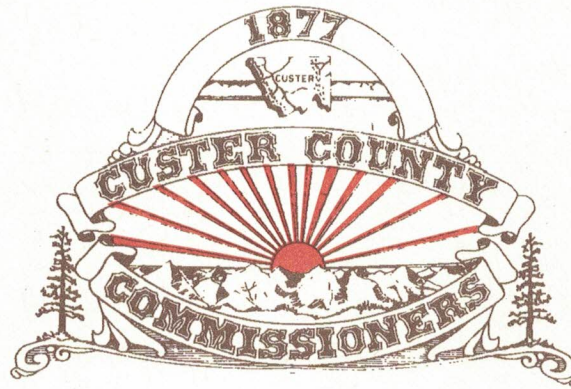


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December 5, 2019

Mr. Robert Tobin
Chairman, Board of Directors
West Custer County Hospital District
704 Edwards Avenue
Westcliffe, Colorado 81252

Dear Bob,

The Board of County Commissioners had its end-of-the-month meeting on November 27, during which we continued our discussion of how we should respond to the recommendation presented to the BOCC by the committee that was formed to explore a possible resolution of the ambulance service issue. At our previous meeting on November 13 Commissioner Printz advised the BOCC of the proposed temporary plan that had been negotiated by those representing your board of directors and those representing the BOCC. By majority vote at the November 13 meeting, it was agreed to accept a major portion of the proposal—paying \$3500 per quarter to the Hospital District for fiscal year 2020, with these payments commencing January 1. The majority of the BOCC disagreed with the suggestion that we should pay you \$4000 for the remainder of the current fiscal year for the reason that we already have a temporary agreement in place that does not expire until January 20. We directed the County Attorney, Clint Smith, to draft a proposed letter to you as the chairman of the Hospital District's board setting forth our position.

The letter prepared by Mr. Smith was just that: a *proposed* response to the recommendation that was presented to us for our consideration and for the commissioners to decide if the letter was

acceptable as drafted or whether revisions were required. We had not finalized the wording of our position statement and were not ready to formally deliver it to you as of our November 27 meeting when our attorney, who had continued doing legal research on the matter, advised us during that meeting, in an executive session to obtain legal advice, of some new information he had just discovered that we believe is very important. The BOCC decided to advise you of this new information right away because it is our belief that it has a significant impact on our ongoing negotiations. We directed Mr. Smith to draft another letter—the one you are now reading—so your board and the BOCC will be on the same page as we go forward in pursuit of our mutual goal: to provide the very best ambulance service possible to any person in Custer County who is in need of such service.

As it turns out, the BOCC's delay in sending you a formal offer or counter-offer regarding the committee's recommendation has proven to be fortuitous to both sides. During the course of his ongoing research our county attorney "stumbled across" (his characterization) a statutory provision of which he was previously not aware. As a preface to explaining what Mr. Smith found during his ongoing research, please recall that the Board of County Commissioners has taken the position from the beginning of this ambulance service dispute that §30-11-107, C.R.S., gave Custer County the exclusive statutory authority "to organize, own, operate, control, direct, manage, contract for or furnish ambulance services" within the county. This was based on legal advice given to us by the county attorney shortly after the Hospital District had unilaterally decided to discontinue providing ambulance service to that portion of the county outside the boundaries of the District.

Mr. Smith acknowledged at our November 27 meeting that he was mistaken. He called to our attention §32-1-1003, C.R.S., the pertinent portion of which reads as follows (*emphasis in bold type supplied*):

Colorado Revised Statutes Annotated C.R.S. 32-1-1003

(1) In addition to the powers specified in section 32-1-1001, **the board of any health service district has any or all of the following powers for and on behalf of such district:** [note: a hospital district *is* a health service district]

(2)

(a) To establish, maintain, or operate, directly or indirectly through lease to or from other parties or other arrangement, public hospitals, convalescent centers, nursing care facilities, intermediate care facilities, emergency facilities, community clinics, or other facilities providing health and personal care services, including but not limited to facilities licensed or certified pursuant to section 25-1.5-103 (1)(a), C.R.S., **and to organize, own, operate, control, direct, manage, contract for, or furnish ambulance service in said district;**

(b) **To organize, own, operate, control, direct, manage, contract for, or furnish ambulance service;**

[the remainder of 32-1-1003 is irrelevant]

As you can see, the final clause in subparagraph (2)(a) above is virtually identical to the language that appears in §30-11-107. It is clear that the West Custer County Hospital District has the same statutory authority as does the Board of County Commissioners when it comes to ambulance services. The Hospital District and the BOCC are equal in this respect.

Mr. Smith at first thought subparagraph (b) said the same thing as (2)(a), but upon closer examination he realized that (2)(a) concludes with the words “in said district”; (b) does not contain these three words. There is a definite and important distinction between these two subparagraphs. His legal explanation and advice to us—with which we concur—is that (2)(a) addresses your power to provide ambulance services *within* the boundaries of your district; (b) gives you the authority to provide such services *outside* the boundaries of your district.

The impact of the statute set forth above as we go forward with our negotiations is this: The Hospital District did not need the permission of the BOCC when it decided to provide ambulance services in its original Service Plan; it could have done so on its own. But it obviously chose to work with the BOCC so it could take over the ambulances and the building that were being used

by the Volunteer Ambulance Corps. Subparagraph (b) gave the Hospital District the authority to provide ambulance services outside the boundaries of the district, and the District clearly and unmistakably opted to do so when it entered into a contractual agreement with the BOCC to provide such services. I am referring, of course, to the Agreement signed January 3, 1989, between the BOCC and the Hospital District. The county attorney assures us that this Agreement is a legally binding contract, notwithstanding the fact that you were apparently unaware it existed until we called it to your attention a few months ago. There is no expiration date in this Agreement, and the Hospital District cannot simply take the position that it will no longer abide by the terms of the Agreement without incurring possible legal consequences. That is why we were prepared to go to court to seek a temporary injunction prohibiting the Hospital District from discontinuing ambulance service outside the boundaries of the District until we were assured there would be no disruption in such emergency coverage.

The Board of County Commissioners is disclosing this newly discovered information—the statutory language set forth above which levels the playing field—to demonstrate our good faith and our commitment to work with you as we go forward. We are not adversaries; we may disagree on how to provide ambulance services to Custer County in the future, but we are in absolute agreement that a solution must be reached that is in the best interests of our citizens and those passing through the county who find themselves in need of emergency services.

Sincerely,

Tommy G. Flower, Chairman
Board of County Commissioners