

ARTICLE IX

COUNTIES

Sec. 1. CREATION OF COUNTIES. The Legislature shall have power to create counties for the convenience of the people subject to the following provisions:

First. In the territory of the State exterior to all counties now existing, no new counties shall be created with a less area than nine hundred square miles, in a square form, unless prevented by preexisting boundary lines. Should the State lines render this impracticable in border counties, the area may be less. The territory referred to may, at any time, in whole or in part, be divided into counties in advance of population and attached, for judicial and land surveying purposes, to the most convenient organized county or counties.

Second. Within the territory of any county or counties now existing, no new county shall be created with a less area than seven hundred square miles, nor shall any such county now existing be reduced to a less area than seven hundred square miles. No new counties shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may in whole or in part be taken. Counties of a less area than nine hundred, but of seven hundred or more square miles, within counties now existing, may be created by a two-thirds vote of each House of the Legislature, taken by yeas and nays and entered on the journals. Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote. When any part of a county is stricken off and attached to, or created into another county, the part stricken off shall be holden for and obliged to pay its proportion of all the liabilities then existing, of the county from which it was taken, in such manner as may be prescribed by law.

Third. No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change shall have been submitted, in such manner as may be provided by law, to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each.

History

The Constitution of the Republic provided for its division into a convenient number of counties, each with an area of not less than 900 square miles, on petition of 100 free male inhabitants of the territory to be organized. (Art. IV, Sec. 11.) Twenty-three existing "municipalities" under the Mexican state of Coahuila and Texas were apparently recognized as counties and were referred to as such in all later legislation.

The Constitution of 1845 allowed the legislature to create new counties, each with an area of at least 900 square miles; a two-thirds vote was required if the creation reduced the area of an existing county below 900 square miles. (Art. VII, Sec. 34.) Bowie County, however, could be reduced below 900 square miles by simple majority vote. No petition of inhabitants was required to create new counties under the 1845 document.

The Constitution of 1866 declared existing counties legally constituted and required a minimum of 120 "qualified jurors" in an area before it could become a county. (Art. VII, Sec. 34.) This minimum was raised to 150 by the Constitution of 1869, which also made it the floor to be retained in existing counties from which territory was taken. (Art. XII, Sec. 24.)

At the Convention of 1875, the Committee on Counties and County Lands submitted this section and Section 2 (Removal of County Seats) as the whole of proposed Article IX. The committee report provided a 450-square-mile minimum area for new counties created out of existing counties and for the remaining parent counties. This figure was increased by committee amendment to 700 square miles. (*Journal*, p. 742.) According to McKay, "at the night session [of the same day, the next-to-last of the Convention] the article on county and county lands was engrossed, . . . passed under a suspension of the rules, and without debate." (*Debates*, p. 445.)

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The present Section 1 is the culmination of restrictions on the creation of counties, but as noted its progressively restrictive ancestry may be traced from 1845 and its sire is of course the Reconstruction experience. The 900-square-mile-minimum-area requirement was retained for counties created out of the public domain; for new counties created out of existing counties, 900 square miles became the maximum, and 700 the minimum, area permitted. The two-thirds legislative vote requirement of the 1845 Constitution was resurrected for creating new counties out of old, and a majority of residents of the old county was required to approve creation of the new. Finally, no new county's boundary may be nearer than 12 miles from the county seat of an existing county, and the new county must assume its share of debt of the county from whose territory it is created.

Section 1 has not been amended since 1876; however, in 1934 the voters defeated a proposed amendment to the second paragraph which would have authorized the legislature to combine existing counties, abolish existing counties, change boundary lines, and reduce the area of counties to less than 900 square miles if the reduced county retained a population of at least 50,000. Such changes would have required a two-thirds vote of both houses and majority approval of those voting in the affected counties.

Explanation

The first paragraph of Section 1 is obsolete since all public domain has been occupied and the last unorganized administrative unit became a county in 1931.

Although a court has held that only the state may challenge a county's creation (*Blackburn v. Delta County*, 107 S.W. 80 (Tex. Civ. App. 1908, *writ ref'd*)), taxpayers have been permitted to enjoin creation of a new county whose proposed boundary passed 11.43 miles from the county seat of an adjacent county. (*Woods v. Ball*, 166 S.W. 4 (Tex. Civ. App.—San Antonio 1914, *no writ*.)

The debt assumption share of a new county is based on taxable value, not area, with the new county liable for that percentage of debt of the old county equal to the ratio the assessed valuation of land in the new county bears to the total assessed valuation of the existing county before separation. (*Mills County v. Brown County*, 85 Tex. 391, 20 S.W. 81 (1892).)

Comparative Analysis

Approximately 22 states have constitutional geographical limitations on making little counties out of big counties. Just over half of them use the magic number of 400 square miles. Except for Tennessee, the remaining states require larger areas, from 432 square miles to 900 square miles. Tennessee permits the formation of a county of not fewer than 275 square miles, but the old county's area may not be reduced below 500 square miles. Approximately ten states have provisions concerning proximity of the county seat to the county line. The *Model State Constitution* requires the legislature by general law to provide for "methods and procedures of . . . merging, consolidating and dissolving [counties] and of altering their boundaries. . . ."

Approximately 24 states have a constitutional provision limiting the division of counties. In most instances, a referendum is required, usually of the voters of the areas affected, but in some cases only the voters in the area to be stricken have to approve. In some states, a majority of the voters is required. In at least four states, the requirement is a two-thirds' vote, either of those voting (two states) or of the voters (two states). The *Model State Constitution* has no referendum provision.

Some 20 states have a provision for apportionment of debt. Three states optimistically provide for apportionment of assets. There is no comparable

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provision in the *Model State Constitution*.

Author's Comment

A 1970 amendment to Article III, Section 64(a), permits the legislature to provide "for consolidation of governmental offices and functions of government of any one or more political subdivisions comprising or located within any county." No consolidation may be effected unless the voters in the affected subdivisions approve, but the authorization may intensify the yearning for county home-rule and at the least should make even more unlikely the creation of new counties out of old under Article IX, Section 1.

County home rule was purportedly authorized in Texas by the addition of Section 3 to Article IX in 1933. No previous constitution contained such a provision. The amendment was accepted during the Great Depression as a possible means of reducing the cost of government. However, in the process of passing through the legislature the amendment was compromised in so many respects that it proved inoperative. The adoption of a home-rule charter in any county was precluded as a practical matter by the requirements of majority approval by the resident qualified electors (rather than a majority of those voting), a majority of those voting within incorporated areas of the county, and a majority of those voting outside the incorporated area.

No county adopted a home-rule charter under Section 3. In El Paso County rural voters vetoed a proposed home-rule charter despite an overall majority in the county favoring it. (See Benton, "The County Home Rule Movement in Texas," 31 *Southwestern Social Science Quarterly* 108 (1950).)

In 1947 Delta County had a home-rule charter drafted which abolished the office of county tax assessor and collector, transferring the duties of that office to a county manager. When asked to rule on the charter's constitutionality, the attorney general commented on Section 3 as follows:

The amendment is a most unusual one, involving, as it does, a potential change in every county of the State in respect to its governmental affairs. It is unusual in length and scope. Its phrasing and meticulous limitations are extraordinary, and furthermore it contains some apparently conflicting provisions.

The opinion concluded that the office of county tax assessor and collector could not be abolished by a home-rule charter since the occupant is a state functionary exercising powers and performing duties of statewide as distinguished from countywide importance. (Tex. Att'y Gen. Op. No. V-723 (1948).)

No other attempt to secure county home rule was made under Section 3, and the section was repealed as part of the "deadwood" amendment in 1969.

The object of county home rule in Texas ought to be to empower the county to function as an autonomous unit of local government as well as an administrative arm of the state. (See the *Explanation* of Sec. 18 of Art. V.) County home-rule authorization should permit the residents of each county to create a form of government most suited to their needs. A county and the incorporated cities within it could consolidate functions and offices or completely merge into a single governmental entity. Counties should have the same power to make and enforce local ordinances now enjoyed by home-rule cities, thus freeing the legislature from the burdensome task of trying to solve county problems by local law. (For a strategy designed to achieve county home rule despite the anticipated resistance of present officeholders, see the *Author's Comment* on Sec. 18 of Art. V.)

Art. IX, § 1-A

Sec. 1-A. COUNTIES BORDERING ON GULF OF MEXICO OR TIDE-WATER LIMITS THEREOF; REGULATION OF MOTOR VEHICLES ON BEACHES. The Legislature may authorize the governing body of any county bordering on the Gulf of Mexico or the tidewater limits thereof to regulate and restrict the speed, parking and travel of motor vehicles on beaches available to the public by virtue of public right and the littering of such beaches.

Nothing in this amendment shall increase the rights of any riparian or littoral landowner with regard to beaches available to the public by virtue of public right or submerged lands.

The Legislature may enact any laws not inconsistent with this Section which it may deem necessary to permit said counties to implement, enforce and administer the provisions contained herein.

Should the Legislature enact legislation in anticipation of the adoption of this amendment, such legislation shall not be invalid by reason of its anticipatory character.

History

This section was added in 1962. A comment by the Legislative Reference Library states, "There is presently [before Section 1-A] no clear cut power in these counties to regulate the use of the beaches that are used by the public."

In 1959 the legislature had enacted article 5415d of the civil statutes, which provides in Section 8:

The Commissioners Court of any county shall have, and is hereby granted, the authority to regulate motor vehicular traffic and the littering of such state-owned beaches, or such larger area, extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public, within the limits of said county. Such regulations may include the speed of motor vehicles in accordance with existing state laws and rules or regulations promulgated by the Texas Highway Commission, and the zoning of designated areas for non-vehicular traffic. The Commissioners Court may declare the violation of such regulations to be and the same shall be considered as a violation of this Act, and the Commissioners Court may prescribe civil penalties therefor not to exceed a penalty in the payment of Two Hundred Dollars (\$200.00) in money

Curiously, the legislature's power to authorize this kind of regulation was never formally questioned until *after* adoption of Section 1-A of Article IX. In 1963 then Governor John Connally requested an opinion of the attorney general on the constitutionality of H.B. 92 of the 58th Legislature, which would have amended article 5415d. Despite a favorable opinion, Governor Connally vetoed the bill on policy grounds. (Tex. Att'y Gen. Op. No. C-80 (1963).)

In 1964 the criminal district attorney of Galveston County requested an opinion on a proposed regulation under article 5415d that authorized constables and the sheriff to arrest persons violating the regulation. The attorney general ruled that the regulation would be constitutional in light of Section 1-A of Article IX, but that the statute authorized only a civil penalty, could not be enforced by peace officers, and did not permit arrest. (Tex. Att'y Gen. Op. No. C-368 (1964).)

In 1965, the legislature amended article 5415d to authorize criminal penalties, including jail sentences for subsequent offenses.

Explanation

It is difficult to understand the need for Section 1-A. For three years prior to adoption, article 5415d had clearly authorized county beach regulation, and the

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statute had never been challenged. Moreover, as pointed out in the *Author's Comment* below, the Texas Supreme Court in 1959 had upheld against special or local law constitutional attack (see Art. III, Sec. 56) a statute applicable to a narrower classification of counties than article 5415d.

Comparative Analysis

The California, Washington, and Idaho constitutions authorize counties to make and enforce within their limits such local, police, sanitary, and other regulations as are not in conflict with state law. No state constitution has addressed the specific problem of beach littering and traffic, however, and the *Model State Constitution* is silent on the issue.

Author's Comment

In *County of Cameron v. Wilson* (160 Tex. 25, 326 S.W.2d 162 (1959)), the court considered a statute granting to Gulf Coast counties which included within their boundaries islands suitable for park purposes the authority to issue revenue bonds for parks. The statute was attacked as local legislation, in violation of Article III, Section 56, but a divided court upheld its classification as reasonable and thus constitutional. In light of this case it is difficult to imagine a successful local law challenge to article 5415d, which applies to all Gulf Coast counties—not just those with island parks—and authorizes them to act on a problem not shared by any other class of counties in the state. Section 1-A is obviously unnecessary.

Sec. 2. REMOVAL OF COUNTY SEATS. The Legislature shall pass laws regulating the manner of removing county seats, but no county seat situated within five miles of the geographical centre of the county shall be removed, except by a vote of two-thirds of all the electors voting on the subject. A majority of such electors, however, voting at such election, may remove a county seat from a point more than five miles from the geographical centre of the county to a point within five miles of such centre, in either case the centre to be determined by a certificate from the Commissioner of the General Land Office.

History

No prior Texas constitution covered the establishment or relocation of county seats. In 1838 the Congress of the Republic authorized the relocation of a seat of justice in any county, if it was more than five miles from the center of the county, to within five miles of the center of the county if two-thirds of the qualified voters desired its relocation (1 *Gammel's Laws*, p. 428.). In 1873 the legislature amended this law to require only a simple majority vote to authorize relocation, thereby encouraging a rash of disputes over relocation of county seats.

Although there was no law passed, or decision of our courts, that recognized that a citizen had any legal right or interest involved in the question of the locality of the county-seat, in point of fact, citizens who lived at the county-seat of a county, and who settled there because it was a county-seat, and made valuable improvements, were largely interested, in money values, in the locality of the county-seat. (Ex parte *Towles*, 48 Tex. 414, 425 (1877).)

Explanation

Article III, Section 56, of the constitution prohibits local or special laws locating or changing county seats. The statutes implementing Section 2 of Article IX elaborate somewhat on the mechanics of relocation. A two-thirds majority of the

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voting residents is required to move a seat from a point within five miles of the county's geographical center to another point either more or less than five miles from the center or from a point more than five miles from the center to another point more than five miles from the center. But only a majority is required to move a seat from more than five miles from the center to another point within five miles of the center. A vote on relocation is initiated by application of 100 freeholders and qualified voters who are residents of the county, unless the county seat has been established more than ten years, in which event 200 applicants are required. If established for more than 40 years, a majority of the resident freeholders and qualified voters of the county must petition to hold the relocation election. (Tex. Rev. Civ. Stat. Ann. arts. 1595, 1596 (1962).) Article 1601 prohibits relocation elections more frequently than every ten years. However, if the county seat is more than five miles from a railroad, an election to relocate it on the railroad right-of-way may be held every two years.

Comparative Analysis

Nearly half of the states require a referendum on changing location of the county seat. Some states require a two-thirds' vote of all voters, and some only of those voting on the question. Several states require three-fifths of those voting to approve the relocation of a county seat. One state besides Texas provides for a simple majority to relocate nearer the center. The *Model State Constitution* does not deal with county-seat location.

Author's Comment

The Texas statutes provide adequate safeguards against costly and capricious relocations of county seats; and Section 2 is thus mostly unnecessary. If the subject merits constitutional treatment, the requirement of a general law prescribing relocation procedure, including a referendum by the affected residents, is all that is needed.

Sec. 4. COUNTY-WIDE HOSPITAL DISTRICTS. The Legislature may by law authorize the creation of county-wide Hospital Districts in counties having a population in excess of 190,000 and in Galveston County, with power to issue bonds for the purchase, acquisition, construction, maintenance and operation of any county owned hospital, or where the hospital system is jointly operated by a county and city within the county, and to provide for the transfer to the county-wide Hospital District of the title to any land, buildings or equipment, jointly or separately owned, and for the assumption by the district of any outstanding bonded indebtedness theretofore issued by any county or city for the establishment of hospitals or hospital facilities; to levy a tax not to exceed seventy-five (\$.75) cents on the One Hundred (\$100.00) Dollars valuation of all taxable property within such district, provided, however, that such district shall be approved at an election held for that purpose, and that only qualified, property taxpaying voters in such county shall vote therein; provided further, that such Hospital District shall assume full responsibility for providing medical and hospital care to needy inhabitants of the county, and thereafter such county and cities therein shall not levy any other tax for hospital purposes; and provided further that should such Hospital District construct, maintain and support a hospital or hospital system, that the same shall never become a charge against the State of Texas, nor shall any direct appropriation ever be made by the Legislature for the construction, maintenance or improvement of the said hospital or hospitals. Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be invalid because of their anticipatory character.

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History

This amendment was adopted in 1954 after the defeat in 1949 of an amendment authorizing hospital districts generally. The population requirement of Section 4 limited its application at the time to Dallas County (Dallas), Harris County (Houston), Bexar County (San Antonio), Tarrant County (Fort Worth), El Paso County (El Paso), and Jefferson County (Beaumont). Galveston County is expressly named. The enabling statute (Tex. Rev. Civ. Stat. Ann. art. 4494n) originally designated the preceding federal census (1950) as determinative of population, but this restriction was removed in 1955. As a result, Travis County (Austin), Nueces County (Corpus Christi), Hidalgo County, and possibly others now come within the Section 4 authorization.

For the history of hospital district amendments, see the *History* of Section 9 of this article.

Explanation

There has been no significant court decision or attorney general opinion interpreting Section 4. (See the *Explanation* of Sec. 9.)

Comparative Analysis

See the *Comparative Analysis* of Section 9.

Author's Comment

This is an example of a "local" amendment that has served its purpose. The districts it originally authorized have been created, Section 9 now authorizes hospital districts in every county, and Section 4 is thus obsolete.

Sec. 5. CITY OF AMARILLO; WICHITA COUNTY; JEFFERSON COUNTY; CREATION OF HOSPITAL DISTRICTS. (a) The Legislature may by law authorize the creation of two hospital districts, one to be coextensive with and have the same boundaries as the incorporated City of Amarillo, as such boundaries now exist or as they may hereafter be lawfully extended, and the other to be coextensive with Wichita County.

If such district or districts are created, they may be authorized to levy a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation of taxable property within the district; provided, however, no tax may be levied until approved by a majority vote of the participating resident qualified property taxpaying voters who have duly rendered their property for taxation. The maximum rate of tax may be changed at subsequent elections so long as obligations are not impaired, and not to exceed the maximum limit of Seventy-five Cents (75¢) per One Hundred Dollars (\$100.00) valuation, and no election shall be required by subsequent changes in the boundaries of the City of Amarillo.

If such tax is authorized, no political subdivision or municipality within or having the same boundaries as the district may levy a tax for medical or hospital care for needy individuals, nor shall they maintain or erect hospital facilities, but the district shall by resolution assume all such responsibilities and shall assume all of the liabilities and obligations (including bonds and warrants) of such subdivisions or municipalities or both. The maximum tax rate submitted shall be sufficient to discharge such obligations, liabilities, and responsibilities, and to maintain and operate the hospital system, and the Legislature may authorize the district to issue tax bonds for the purpose of the purchase, construction, acquisition, repair or renovation of improvements and initially equipping the same, and such bonds shall be payable from said Seventy-five Cents (75¢) tax. The Legislature shall provide for transfer of title to properties to the district.

(b) The Legislature may by law permit the County of Potter (in which the City of

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Amarillo is partially located) to render financial aid to that district by paying a part of the expenses of operating and maintaining the system and paying a part of the debts of the district (whether assumed or created by the district) and may authorize the levy of a tax not to exceed Ten Cents (10¢) per One Hundred Dollars (\$100.00) valuation (in addition to other taxes permitted by this Constitution) upon all property within the county but without the City of Amarillo at the time such levy is made for such purposes. If such tax is authorized, the district shall by resolution assume the responsibilities, obligations, and liabilities of the county in the manner and to the extent hereinabove provided for political subdivisions having boundaries coextensive with the district, and the county shall not thereafter levy taxes (other than herein provided) for hospital purposes nor for providing hospital care for needy individuals of the county.

(c) The Legislature may by law authorize the creation of a hospital district within Jefferson County, the boundaries of which shall include only the area comprising the Jefferson County Drainage District No. 7 and the Port Arthur Independent School District, as such boundaries existed on the first day of January, 1957, with the power to issue bonds for the sole purpose of purchasing a site for, and the construction and initial equipping of, a hospital system, and with the power to levy a tax of not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation of property therein for the purpose of paying the principal and interest on such bonds.

The creation of such hospital district shall not be final until approved at an election by a majority of the resident property taxpaying voters voting at said election who have duly rendered their property for taxation upon the tax rolls of either said Drainage or said School District, nor shall such bonds be issued or such tax be levied until so approved by such voters.

The district shall not have the power to levy any tax for maintenance or operation of the hospital or facilities, but shall contract with other political subdivisions of the state or private individuals, associations, or corporations for such purposes.

If the district hereinabove authorized is finally created, no other hospital district may be created embracing any part of the territory within its boundaries, but the Legislature by law may authorize the creation of a hospital district incorporating therein the remainder of Jefferson County, having the powers and duties and with the limitations presently provided by Article IX, Section 4, of the Constitution of Texas, except that such district shall be confirmed at an election wherein the resident qualified property taxpaying voters who have duly rendered their property within such proposed district for taxation on the county rolls, shall be authorized to vote. A majority of those participating in the election voting in favor of the district shall be necessary for its confirmation and for bonds to be issued.

(d) Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be invalid because of their anticipatory character.

History

This amendment was adopted on November 4, 1958. See the *History* of Article IX, Section 9, for a history of hospital districts generally.

Explanation

Section 5 authorized creation of four hospital districts with taxing power. Two districts were authorized for Jefferson County, one for Wichita County, and one for the City of Amarillo. Potter County (in which the city of Amarillo is partially located) was authorized to contribute to the support of the district and to use its facilities and services. This amendment for the first time authorized a hospital district less than countywide.

No significant court or attorney general opinion has interpreted this section. See the *Explanation* of Section 9 for cases and opinions on hospital districts generally.

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See the *Comparative Analysis* of Section 9.

Author's Comment

See the *Author's Comment* on Section 9.

Sec. 6. LAMAR COUNTY; HOSPITAL DISTRICT; DISSOLUTION. On the effective date of this Amendment, the Lamar County Hospital District is abolished. The Commissioners Court of Lamar County may provide for the transfer or for the disposition of the assets of the Lamar County Hospital District.

History

This section, adopted in 1972, replaced the original Section 6, which read as follows:

Sec. 6. LAMAR COUNTY; HOSPITAL DISTRICT; CREATION; TAX RATE. The Legislature may by law authorize the creation of a Hospital District co-extensive with Lamar County, having the powers and duties and with the limitations presently provided in Article IX, Section 5(a), of the Constitution of Texas, as it applies to Wichita County, except that the maximum rate of tax that the said Lamar County Hospital District may be authorized to levy shall be seventy-five cents (75¢) per One Hundred Dollars (\$100) valuation of taxable property within the District subject to district taxation.

Section 6 was one of three local hospital district amendments adopted in 1960. See the *History* of hospital district amendments generally under Section 9.

Explanation

In response to a question concerning the original text of Section 9, the attorney general concluded that no authority existed to abolish a hospital district once created. (Tex. Att'y Gen. Op. No. C-380 (1965).) Section 9 was amended in 1966 to provide this authority, but since the Lamar County district had not been created under Section 9, the 1972 amendment was used to abolish the district directly.

Comparative Analysis

No other state constitution provides for the abolition of a single hospital district.

Author's Comment

This section has served its purpose and can be eliminated.

Sec. 7. HIDALGO COUNTY; HOSPITAL DISTRICT; CREATION; TAX RATE. The Legislature may by law authorize the creation of a Hospital District co-extensive with Hidalgo County, having the powers and duties and with the limitations presently provided in Article IX, Section 5(a), of the Constitution of Texas, as it applies to Hidalgo County, except that the maximum rate of tax that the said Hidalgo County Hospital District may be authorized to levy shall be ten cents (10¢) per One Hundred Dollars (\$100) valuation of taxable property within the District subject to district taxation.

History

This section was adopted in 1960 along with Sections 6 and 8. See the *History* of hospital district amendments generally under Section 9.

Art. IX, § 8**Explanation**

See the *Explanation* of Section 9 for discussion of hospital district amendments generally.

Comparative Analysis

See the *Comparative Analysis* of Section 9.

Author's Comment

See the *Author's Comment* on Section 9.

Sec. 8. COUNTY COMMISSIONERS PRECINCT NO. 4 OF COMANCHE COUNTY; HOSPITAL DISTRICT; CREATION; TAX RATE. The Legislature may by law authorize the creation of a Hospital District to be co-extensive with the limits of County Commissioners Precinct No. 4 of Comanche County, Texas.

If such District is created, it may be authorized to levy a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollar (\$100) valuation of taxable property within the District; provided, however, no tax may be levied until approved by a majority vote of the participating resident qualified property taxpaying voters who have duly rendered their property for taxation. The maximum rate of tax may be changed at subsequent elections so long as obligations are not impaired, and not to exceed the maximum limit of seventy-five cents (75¢) per One Hundred Dollar (\$100) valuation, and no election shall be required by subsequent changes in the boundaries of the Commissioners Precinct No. 4 of Comanche County.

If such tax is authorized, no political subdivision or municipality within or having the same boundaries as the District may levy a tax for medical or hospital care for needy individuals, nor shall they maintain or erect hospital facilities, but the District shall by resolution assume all such responsibilities and shall assume all of the liabilities and obligations (including bonds and warrants) of such subdivisions or municipalities or both. The maximum tax rate submitted shall be sufficient to discharge such obligations, liabilities, and responsibilities, and to maintain and operate the hospital system, and the Legislature may authorize the District to issue tax bonds for the purpose of the purchase, construction, acquisition, repair or renovation of improvements and initially equipping the same, and such bonds shall be payable from said seventy-five cent (75¢) tax. The Legislature shall provide for transfer of title to properties to the District.

(b) The Legislature may by law permit the County of Comanche to render financial aid to that District by paying a part of the expenses of operating and maintaining the system and paying a part of the debts of the District (whether assumed or created by the District) and may authorize the levy of a tax not to exceed ten cents (10¢) per One Hundred Dollar (\$100) valuation (in addition to other taxes permitted by this Constitution) upon all property within the County but without the County Commissioners Precinct No. 4 of Comanche County at the time such levy is made for such purposes. If such tax is authorized, the District shall by resolution assume the responsibilities, obligations, and liabilities of the County in the manner and to the extent hereinabove provided for political subdivisions having boundaries co-extensive with the District, and the County shall not thereafter levy taxes (other than herein provided) for hospital purposes nor for providing hospital care for needy individuals of the County.

(c) Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be invalid because of their anticipatory character.

History

This amendment was adopted in 1960, at the same time Sections 6 and 7 were adopted. See the *History* of hospital district amendments generally under Section 9.

Explanation

See the *Explanation* of Section 9.

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Note that Section 8 is similar to Section 5 in that it authorizes creation of a district within a portion of a county—in this case a commissioners precinct—and authorizes the county-at-large to help pay for (but at a lower tax rate) and to use the facilities and services of the district.

Comparative Analysis

See the *Comparative Analysis* of Section 9.

Author's Comment

See the *Author's Comment* on Section 9.

Sec. 9. HOSPITAL DISTRICTS; CREATION, OPERATION, POWERS, DUTIES AND DISSOLUTION. The Legislature may by law provide for the creation, establishment, maintenance and operation of hospital districts composed of one or more counties or all or any part of one or more counties with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes; providing for the transfer to the hospital district of the title to any land, buildings, improvements and equipment located wholly within the district which may be jointly or separately owned by any city, town or county, providing that any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants and assume the outstanding indebtedness incurred by cities, towns and counties for hospital purposes prior to the creation of the district, if same are located wholly within its boundaries, and a pro rata portion of such indebtedness based upon the then last approved tax assessment rolls of the included cities, towns and counties if less than all the territory thereof is included within the district boundaries; providing that after its creation no other municipality or political subdivision shall have the power to levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care within the boundaries of the district; providing for the levy of annual taxes at a rate not to exceed seventy-five cents (\$.75) on the One Hundred Dollar valuation of all taxable property within such district for the purpose of meeting the requirements of the district's bonds, the indebtedness assumed by it and its maintenance and operating expenses, providing that such district shall not be created or such tax authorized unless approved by a majority of the qualified property taxpaying electors thereof voting at an election called for the purpose; and providing further that the support and maintenance of the district's hospital system shall never become a charge against or obligation of the State of Texas nor shall any direct appropriation be made by the Legislature for the construction, maintenance or improvement of any of the facilities of such district.

Provided, however, that no district shall be created except by act of the Legislature and then only after thirty (30) days' public notice to the district affected, and in no event may the Legislature provide for a district to be created without the affirmative vote of a majority of the taxpaying voters in the district concerned.

The Legislature may also provide for the dissolution of hospital districts provided that a process is afforded by statute for:

(1) determining the desire of a majority of the qualified voters within the district to dissolve it;

(2) disposing of or transferring the assets, if any, of the district; and

(3) satisfying the debts and bond obligations, if any, of the district, in such manner as to protect the interests of the citizens within the district, including their collective property rights in the assets and property of the district, provided, however, that any grant from federal funds, however dispensed, shall be considered an obligation to be repaid in satisfaction and provided that no election to dissolve shall be held more often than once each year. In such connection, the statute shall provide against disposal or transfer of the assets of the district except for due compensation unless such assets are transferred to another governmental agency, such as a county, embracing such district and using such transferred assets in such a way as to benefit citizens formerly within the district.

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History

In September 1949 the voters rejected two proposed amendments authorizing the legislature to establish special districts with taxing power to provide for local medical services. House Joint Resolution 15 proposed adding a Section 48-b to Article III to permit creation of "county-city health units" which could tax up to 20¢ on the \$100 valuation. House Joint Resolution 36 of the same session proposed adding a Section 60 to Article III to authorize legislative creation, subject to approval by local voters, of countywide hospital districts with power to tax property in the county.

Both of these defeated amendments were proposed in response to the desires of many Texas communities to maintain or improve public health care and facilities, especially for indigents. The increasing cost of medical services had strained the budgets of cities and counties, both of which are subject to stringent constitutional limitations on their power to tax. Some of the metropolitan areas—Houston, Dallas and Fort Worth, and San Antonio—had public hospitals supported jointly by the city and county and this method alleviated somewhat the unfairness of having city residents bear the entire burden for use of their public hospital by indigents from surrounding areas. Nevertheless, the city residents of such counties pay both city and county taxes and therefore bear a greater share of the cost of the hospital services than the rural residents. (See Woodworth G. Thrombly, *Special Districts and Authorities in Texas*, Austin, The University of Texas, Institute of Public Affairs, 1959). Most of this *History* comes from Thrombly's excellent study.)

For cities and counties desiring to increase taxes to provide better health services, an increase in the assessed valuation of taxable property was the only alternative if the maximum permissible tax rate was already being levied. Although such an increase is usually possible, since most cities and counties assess at only a fraction of fair market value, an increase has the undesired consequence for county taxpayers of increasing their state property tax, which is based on the same assessment. Today the state property tax is being phased out, and this conflict between local and state interest in property value assessments is diminishing. (See the *Author's Comment* on Art. VIII, Sec. 1-e.) But until recently the conflict was intense and the countywide hospital district was viewed as the most expedient way of maintaining or improving local health care without a major revision of local government tax structure.

In 1954 the voters approved the addition of Section 4, authorizing the establishment of hospital districts in counties with a population of 190,000 or more and in Galveston County. (See the *Explanation* of that section.) Acting under this authority voters of Dallas and Bexar counties approved the creation of hospital districts in 1954 and 1955, but voters of Harris, Tarrant, and El Paso counties rejected such districts during the same years. (El Paso County voters reversed themselves and approved creation of a district in 1958.)

The Optional Hospital District Law was pushed through by Harris County legislators in 1957. This law set a lower maximum tax rate than the 75¢ allowed by Section 4. (See Tex. Rev. Civ. Stat. Ann. art. 4494p.) Nevertheless, in August 1957 Harris County voters again defeated creation of a proposed hospital district. The legislature authorized the creation of a hospital district in Brazoria County in 1957, apparently without constitutional authority since Brazoria County had many fewer than 190,000 inhabitants. That same year the legislature also authorized creation of hospital authorities without taxing power but with power instead to issue revenue bonds. Only the city of Mesquite has established a hospital authority of this type.

In 1958 Article IX was amended by adding Section 5 to authorize creation of hospital districts with taxing power in the city of Amarillo (supported partially by

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Potter County), Wichita County, and in two special districts within Jefferson County. (See the *Explanation* of that section.)

In 1960 Article IX was again amended by adding Sections 6, 7, and 8 to authorize creation of hospital districts in Lamar County, Hidalgo County, and County Commissioners Precinct No. 4 of Comanche County. (See the *Explanations* of those sections.)

In 1962 Section 9 was added along with Section 11, which authorizes hospital districts in Ochiltrie, Castro, Hansford, and Hopkins counties. A proposed Section 10, authorizing two districts in Brazoria County, was defeated, perhaps because it would have limited the authorized tax rate to 25¢ whereas Section 9, applicable to all counties, authorizes a maximum of 75¢.

Section 9 is a general authorization for the creation of hospital districts that, except for a 1966 "perfecting amendment" to permit the abolition of hospital districts, ended the need for a separate constitutional amendment each time a local government wished to establish a hospital district.

Explanation

Hospital districts, as well as many other special-purpose districts, are probably created because of the inability of established general purpose local governments to furnish needed services. The constitutional limits on the taxing power of cities and counties already have been mentioned. In addition, local problems and needs often do not conform to the geographic boundaries of cities or counties. The diversity of function which special-purpose districts exhibit, the variation in the degree of fiscal and administrative authority they possess, and their location within the state are all results of the variety of methods by which they are created.

Use of special-purpose districts in Texas has both advantages and disadvantages. The use of special-purpose districts often results in a fragmented approach to local government. The citizen, therefore, is confronted with a complex array of local governing units with which to contend. However, whether created by general or local law, special-purpose districts have been responsive to the many localized problems and needs of the citizens of the state. It is readily apparent that in Texas, special-purpose districts represent a flexible approach to both isolated and widespread problems, the solutions to which are beyond the geographic boundaries, financial capability, or legal authority of existing local general purpose governments.

Both the attorney general and a court of civil appeals have concluded that the vote necessary to create a hospital district is a majority of those who vote in the election rather than a majority of all the district's residents, as the second paragraph of Section 9 seems to require. (See Tex. Att'y Gen. Op. No. C-54 (1963); *Yeary v. Bond*, 384 S.W.2d 376 (Tex. Civ. App. — Amarillo 1964, writ *ref'd n.r.e.*.) And in *Sweeny Hosp. Dist. v. Carr*, 378 S.W.2d 40 (Tex. 1964), the supreme court held that Section 9 and its enabling statute (Tex. Rev. Civ. Stat. Ann. art. 4494q), which both refer to a vote by "qualified property taxpaying electors," means those otherwise qualified electors who have duly rendered property for taxation. (See the *Explanation* of Art. VI, Sec. 3a.)

A hospital district may be created within a portion of a county and may levy taxes in the district, despite the fact that there already exists a county hospital in another part of the county supported in part from the county's general fund. In other words, the county may use its general tax levy on property within the new hospital district to support a hospital *outside* the district at the same time that the district may tax within the district to support the new hospital there. (*Moore v. Edna Hosp. Dist.*, 449 S.W.2d 508 (Tex. Civ. App. — Corpus Christi 1969, writ *ref'd n.r.e.*.)

Until 1966, with adoption of an amendment adding the last paragraph to Section

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9, taxpayers having second thoughts about the wisdom of their creating another tax burden could not abolish a hospital district because the attorney general had ruled that Section 9 permitted only creation and not abolition. (Tex. Att'y Gen. Op. No. C-380 (1965).)

Still another amendment was required, this one in 1967 adding Section 13 (see its *Explanation*), in response to an attorney general's opinion ruling that a county with a hospital district could not contribute land to the State Department of Mental Health and Mental Retardation as the site for a community mental health center. This opinion was based on the Section 9 provision that a hospital district must assume full responsibility for providing medical and hospital care for all needy within the district and that a political subdivision within the district could not tax for this purpose. (Tex. Att'y Gen. Op. No. C-646 (1966).)

Comparative Analysis

Numerous states have created hospital districts, authorities, health and hospital corporations, etc., by statute, but Louisiana appears to be the only other state which treated the subject in its constitution. (The new 1974 Louisiana Constitution omits this detail.) Alabama has a number of constitutional provisions authorizing bond issues to build and operate hospitals. The *Model State Constitution* says simply that the legislature shall provide by general law for the government of counties, cities, and other civil divisions and for methods and procedures of incorporating, merging, consolidating, and dissolving them. (Sec. 8.01.)

Author's Comment

If the constitutional limitations on the taxing power of counties and cities were removed, there would be no need for constitutional authorization for hospital districts. The power of the legislature to create or abolish any type of special-purpose governmental district is otherwise clear and only the need for additional taxing authority necessitates inclusion of special districts in the constitution.

The proliferation of hospital and other special-purpose districts has the undesirable consequence of fragmenting local government, thereby reducing its visibility and increasing its administrative complexity. Administrative reorganization, increased taxing power for city and county governments, and regional consolidation would permit hospital and other special-purpose districts to be phased out by having the general local governments assume their duties.

But regardless of whether hospital districts are retained or phased out, no need exists for their elaborate treatment in the constitution. The history of local amendments, perfecting amendments, and amendments to amendments concerning hospital districts clearly demonstrates the inflexibility, cost, and awkwardness of including such legislative detail in a constitution. If they must be retained, however, a brief section granting taxing and perhaps borrowing authority, subject to local voter approval (though this requirement could as well be in the implementing statute), would suffice.

Sec. 11. HOSPITAL DISTRICTS; OCHILTREE, CASTRO, HANSFORD AND HOPKINS COUNTIES; CREATION; TAXES. The Legislature may by law authorize the creation of hospital districts in Ochiltree, Castro, Hansford and Hopkins Counties, each district to be coextensive with the limits of such county.

If any such district is created, it may be authorized to levy a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollar (\$100) valuation of taxable property within the district; provided, however, no tax may be levied until approved by a majority vote of the participating resident qualified property-taxpaying voters who have duly rendered their property for taxation. The maximum rate of tax may be changed at

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subsequent elections so long as obligations are not impaired, and not to exceed the maximum limit of Seventy-five Cents (75¢) per One Hundred Dollar (\$100) valuation.

If such tax is authorized, no political subdivision or municipality within or having the same boundaries as the district may levy a tax for medical or hospital care for needy individuals, nor shall they maintain or erect hospital facilities, but the district shall by resolution assume all such responsibilities and shall assume all of the liabilities and obligations (including bonds and warrants) of such subdivisions or municipalities or both. The maximum tax rate submitted shall be sufficient to discharge obligations, liabilities, and responsibilities, and to maintain and operate the hospital system, and the Legislature may authorize the district to issue tax bonds for the purpose of the purchase, construction, acquisition, repair or renovation of improvements and initially equipping the same, and such bonds shall be payable from said Seventy-five Cent (75¢) tax. The Legislature shall provide for transfer of title to properties to the district.

Should the Legislature enact enabling laws in anticipation of the adoption of the amendment, such Acts shall not be invalid because of their anticipatory character.

History

This amendment, adopted in 1962, was the last "local" amendment concerning hospital districts. At the same election a proposed Section 10, which would have authorized two hospital districts in Brazoria County, was defeated. Section 9 was adopted at the same election, however, and Brazoria County later created a district under the authority of Section 9.

See the *History* of hospital district amendments generally under Section 9.

Explanation

See the *Explanation* of Section 9.

Comparative Analysis

See the *Comparative Analysis* of Section 9.

Author's Comment

See the *Author's Comment* on Section 9.

Sec. 12. AIRPORT AUTHORITIES. The Legislature may by law provide for the creation, establishment, maintenance and operation of Airport Authorities composed of one or more counties, with power to issue general obligation bonds, revenue bonds, either or both of them, for the purchase, acquisition by the exercise of the power of eminent domain or otherwise, construction, reconstruction, repair or renovation of any airport or airports, landing fields and runways, airport buildings, hangars, facilities, equipment, fixtures, and any and all property, real or personal, necessary to operate, equip and maintain an airport; shall provide for the option by the governing body of the city or cities whose airport facilities are served by certificated airlines and whose facility or some interest therein, is proposed to be or has been acquired by the Authority, to either appoint or elect a Board of Directors of said Authority; if the Directors are appointed such appointment shall be made by the County Commissioners Court after consultation with and consent of the governing body or bodies of such city or cities, and if the Board of Directors is elected they shall be elected by the qualified taxpaying voters of the county which chooses to elect the Directors to represent that county, such Directors shall serve without compensation for a term fixed by the Legislature not to exceed six (6) years, and shall be selected on the basis of the proportionate population of each county based upon the last preceding Federal Census, and shall be a resident or residents of such county; provide that no county shall have less than one (1) member on the Board of Directors; provide for the holding of an election in each county proposing the creation of an Authority to be called by the Commissioners Court or Commissioners Courts, as the

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case may be, upon petition of five per cent (5%) of the qualified taxpaying voters within the county or counties, said elections to be held on the same day if more than one county is included, provided that no more than one (1) such election may be called in a county until after the expiration of one (1) year; in the event such an election has failed, and thereafter only upon a petition of ten per cent (10%) of the qualified taxpaying voters being presented to the Commissioners Court or Commissioners Courts of the county or counties in which such an election has failed, and in the event that two or more counties vote on the proposition of the creation of an Authority therein, the proposition shall not be deemed to carry unless the majority of the qualified taxpaying voters in each county voting thereon vote in favor thereof; provided, however, that an Airport Authority may be created and be composed of the county or counties that vote in favor of its creation if separate propositions are submitted to the voters of each county so that they may vote for a two or more county Authority or a single county Authority; provide for the appointment by the Board of Directors of an Assessor and Collector of Taxes in the Authority, whether constituted of one or more counties, whose duty it shall be to assess all taxable property, both real and personal, and collect the taxes thereon, based upon the tax rolls approved by the Board of Directors, the tax to be levied not to exceed Seventy-Five Cents (\$.75) per One Hundred Dollars (\$100) assessed valuation of the property, provided, however, that the property of state regulated common carriers required by law to pay a tax upon intangible assets shall not be subject to taxation by the Authority, said taxable property shall be assessed on a valuation not to exceed the market value and shall be equal and uniform throughout the Authority as is otherwise provided by the Constitution; the Legislature shall authorize the purchase or acquisition by the Authority of any existing airport facility publicly owned and financed and served by certificated airlines, in fee or of any interest therein, or to enter into any lease agreement therefor, upon such terms and conditions as may be mutually agreeable to the Authority and the owner of such facilities, or authorize the acquisition of same through the exercise of the power of eminent domain, and in the event of such acquisition, if there are any general obligation bonds that the owner of the publicly owned airport facility has outstanding, the same shall be fully assumed by the Authority and sufficient taxes levied by the Authority to discharge said outstanding indebtedness; and likewise any city or owner that has outstanding revenue bonds where the revenues of the airport have been pledged or said bonds constitute a lien against the airport facilities, the Authority shall assume and discharge all the obligations of the city under the ordinances and bond indentures under which said revenue bonds have been issued and sold. Any city which owns airport facilities not serving certificated airlines which are not purchased or acquired or taken over as herein provided by such Authority, shall have the power to operate the same under the existing laws or as the same may hereafter be amended. Any such Authority when created may be granted the power and authority to promulgate, adopt and enforce appropriate zoning regulations to protect the airport from hazards and obstructions which would interfere with the use of the airport and its facilities for landing and take-off; an additional county or counties may be added to an existing Authority if a petition of five per cent (5%) of the qualified taxpaying voters is filed with and an election is called by the Commissioners Court of the county or counties seeking admission to an Authority and the vote is favorable, then admission may be granted to such county or counties by the Board of Directors of the then existing Authority upon such terms and conditions as they may agree upon and evidenced by a resolution approved by two-thirds (2/3rds) of the then existing Board of Directors, provided, however, the county or counties that may be so added to the then existing Authority shall be given representation on the Board of Directors by adding additional directors in proportion to their population according to the last preceding Federal Census.

History

This amendment was adopted in 1966.

In 1929 the legislature authorized counties and incorporated cities to acquire, maintain, and operate airports. The act also provided that cities and counties could levy a special maintenance tax, not to exceed 5¢ on the \$100 valuation, in addition to

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taxes necessary to retire the debt created to finance airport acquisition and construction. (Tex. Rev. Civ. Stat. Ann. art. 1269b.)

In 1935 the legislature passed another airport act, applicable to cities with more than 40,000 inhabitants, that authorized bonds, warrants, mortgages, and unlimited taxes for the establishment and operation of airports. (Tex. Rev. Civ. Stat. Ann. art. 1269j.)

In 1947, without repealing either of the earlier laws, the legislature passed the Municipal Airports Act, authorizing counties, incorporated cities, villages, and towns to establish and operate airports, issue bonds for acquisition and improvement of airports, and levy a special 5¢ tax for their operation and maintenance. (Tex. Rev. Civ. Stat. Ann. arts. 46d-1 through 46d-22.) This act provides for airport creation and operation jointly by two or more local governments or by a unit of local government and another governmental agency. The act expressly prohibits local governments operating under it from exceeding otherwise applicable constitutional tax limits. To date six airport authorities have been created under Section 12.

Local government's inability to tax for airports beyond the constitution's general rate limitations (see Art. XI, Secs. 4 and 5; Art. VIII, Sec. 9) necessitated adoption of Article IX, Section 12, with its authorization for an additional tax not exceeding 75¢ on the \$100 valuation. (For a ruling that the general rate limitations also applied to local government airport taxes authorized by the pre-1947 statutes, see Tex. Att'y Gen. Op. No. O-6762 (1945).) In proposing Section 12 the legislature was merely following the route already mapped out by amendments authorizing creation of hospital districts with additional taxing power. (See the *Explanation* of Sec. 9.)

Comparative Analysis

No other state has a comparable provision.

Author's Comment

Section 12 contains one sentence with 803 words, the longest in the constitution. This length is the result of a dizzying use of semicolons setting off an incredible number of details about the creation and operation of airport authorities. As pointed out in the *Author's Comment* on Section 9 of this article, in authorizing creation of hospital districts only the taxing (and perhaps borrowing) authority of special-purpose districts need be placed in the constitution. Thus, all but a single sentence of Section 12 should be transferred to the statutes—after a thorough revision, one would hope, of both the section's interminable sentence and the existing airport statutes.

Sec. 13. PARTICIPATION OF MUNICIPALITIES AND OTHER POLITICAL SUBDIVISIONS IN ESTABLISHMENT OF MENTAL HEALTH, MENTAL RETARDATION OR PUBLIC HEALTH SERVICES. Notwithstanding any other section of this article, the Legislature in providing for the creation, establishment, maintenance and operation of a hospital district, shall not be required to provide that such district shall assume full responsibility for the establishment, maintenance, support, or operation of mental health services or mental retardation services including the operation of any community mental health centers, community mental retardation centers or community mental health and mental retardation centers which may exist or be thereafter established within the boundaries of such district, nor shall the Legislature be required to provide that such district shall assume full responsibility of public health department units and clinics and related public health activities or services, and the Legislature shall not be required to restrict the power of any municipality or political subdivision to levy taxes or issue bonds or other obligations or to expend public moneys for the establishment, maintenance, support, or operation of mental health services,

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mental retardation services, public health units or clinics or related public health activities or services or the operation of such community mental health or mental retardation centers within the boundaries of the hospital districts; and unless a statute creating a hospital district shall expressly prohibit participation by any entity other than the hospital district in the establishment, maintenance, or support of mental health services, mental retardation services, public health units or clinics or related public health activities within or partly within the boundaries of any hospital district, any municipality or any other political subdivision or state-supported entity within the hospital district may participate in the establishment, maintenance, and support of mental health services, mental retardation services, public health units and clinics and related public health activities and may levy taxes, issue bonds or other obligations, and expend public moneys for such purposes are provided by law.

History

This section was adopted in 1967. See the *History* of hospital district amendments generally under Section 9.

Explanation

Wilbarger County, which contains the city of Vernon, created a hospital district under Article IX, Section 9. Thereafter the State Department of Mental Health and Mental Retardation proposed to build a community mental health center there if the county would provide the land. The local district attorney requested an opinion from the attorney general on the legality of using county funds for this purpose in light of the following language in Section 9:

. . . providing that any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants [and] after its creation no municipality or political subdivision shall have the power to levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care within the boundaries of the district

The attorney general ruled that mental health services constituted "medical care" within the meaning of Section 9 and that use of county funds to purchase a site for a mental health center constituted levying taxes for that purpose. (Tex. Att'y Gen. Op. No. C-646 (1966).) Section 13 was accordingly adopted the following year to authorize political subdivisions within or coextensive with hospital districts to levy taxes and spend public funds for mental health and mental retardation facilities and services *and* public health units or clinics or related public health activities. In light of this section, the attorney general has ruled that a county may use federal revenue sharing funds to contract with a hospital district for a mental health center since the statute authorizing creation of the district did not expressly prohibit participation by other entities (Tex. Att'y Gen. Op. No. H-454 (1974)).

Comparative Analysis

This is a unique constitutional provision. See the *Comparative Analysis* of Section 9.

Author's Comment

The two main objectives of creating hospital districts by constitutional amendment were to get around the limits on the taxing power of local governments and to improve the quality of public health services. The apparent intent of the various sections authorizing hospital districts with taxing power was to deny the use of this power for public health care purposes to the remaining governmental subdivisions

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that were coextensive with or that overlapped the hospital district. Thus, an effective limitation was still imposed on the authority of general local governments to tax for this purpose. With the adoption of Section 13, however, this limitation vanished and the financing of public health care by local governments became fragmented but not so severely limited.