

Leslie C. Acker

Garza County Attorney

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April 24, 2001

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

Re: "My Special Place"

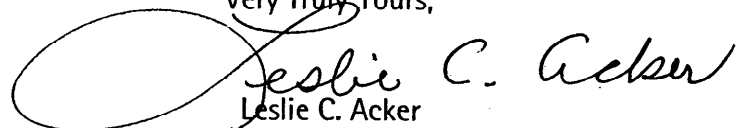
Dear Committee:

This letter request your opinion concerning the authority of the Garza County Commissioners Court to expend funds to benefit "My Special Place", a local child care center.

I have recently advised the Court that it is without authority under Texas Law to use county funds for this purpose, however; the Court has requested that I seek your opinion on this matter.

If additional information is needed by your Committee, please feel free to contact me.

Very Truly Yours,


Leslie C. Acker

LCA/sc
enclosure

certified mail # 7000 0600 0029 3604 1341 - Attorney General's Office- Opinion Committee

cc: Joseph A. Draughon
Director of Workforce Programs
South Plains Workforce Board
1301 Broadway, Suite 201
Lubbock, Texas 79401

RECEIVED

APR 27 2001

OPINION COMMITTEE

RQ-0379-JC

FILE # ML-41980-01

I.D. # 41980

QUESTION:

Whether the Garza County Commissioners Court has authority to expend county funds to benefit "My Special Place", a local child care center.

FACTUAL SITUATION:

The South Plains Workforce Development Commission has requested the Garza County Commissioners Court to expend county funds of approximately \$29,000.00 to match federal funds to expand or enhance child care and learning at "My Special Place", a local child care center. Attached are the proposed Texas Workforce Commission contracts.

"My Special Place" is a Texas nonprofit corporation which is tax exempt under Section 501(c)(3), Internal Revenue Code, as a non-private foundation. At the present time, it is the only child care center in Garza County and it accepts any children of working parents who pay for the child care services.

OPINION:

Commissioners Court are courts of limited jurisdiction. Article 3, Section 52 and Article 5, Section 18 of the Texas Constitution restrict the powers of counties. Under these Constitution provisions the Texas "legislature has no power to authorize any county...to lend its credit or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever..." and "...commissioners courts shall exercise only such powers and jurisdiction as is granted to them by the Constitution and statutes of Texas". These powers must be either expressly or impliedly conferred. Canales v. Laughlin, 214 S.W.2d 451 (Tex. 1948)

Through the years there have been various Texas Attorney General Opinions touching on the question of a county's authority to fund day care activities.

First, in 1943 the Travis County Auditor questioned whether the Travis County Commissioners Court was authorized to expend county funds for the Austin Community Nursery School, which was maintained for the care and teaching of children whose parents worked during the daytime. The Texas Attorney General concluded that there was no constitutional or statutory authority for Travis County to donate county funds in aid of such nursery school. Attorney General Opinion No. O-5386.

In 1968, The Lubbock County Attorney requested an opinion whether the Lubbock County Commissioners Court had authority to act as the community action agency under the 1967 amendments to the Economic Opportunity Act, which would require the county to plan, conduct, administer and evaluate such community projects among others as day care and preschool. Citing Article 5, Section 18 of the Texas Constitution, Attorney General Crawford Martin stated there was no constitutional or statutory authority for commissioners courts in Texas to exercise such powers and functions or to engage in these activities. Attorney General Opinion No. M-264.

The Office of the Texas Attorney General was asked in 1978 whether a county may use federal revenue sharing money to supplement the operating budget of a private nonprofit day care center located in Moore County. Although recognizing that there was statutory authority for providing services to specific groups of children, such as support of paupers,

county homes for dependent and delinquent children, community mental health-mental retardation center and federally established day care program administered through the Department of Public Welfare, Texas Attorney General John L. Hill stated that expenditure of federal revenue sharing money must be in accordance with Texas law applicable to the expenditure of a county's own revenues. He concluded that there was no statute authorizing the Moore County Commissioners Court to provide day care for all the children in the county. Attorney General Opinion No. H-1189.

Finally, the Gaines County Attorney asked whether Gaines County may spend funds to operate and maintain a nonprofit day care facility which received federal funds to provide services for dependent and neglected children, but which also cared for other children in Gaines County. The Texas Attorney General stated that Article 695a-4, V.T.C.S. (now Chapter 44, Human Resources Code) authorized Gaines County to provide funds through its county child welfare board for day care of only dependent and neglected children. However, Gaines County was not authorized to provide day care to all children and funds could not be so provide. Attorney General Opinion H-1244.

There is no Texas statutory authority for the Garza County Commissioners Court to expend county funds to benefits "My Special Place".

Respectfully submitted,

A handwritten signature in cursive script that reads "Leslie C. Acker". The signature is written in black ink and is positioned to the left of the typed name.

Leslie C. Acker
Garza County Attorney
Garza County Courthouse
Post, Texas 79356