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May 29, 2013

Honorable Mike Ford, Somervell County Judge
Honorable Larry Hurley, Somervell County Commissioner, Precinct 1
Honorable John Curtis, Somervell County Commissioner, Precinct 2
Honorable Kenneth Wood, Somervell County Commissioner, Precinct 3
Honorable James Barnard, Somervell County Commissioner, Precinct 4

Re: Effect of Creation of the Somervell County Hospital District on the County's
Outstanding Obligations Issued for the Benefit of the County Hospital Purposes

Dear Judge and Commissioners:

You have asked me to advise you of the effect of the creation of the Somervell County Hospital District on the County's outstanding Somervell County, Texas Certificates of Obligation, Series 2008 (the "Series 2008 Certificates"), including what notices must be given to or consents received from the holders of those obligations.

You have advised me that the Commissioners Court received a petition for the creation of a hospital district pursuant to Chapter 286 of the Texas Health and Safety Code that would be coterminous with the boundaries of the County, and that the proposed district would have an ad valorem tax not to exceed \$0.175 per \$100 valuation. The Commissioners Court ordered an election on the creation of the district for May 11, 2013, and that such election to create the hospital district passed.

You have provided us with a copy of the order canvassing the hospital district election which the Commissioners Court passed on May 20, 2013.¹ We have not examined any other documents relating to the hospital district election, except the petition and the canvassing order. Consequently, since we have not examined documents, such as the election order and the preclearance submission and preclearance letter from the United States Department of Justice, we are unable to advise you regarding the validity of the election. You will need to request such opinion from the attorneys who represented the County and proposed district in this process. For purposes of this letter, we will assume that the election was properly conducted and all requisite steps for a valid election have occurred. Any discrepancy in the election process could require a different result.

¹ Please note that the period for filing an election contest expires thirty days after the canvass.

Assuming the election was properly conducted and precleared, we do not believe the County has any requirement to obtain any consent from the holders of the Series 2008 Certificates. The Series 2008 Certificates and the proceeds thereof related solely to the hospital. The Series 2008 Certificates were issued for the purpose of paying contractual obligations to be incurred for (1) the construction of improvements and expansion of the County's hospital and the equipping thereof and (2) the payment of professional services and costs of issuance related to the Certificates.

Section 286.071 of the Health and Safety Code sets forth the responsibility of Somervell County as a result of the election:

On creation of a district, a county, municipality, or other governmental entity in which the district is located shall convey or transfer to the district:

- (1) title to land, buildings, improvements, and equipment related to the hospital system located wholly in the district that are owned by the county, municipality, or other governmental entity in which the district is located;
- (2) operating funds and reserves for operating expenses and funds that have been budgeted by the county, municipality, or other governmental entity in which the district is located to provide medical care for residents of the district for the remainder of the fiscal year in which the district is established;
- (3) taxes levied by the county, municipality, or other governmental entity in which the district is located for hospital purposes for residents of the district for the year in which the district is created; and
- (4) funds established for payment of indebtedness assumed by the district.

As a result of a valid election, the County would transfer all of the real property and equipment used for the County Hospital to the District, as well as all operating funds, taxes levied for hospital purposes, and any interest and sinking funds that the County had accumulated for the Series 2008 Certificates, as such obligations are being assumed by the newly created Somervell County Hospital District (the "District") as a result of the election.

Please note that after the District has been created, the County can no longer levy taxes for hospital purposes as Section 286.072 of the Health and Safety Code expressly provides:

On or after creation of the district, a county, municipality, or other governmental entity in which the district is located may not levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care for the residents of the district.

The responsibility for medical care and hospital purposes becomes the responsibility of the District. Section 286.073(a) of the Health and Safety Code provides:

- (a) On creation of a district, the district:
- (1) assumes full responsibility for operating hospital facilities and for furnishing medical and hospital care for the district's needy inhabitants;
 - (2) assumes any outstanding indebtedness incurred by a county, municipality, or other governmental entity in which all or part of the district is located in providing hospital care for residents of the territory of the district before the district's creation; and
 - (3) may operate or provide for the operation of a mobile emergency medical service.

Similar language is found for the transfer from a county to a hospital district where the district is created under Chapters 281, 282 and 283 of the Health and Safety Code. *See*, §§ 281.041 - 281.045, 282.124 - 282.126, and 283.041 - 283.044.

The obligations of the County are not cancelled. They remain in place, but the District is responsible for levying the tax and paying the debt service—section 283.073(b) provides that the District assume these obligations. The County is required to transfer all funds in its debt service funds to the District upon its coming into existence. Consequently, the District will use such funds to make the upcoming August 15 interest payment on the Series 2008 Certificates. The District will need to include the future debt service payments when it adopts its budget and levies a tax for the next fiscal year.

The Series 2008 Certificates are not extinguished and remain in the name of the County, although the District would be the party to refund or defease the 2008 Certificates. Should the District fail to make the requisite debt service payments for the Series 2008 Certificates, then the holders of such obligations could bring an action against the County for payment. The County may be able to raise certain immunity defenses, as well as defending itself on the basis that Chapter 286 has transferred the responsibility for the Series 2008 Certificates to the District and

the County no longer has the authority to levy a tax for payment of the debt service. In addition, the County could bring a mandamus action against the District to compel it to carry out its statutory duty to levy the tax and make payments on the Series 2008 Certificates.

We believe that it will be important to have the County explain to the District what the obligation for assuming the 2008 Certificates will be, including levying a tax and paying debt service, continuing disclosure responsibilities and the like. We recommend documenting how this explanation was conveyed to minimize future misunderstandings.

As we previously indicated, we find no requirement for the County to obtain consents from the holders of the Series 2008 Certificates. In addition to the other types of hospital districts referred to above which also assume the outstanding obligations of a county, there is at least one other instance where outstanding obligations of one governmental entity are assumed by another governmental entity without any requirement of obtaining consent of the bondholders. When a city annexes a municipal utility district, Section 43.075(d), Local Government Code, provides that the city "assumes all the debts, liabilities and obligations of the district."

We recommend that the County file a material events notice with EMMA pursuant to its continuing disclosure undertaking, as set forth in Section 9.04 of the County's Order authorizing the Series 2008 Certificates. A proposed form of notice is attached.

Please let me know if you have additional questions.

Our opinion is intended to respond to the specific fact situation you presented to us, and its application is limited to the facts supplied to us. Where the facts are different from those supplied to us, the application of the law to such facts may result in a different answer. While we believe our interpretation of the law to be correct, the courts have not ruled on the precise issues presented in your situation. Therefore, we cannot predict with certainty what result a court would reach. Finally, our legal opinion, which was given in a specific situation and for a particular purpose, should not be relied on for other purposes or by third parties.

Very truly yours,



Thomas M. Pollan

cc: George Williford
First Southwest Company