.

In 2010 Midland County and DMC renewed the contract for an additional 5 years, ending on September 30, 2015. This renewal also stated that that “the agreement may renew for an additional specific time frame by the written and mutual consent of both parties.” A copy of this contract is enclosed as Exhibit B.

In October of 2014, prior to the expiration of the renewal term, Midland County and DMC entered a 2nd renewal of the contract for another 5 years, ending on September 30, 2019, and also containing the language that “the agreement may renew for an additional specific time frame by the written and mutual consent of both parties.” A copy of this contract is enclosed as Exhibit C.

In September of 2018, Midland County and DMC entered into a 3rd renewal of the contract for another 5 years, beginning on October 1, 2019 and ending on September 30, 2024. The renewal also contained the language that “the agreement may renew for an additional specific time frame by the written and mutual consent of both parties.” A copy of this contract is enclosed as Exhibit D.

The September 2018 renewal also contained language stating that 100% of ownership in DMC would be transferred from Mike and Tammy Dooley to Joseph Kelley. The transfer of ownership did take place, and Mr. Kelley changed the name of the organization to Horseshoe Hospitality Services.

Midland County entered into the original 2005 contract with Dooley Management Company after considering and evaluating proposals submitted in response to a request for proposals. Midland County did not request either competitive bids or proposals prior to any of the subsequent three renewals of the contract.

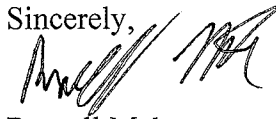
Texas Government Code Section 1473.021 authorizes a county to purchase or construct a building or permanent improvement to be used for a coliseum, an auditorium or an annual exhibit of livestock or agricultural, horticultural, or mineral products of the county. Section 319.002 of the Texas Local Government Code authorizes a County to establish and maintain a museum, building, or other improvement in the county or at any other location in the United States at which a fair or exposition is being held. Section 319.004 of the Texas Local Government Code authorizes a commissioners court to “contract for the complete management of, and for the conducting, maintenance, use, and operation of, buildings, improvements, and exhibits authorized by this chapter or by Subchapter B, Chapter 1473, Government Code.”

I have found two Attorney General opinions that construed 319.004. In Tex. Atty. Gen. Op. JC-0582 (2002), the Attorney General found that “a lease entered into under section 319.004 of the Local Government Code (or its predecessor) is not void or voidable if it was entered into without complying with chapter 263.” In Tex. Atty. Gen. Op. LO-98-057 (1998) the Attorney General ruled as follows:

The commissioners court of Ector County may enter into a coliseum concession contract pursuant to section 319.004 of the Local Government Code without seeking competitive bids, and may include in the contract provisions authorizing the lessee to assign the lease and to extend the term of the lease, subject to the consent of the commissioners court. The option to extend and the assignment could be exercised without putting the lease contract up for competitive bids.

Thank you for your assistance. Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Russell Malm', written over a horizontal line.

Russell Malm