



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2019

Mr. Tony Sims
Chambers County Auditor
404 Washington Avenue
Post Office Box 910
Anahuac, Texas 77514

Opinion No. KP-0230

Re: Whether a commissioners court may fund certain county departments through revenue generated by a sales and use tax imposed pursuant to chapter 324 of the Tax Code (RQ-0232-KP)

Dear Mr. Sims:

You ask whether a commissioners court may use tax revenue generated pursuant to chapter 324 of the Tax Code to fund several county departments, including environmental health, emergency management, mosquito control, and animal services.¹ Chapter 324 of the Tax Code authorizes certain counties to impose a sales and use tax for health services. TEX. TAX CODE §§ 324.001–.081. Section 324.081, however, limits the county’s use of the tax revenue:

Revenue from the tax imposed under this chapter *may be used only to provide health services in the county*. The county imposing the tax may allocate all or part of that revenue to:

- (1) a county hospital authority or a hospital district having the same boundaries as the county; or
- (2) a public health district in which the county participates.

Id. § 324.081 (emphasis added).

Attorney General Opinion KP-0162 addressed the meaning of “health services” for purposes of section 324.081. Tex. Att’y Gen. Op. No. KP-0162 (2017) at 2. In the absence of a legislative definition for the term, the opinion noted that section 324.081 identifies a county hospital authority, a hospital district, and a public health district as three potential recipients for all or part of the tax revenue generated under chapter 324 and concluded that the Legislature’s specification of these entities as authorized recipients “suggests that it intended ‘health services’ to relate to the functions these entities perform.” *Id.*; see *Cty. of Harris v. Eaton*, 573 S.W.2d 177,

¹Letter and attachment from Mr. Tony Sims, Chambers Cty. Auditor, to Op. Comm., Office of the Tex. Att’y Gen. at 1 (May 23, 2018), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter” and “Attachment,” respectively) (Attachment on file with the Op. Comm.).

179 (Tex. 1978) (concluding that when examples are given to illustrate an undefined term in a statute, principle of ejusdem generis requires court to construe term to include others “of the same kind or class as the ones expressly mentioned”). Thus, in determining whether a county may use tax revenue generated under chapter 324, we look to whether the expense is for the provision of health services similar in kind or class to the services provided by these entities. See *Eaton*, 573 S.W.2d at 179; Tex. Att’y Gen. Op. No. KP-0162 (2017) at 2.

The Legislature vested county hospital authorities with powers generally related to operating a hospital in the county, as well as providing facilities and services to care for the disabled or elderly. See TEX. HEALTH & SAFETY CODE §§ 264.022, .034. Similarly, a county hospital district must “provide adequate hospital services” and may generally “promote health in the district.” *Id.* §§ 282.049, .050(a); see also *id.* § 281.046. The Legislature vested public health districts with a wider range of responsibilities, providing that at a minimum these entities must provide the following public health services: “(1) personal health promotion and maintenance services; (2) infectious disease control and prevention services; (3) environmental and consumer health programs; (4) public health education and information services; (5) laboratory services; and (6) administrative services.” *Id.* §§ 121.006(d), .043(b). As a class, these entities generally provide services relating to “the treatment and prevention of physical pain and disease to members of the public.” Tex. Att’y Gen. Op. No. KP-0162 (2017) at 2.

Turning to your question, your request provides no detail as to the services provided by the county’s environmental health, emergency management, mosquito control, and animal services departments or the specific expenses you seek to fund with revenue generated under chapter 324. Request Letter at 1. Whether an expense serves an authorized purpose under chapter 324 will depend on the specific facts and circumstances concerning the expenditure. For example, the Legislature recognizes that mosquitoes spread infectious disease and constitute a public health nuisance. See, e.g., TEX. HEALTH & SAFETY CODE §§ 341.011(7), .038. Thus, a county’s use of funds to control the spread of mosquitoes for the purpose of preventing infectious disease likely falls within the class of health services contemplated by chapter 324. See *id.* § 121.006(d)(2) (providing that public health district must provide infectious disease prevention services). On the other hand, a county’s animal control department may encompass services related to both human health and animal welfare. Compare *id.* §§ 822.001–.004, .041–.047 (providing, in part, procedures for county animal control authority to seize or destroy dangerous dogs), and *id.* § 826.017 (requiring county to designate an officer to act as local rabies control authority), with *id.* § 821.022 (providing that officer with responsibility for animal control in county may apply for warrant to seize cruelly treated animal). Animal control services administered for the purpose of protecting human health, such as rabies prevention, directly protect the public from disease and likely fall within the class of health services contemplated by chapter 324. See *id.* § 121.006(d)(2) (providing that public health district must provide infectious disease prevention services). While other services administered for the purpose of promoting animal welfare may contribute to the overall wellbeing of the community, such services do not directly relate to human health. See Tex. Att’y Gen. Op. No. KP-0162 (2017) at 3 (concluding that the general statutory scheme of section 324.081 “relates to services for the direct treatment and prevention of physical pain and disease provided to members of the public”); see also *Ctr. for Food Safety v. Lakey*, No. 03-13-00094-CV, 2014 WL 711622, at *3 (Tex. App.—Austin 2014, no pet.) (mem. op.) (distinguishing between chapters of the Health and Safety Code pertaining to animals that “expressly address the

protection of human health” and those that address animal cruelty). Thus, some of the expenses for the departments you identify may relate to services provided to the public for the treatment and prevention of physical pain and disease, while others certainly will not. Whether a particular expense qualifies as a health service for purposes of chapter 324 is a question for the commissioners court to determine in the first instance, subject to judicial review. *See* Tex. Att’y Gen. Op. No. GA-0340 (2005) at 6 (concluding commissioners court was authorized to make reasonable decision as to whether a particular expenditure was for an authorized purpose, subject to judicial review for abuse of discretion).

S U M M A R Y

If a specific expense of a county's environmental health, emergency management, mosquito control, or animal services departments relates to the treatment and prevention of physical pain and disease to the public, the county may use funds generated under Tax Code chapter 324 to fund health services provided by the relevant departments.

Whether a county incurs an expense in the accomplishment of a health service under chapter 324 will depend on the specific facts and circumstances concerning the expenditure. Such factual determinations are questions for the commissioners court to determine in the first instance, subject to judicial review.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
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