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By Opinion Committee at 11:01 am, Aug 18, 2022

Nichole Mock
Wheeler County Auditor

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FILE# ML-49164-22
I.D.# 49164

August 18, 2022

Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Opinion Request – Wheeler County

Dear Opinion Committee:

Upon action taken on August 8, 2022, at the regularly scheduled meeting of the Wheeler County Commissioners' Court, this is to request an Attorney General Opinion on questions raised by the Wheeler County Treasurer regarding supplements paid by Wheeler County to the two hospital districts located within the boundaries of Wheeler County, Texas.

QUESTION NO. 1:

Can Wheeler County, as a taxing entity, use county tax revenue to pay a supplement to the two hospital districts located within the county regardless of the hospital district residency of the taxpayers who fund this supplement?

BACKGROUND:

As background, Wheeler County (hereafter referred to as "County") has the unique situation of having two legislatively created hospital districts located within its boundaries, the two hospital districts being North Wheeler County Hospital District (hereafter referred to as "NWCHD") and South Wheeler County Hospital District (hereafter referred to as "SWCHD"). (See Chapters 1083 and 1097, respectively, of the Special District Local Laws Code). All property owners in Wheeler County reside in either NWCHD or SWCHD and thus, are assessed hospital district taxes by one of the hospital districts within whose boundaries the taxpayer resides. Local taxpayers also elect a board of directors for each hospital district, and a taxpayer may only vote for a board member(s) in the hospital district in which the taxpayer resides.

For several years the County, a separate taxing entity from NWCHD and SWCHD, has budgeted annually the sum of \$600,000.00 as a supplement/lump sum payment to both hospital districts, with each district receiving a \$300,000.00 lump sum payment in October each year. Each hospital district operates its own emergency medical service providing EMS/ambulance services to residents in either the NWCHD or SWCHD. Over the years, both hospital districts have requested the County provide monetary assistance to each hospital district in the operation of their respective EMS departments. The County has previously entered into Interlocal

Agreements with each hospital district. The monies used to pay these supplements comes primarily from Wheeler County tax revenue received from property owners throughout the county. The two supplements are paid at the same time each year to both NWCHD and SWCHD. As an example, a taxpayer living in and paying property taxes to NWCHD also pays County taxes, with a portion of the taxpayer's County taxes being paid to both NWCHD and SWCHD in the form of the annual supplement budgeted by the County, even though the taxpayer does not reside in SWCHD. The taxpayer does not have the right to vote in the elections for the governing board of directors for SWCHD and has no representative voice on that board as to how the annual county supplement payments are used by SWCHD. The same can be said for taxpayers who reside in and pay taxes to SWCHD, who have no representative voice or right to vote on the board of directors for NWCHD, yet a portion of the taxpayer's County tax dollars are sent to NWCHD for use under the terms of the Interlocal Agreement. Copies of both Interlocal Agreements are attached for your information and review.

Based on the above information, does the Constitution or other statute(s) prohibit sending taxpayer funds to another taxing entity for which the taxpayer has no representation/vote as to the board members elected to make fiscal decisions regarding the use of the funds provided by the County to each hospital district?

QUESTION NO. 2:

Based on the perpetual nature of the attached Interlocal Agreements, if the current Interlocal Agreements with NWCHD and SWCHD do not contain specific language, per Section 791.011(d)(3), that payments are being made from revenues currently available to the County, would the County be required to calculate a debt rate for the County's continuing payment obligations under the terms of the two Interlocal Agreements?

BACKGROUND:

The attached Interlocal Agreements between the County and NWCHD and SWCHD contain identical verbiage, and both agreements require the County to make lump sum payments each year of \$300,000.00 to each hospital district totaling \$600,000.00 budgeted annually by the County for these payments. There is no specific language in either agreement that Wheeler County will pay for the performance of the governmental functions or services from current revenues available to Wheeler County, simply a reference in the "PREAMBLE" that the parties mutually desire an arrangement that "Facilitates efficient use of the resources currently available to both the County and ...". Both Interlocal Agreements are perpetual in nature and automatically renew each year unless terminated by either party in writing, with the County's monetary obligation under each Interlocal Agreement continuing year-over-year.

Based on the above information, does the lack of specific language pursuant to Section 791.011(d)(3) and the perpetual nature of the Interlocal Agreements constitute a debt of the County, thus, creating a debt obligation that would require the County to calculate a debt rate on Line 42 of the Tax Rate Calculation Worksheet?

QUESTION NO. 3:

Does the failure of the County and both NWCHD and SWCHD to adhere to the Texas Supreme Court's three-part test regarding use of public funds constitute a violation of Article III, Sec. 52(a) of the Texas Constitution? In the alternative, what are the consequences where Wheeler County has no controls in place to ensure the funds

paid to NWCHD and SWCHD are spent properly, there is a public purpose to the spent County funds, and the County is receiving a service equivalent to what the County is spending under each Agreement?

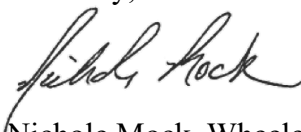
BACKGROUND:

Wheeler County has had Interlocal Agreements in place with both NWCHD and SWCHD for many years to provide supplements to each hospital district for assistance with EMS expenditures and ambulance purchases, the most recent Agreements having both been executed in February 2020 and renewing annually. Sufficient control over the expenditures of both hospital districts has not been retained by the County to ensure that the public purpose set forth in each Interlocal Agreement is being accomplished, and the County has no information on how these funds have been spent by the hospital districts. No annual accounting has been made by either hospital district to assure the County that the funds are being spent on EMS services in an amount equivalent to what the County is spending under the terms of each Interlocal Agreement.

Based on the above information, does the County's failure to adhere to the Texas Supreme Court's three-part test regarding use of public funds constitute a violation of Texas Constitution Article III, Section 52(a), and does such failure by the County to exercise sufficient control over the expenditures by both NWCHD and SWCHD necessitate an abatement of any future payments under the attached Interlocal Agreements until such time as the County is provided an accounting as to the expenditures by NWCHD and SWCHD under the terms of the attached Interlocal Agreements?

Wheeler County appreciates your time and attention in reviewing this letter request and looks forward to your response and opinion regarding these queries. Please let me know if you need further information regarding this opinion request.

Sincerely,



Nichole Mock, Wheeler County Auditor

cc: Hon. Carol Porton, Wheeler County Judge
Jackie Don May, Commissioner, Pct. 1
Phillip Gaines, Commissioner, Pct. 2
David Simpson, Commissioner, Pct. 3
John Walker, Commissioner, Pct. 4
Leslie Timmons, Wheeler County Attorney
Renee Warren, Wheeler County Treasurer
Margaret Dorman, Wheeler County Clerk

**INTERLOCAL AGREEMENT
BETWEEN WHEELER COUNTY
And NORTH WHEELER COUNTY HOSPITAL DISTRICT**

This Agreement ("Agreement") is by and between Wheeler County, Texas ("County"), and North Wheeler County Hospital District, a political subdivision of the State of Texas ("NWCHD") (collectively "the entities").

PREAMBLE

Currently, NWCHD operates an ambulance service, North Wheeler County EMS ("EMS") that currently serves both the City of Wheeler and the northern portion of Wheeler County, including rural areas outside the County.

NWCHD has found it increasingly difficult to fund the acquisition of required equipment and ambulances.

County and NWCHD mutually desire an arrangement that:

- (a) Facilitates delivery of a responsive and effect ambulance service for the residents of NWCHD;
- (b) Facilitates efficient use of the resources currently available to both the County and NWCHD;
- (c) Is deemed to mutually benefit the County and NWCHD;
- (d) Is deemed to benefit the residents of NWCHD;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein set forth, the entities agree as follows:

ARTICLE ONE
RESPONSIBILITIES OF COUNTY

1.01 Responsibilities of County. Under this agreement, County shall:

- (a) Pay to NWCHD the sum of Three Hundred Thousand Dollars (\$300,000.00) per year, due and payable in one lump sum on *date.
- (b) Every five years, consider funding fifty percent (50%) of the cost of a new ambulance.
- (c) Provide dispatch and 911 support for the ambulance service.

1.02 Responsibilities of NWCHD. Under this agreement, NWCHD shall:

- (a) Continue to provide ambulance services to the residents of NWCHD;
- (b) Operate, staff, and manage ambulance services;
- (c) Provide a building suitable to house EMS, including staff and ambulances and pay all utility expenses for said building;

mk

APPROVED
3/23/2020

**INTERLOCAL AGREEMENT
BETWEEN WHEELER COUNTY
And SOUTH WHEELER COUNTY HOSPITAL DISTRICT**

This Agreement ("Agreement") is by and between Wheeler County, Texas ("County"), and South Wheeler County Hospital District, a political subdivision of the State of Texas ("SWCHD") (collectively "the entities").

PREAMBLE

Currently, SWCHD operates an ambulance service, South Wheeler County EMS ("EMS") that currently serves both the City of Shamrock and the Southern portion of Wheeler County, including rural areas outside the County.

SWCHD has found it increasingly difficult to fund the acquisition of required equipment and ambulances.

County and SWCHD mutually desire an arrangement that:

- (a) Facilitates delivery of a responsive and effect ambulance service for the residents of SWCHD;
- (b) Facilitates efficient use of the resources currently available to both the County and SWCHD;
- (c) Is deemed to mutually benefit the County and SWCHD;
- (d) Is deemed to benefit the residents of SWCHD;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein set forth, the entities agree as follows:

ARTICLE ONE
RESPONSIBILITIES OF COUNTY

1.01 Responsibilities of County. Under this agreement, County shall:

- (a) Pay to SWCHD the sum of Three Hundred Thousand Dollars (\$300,000.00) per year, due and payable in one lump sum on *date.
- (b) Every five years, consider funding fifty percent (50%) of the cost of a new ambulance.
- (c) Provide dispatch and 911 support for the ambulance service.

1.02 Responsibilities of SWCHD. Under this agreement, SWCHD shall:

- (a) Continue to provide ambulance services to the residents of SWCHD;
- (b) Operate, staff, and manage ambulance services;
- (c) Provide a building suitable to house EMS, including staff and ambulances and pay all utility expenses for said building;

APPROVED
2/24/2020

- (d) Provide ongoing repairs and maintenance for the upkeep of ambulances;
- (e) Provide medical supplies for the ambulance service;
- (f) Provide fuel for the ambulances;
- (g) Provide malpractice liability insurance coverage for staff members;
- (h) Provide both collision and liability coverage on the ambulance, with liability limits of \$100,000 per person and \$300,000 per accident for bodily injury and \$100,000 for property damage;
- (i) Provide education and training for staff members.

ARTICLE TWO TERM AND TERMINATION

- 2.01 Term. This agreement shall commence on March 1, 2020 and shall remain in full force and effect until one the governing bodies of the entities vote to terminate the agreement.
- 2.02 Notice of Termination. The party wishing to terminate this Agreement shall notify the other entity in writing thirty (30) days prior to meeting in which that entity will vote on termination.
- 2.03 No-Fault Termination. This Agreement may be terminated:
- (a) At any time by mutual consent of the parties;
 - (b) By either party without cause.
- 2.04 Termination for Breach. This Agreement may be terminated immediately, by either entity, upon material breach of the Agreement, which breach shall have remained uncorrected for ten (10) consecutive days following written notice to the breaching party from the nonbreaching party.
- 2.05 Effects of Termination. Upon termination of this Agreement, neither party shall have any further obligation except for:
- (a) Obligations accruing prior to the date of termination, and
 - (b) Obligations promised or covenants of this Agreement.

ARTICLE THREE MISCELLANEOUS

- 3.01 Amendments. This Agreement represent the entire understanding an dagreement between the parties and each part agrees to faithfully perform and uphold each of the provisions hereof. No modification, alteration, or waiver of any term, covenant, or condition of this Agreement shall be valid unless agreed to in writing by both parties.

- 3.02 Assignment. This Agreement may not be assigned without the prior written consent of the remaining part hereto, which consent may not be unreasonable withheld.
- 3.03 Sole Agreement. This Agreement shall constitute the sole and exclusive Agreement of the parties with respect to the matters set forth herein, and supersedes any and all other agreements, whether written or oral, heretofore entered into between the parties. It is expressly agreed that any amendments hereto must be in writing and signed by the parties hereto. The terms, provisions, conditions, and covenants contained in this Agreement shall apply to, inure to the benefit of, and be binding upon, the parties hereto and their respective successors in interests and assigns, except as may be otherwise expressly provided for herein.
- 3.04 Choices of Law. This Agreement shall be construed and governed according to the laws of the State of Texas.
- 3.05 Notices. Any and all notices of documents or other notices required to be delivered under the terms of this Agreement shall be addressed to each party as follows:

Wheeler County
 ATTN: Jerry Dan Hefley
 PO Box 486
 Wheeler, TX 79096

South Wheeler County Hospital District
 ATTN: Wiley Fires
 PO Box 511
 Shamrock, TX 79079

EXECUTED on this 24th day of February, 2020.

WHEELER COUNTY

SOUTH WHEELER COUNTY
 HOSPITAL DISTRICT

By: Jerry Dan Hefley
 Jerry Dan Hefley
 Wheeler County Judge

By: Wiley Fires
 Wiley Fires
 Administrator/CEO

ATTEST:

Margaret Dorman
 Margaret Dorman
 Wheeler County Clerk

By: Vernon "Cottie" Tarbet
 Vernon "Cottie" Tarbet,
 Chairman, Board of Directors

- (d) Provide ongoing repairs and maintenance for the upkeep of ambulances;
- (e) Provide medical supplies for the ambulance service;
- (f) Provide fuel for the ambulances;
- (g) Provide malpractice liability insurance coverage for staff members;
- (h) Provide both collision and liability coverage on the ambulance, with liability limits of \$100,000 per person and \$300,000 per accident for bodily injury and \$100,000 for property damage;
- (i) Provide education and training for staff members.

ARTICLE TWO
TERM AND TERMINATION

- 2.01 Term. This agreement shall commence on March 1, 2020 and shall remain in full force and effect until one the governing bodies of the entities vote to terminate the agreement.
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 - (b) Obligations promised or covenants of this Agreement.

ARTICLE THREE
MISCELLANEOUS

- 3.01 Amendments. This Agreement represent the entire understanding and agreement between the parties and each part agrees to faithfully perform and uphold each of the provisions hereof. No modification, alteration, or waiver of any term, covenant, or condition of this Agreement shall be valid unless agreed to in writing by both parties.

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- 3.03 Sole Agreement. This Agreement shall constitute the sole and exclusive Agreement of the parties with respect to the matters set forth herein, and supersedes any and all other agreements, whether written or oral, heretofore entered into between the parties. It is expressly agreed that any amendments hereto must be in writing and signed by the parties hereto. The terms, provisions, conditions, and covenants contained in this Agreement shall apply to, inure to the benefit of, and be binding upon, the parties hereto and their respective successors in interests and assigns, except as may be otherwise expressly provided for herein.
- 3.04 Choices of Law. This Agreement shall be construed and governed according to the laws of the State of Texas.
- 3.05 Notices. Any and all notices of documents or other notices required to be delivered under the terms of this Agreement shall be addressed to each party as follows:

Wheeler County
ATTN: Jerry Dan Hefley
PO Box 486
Wheeler, TX 79096

North Wheeler County Hospital District
ATTN: Monica Kidd
PO Box 1030
Wheeler, TX 79096

EXECUTED on this 25 day of February, 2020.

WHEELER COUNTY

NORTH WHEELER COUNTY
HOSPITAL DISTRICT

By: Jerry Dan Hefley
Jerry Dan Hefley
Wheeler County Judge

By: Monica Kidd
Monica Kidd
Administrator/CEO

ATTEST:

Margaret Dorman
Margaret Dorman
Wheeler County Clerk

By: Tommy Puryear
Tommy Puryear,
Chairman, Board of Directors