

SETH C. SLAGLE, CLAY COUNTY ATTORNEY
111 SOUTH MAIN STREET
HENRIETTA, TEXAS 76365



111 SOUTH MAIN STREET
TELEPHONE: 940.538.0533
TELECOPIER: 940.538.0555
claycountylaw@gmail.com

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Honorable Mike Campbell
214 North Main Street
Henrietta, Texas 76365

Retta Collins
214 North Main Street
Henrietta, Texas 76365

Johnny Gee
214 North Main Street
Henrietta, Texas 76365

Richard Lowry
214 North Main Street
Henrietta, Texas 76365

Chase Broussard
214 North Main Street
Henrietta, Texas 76365

Honorable Sheriff Jeffrey C. Lyde
Chairman Board of Manager CCMH
215 West Gilbert Street
Henrietta, Texas 76365

Re: Whether the Commissioners Court or the public hospital has the right to hire or fire the county indigent health coordinator?

To the Commissioners Court:

This letter is in follow up to my comments in open court on May 31st, 2022, regarding the Indigent Health Care in Clay County.

Clay County has a public hospital that covers Clay County and surrounding areas, namely Clay County Memorial Hospital. The Clay County Memorial Hospital is governed by a board of managers who are selected by the Commissioners Court. It is undisputed that the Indigent Health Care & Treatment Act requires Clay County to provide health care to qualified applicants. It is further undisputed that this program is to be administered by an indigent healthcare coordinator. For at least the last 20 years that position has been held by a “county employee.” At one point it

was the Commissioners Court secretary, the county judge's secretary, and most recently the elected County Treasurer. This person was picked either by the County Judge or by the Commissioners Court. It was stated in open court on May 31st, 2022, that this was a "gentlemen's agreement" between the county (through the County Judge) and the administrator of the public hospital. The indigent healthcare coordinator was paid by the hospital and received a W-2 for those services. It was recently determined by the public hospital's administrator, that public funds could be saved by discontinuing the services of the elected County Treasurer and giving a stipend to an already existing employee of the hospital. The CEO terminated the elected County Treasurer as the indigent healthcare coordinator. The commissioners Court is of the opinion that the indigent healthcare coordinator is to be appointed by the court. The County Attorney disagreed with this and stated so in open court at the May 31st, 2022, meeting of the court.

The Texas Health & Safety Code provides various provisions to make sure that persons entitled to health care assistance receive such assistance paid for by the county.

Chapter 61 of the Texas Health & Safety Code is essentially divided into two subchapters. The first deals with Counties that are not covered or only partially covered by a public hospital.

The Indigent Health Care & Treatment Act requires that counties not fully served by a hospital district or public hospital must operate a County Indigent Health Care Program (CIHCP) to provide health care to eligible indigent residents.

"This subchapter applies to health care services and assistance provided to a person who does not reside in the service area of a public hospital or hospital district." Tex. Health & Safety Code § 61.021

Tex. Health & Safety Code § 61.021 through 61.044 do not apply as Clay County is covered by a public hospital.

The second deals with Counties that are covered by a public hospital.

"This subchapter applies to health care services and assistance provided to a person who resides in the service area of a public hospital or hospital district." Tex. Health & Safety Code § 61.051

Sections 61.051 through 61.068 are the provisions relating specifically to Clay County. Most importantly:

"a public hospital shall endeavor to provide the basic health care services a county is required to provide under Section 61.028." Tex. Health & Safety Code § 61.054

This means that a public hospital shall provide those same services enumerated above to those residents who do not reside in an area covered by a public hospital.

Most importantly, Clay County is still responsible for funding to operate indigent health care services.

"A governmental entity that owns, operates, or leases a public hospital shall provide sufficient funding to the hospital to provide basic health care services." Texas Health &

Once it is established that the county is covered by a public hospital, it is then necessary to look at Chapter 263 of the Texas Health & Safety Code.

“County hospitals are governed by Chapter 263 of the Health and Safety Code. *See generally* TEX. HEALTH & SAFETY CODE §§ 263.0001-.102. The general management and control of the hospital, "including ... its officers and employees" belongs to the hospital's board of managers (the "Board"), an appointed group of county residents. *Id.* § 263.046(a)(2). The Board appoints a superintendent to be "the chief executive officer of the hospital."⁴ *Id.* § 263.072(a). He or she "has general supervision and control of ... the internal affairs of the hospital, including discipline." *Id.* § 263.074(a)(3). The superintendent also "determine[s] the duties of ... employees of the hospital" and may discharge them for cause "at [his or her] discretion." *Id.* § 263.076(b)-(c); *see also id.* § 263.074(b) (requiring the superintendent to "enforce the bylaws and rules adopted by the [Board] for the government, discipline, and management of the hospital and its employees and patients"). With regard to hiring staff, "resident officers and employees considered proper and necessary by the superintendent for the efficient performance of the hospital's business" shall be appointed by the superintendent "[w]ith the consent of the [Board]." *Id.* § 263.076(a). Thus, the superintendent holds the power to appoint hospital employees, as does the Board because it must "consent" to any such appointment. *See id.* § 263.076(a). Neither the Commissioners Court nor the county judge, however, holds such authority.” See Attorney General Opinion KP-0045.

The indigent health care in Clay County falls squarely within the purview of the public hospital and the operations of the public hospital fall squarely within the purview of the superintendent (or in our case the CEO) and the board of managers. The indigent health care coordinator serves at the pleasure of the superintendent (or CEO) of the public hospital.

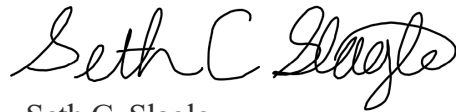
This is not meant to be an exhaustive explanation of the policy, procedures and administration of the Act, only which parts of the Health & Safety Code are applicable to Clay County and to answer the question of whether the public hospital can hire/fire the indigent health care coordinator.

I will further caution the Commissioners that going into executive session to “evaluate the performance” of an elected official is improper and illegal. Elected officials are answerable to the public for their performance and are not hired or fired by the court, therefore this would be an improper use of the exception to the Open Meetings Act.

It has come to my attention that the County Judge believes that the County is not responsible for to pay for the running of the Indigent Health Care Coordinator (“IHCC”). Based upon the statutes laid out above and the Attorney General Opinions on this matter. The County cannot refuse to fund the IHCC. It is the responsibility of the County to fund the implementation of Chapter 61. I have also been told by the County Judge that if the Hospital Board does not agree to allow the Court to hire this employee and pay this employee then they will not fund the position. This is not only an improper threat to another quasi-governmental agency. It would be illegal for the County to not fund that position.

To be clear the duly elected County Attorney is telling you that outside of the hospital agreeing to circumvent the statute, the court is obligated to fund the Indigent Health Care program and its coordinator. If there is any litigation over this issue any action taken in contravention of the statutes could be considered done willfully and intentionally leaving you personally liable if there were an award of any damages. This means you would not have the benefit of any sort of governmental immunity.

Very Truly Yours,

A handwritten signature in black ink that reads "Seth C. Slagle". The signature is written in a cursive style with a large, stylized "S" and "C".

Seth C. Slagle
Clay County Attorney