2011-027

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January 12, 2011

Honorable DuWayne Bridges
Member, House of Representatives
Post Office Box 729
Valley, Alabama 36854

Health Care – Funds – Hospital Tax – Nonprofit Corporations – Chambers County

If the voters of Chambers County pass a special tax pursuant to section 215.02 of the Recompiled Constitution of Alabama, section 5 of the Chambers County Local Amendments authorizes those tax proceeds to be used in the acquiring, constructing, equipping, operating, and maintaining of a private, nonprofit hospital.

Dear Representative Bridges:

This opinion of the Attorney General is issued in response to your request.

QUESTION

If the voters of Chambers County pass a special tax pursuant to section 215.02 of the Recompiled Constitution of Alabama, does section 5 of the Chambers County Local Amendments authorize those tax proceeds to be used in support of a private, non-profit hospital?

FACTS AND ANALYSIS

In your request, you informed this Office that Lanier Health Services ("Hospital") is a local hospital that provides the primary health care for Chambers County ("County"). The Hospital also provides a significant amount

of indigent care to residents of the County. Lanier Health Services is a private, nonprofit institution that receives no financial assistance from the County.

Section 215.02 of the Recompiled Constitution of Alabama states as follows:

> If the tax is authorized by vote of a majority of the qualified electors of the county who participate in any election called for that purpose, the governing body of each county except Mobile, Montgomery, and Jefferson counties must levy and collect, in addition to all other taxes authorized by law, a special county tax, not exceeding four mills on each dollar of taxable property in the county to be used solely for acquiring, by purchase, lease, or otherwise, constructing, operating, equipping, or maintaining county hospitals, or other public hospitals, non-profit hospitals and public health facilities. An election may be called at any time by the governing body of the county, and must be called within three months of receipt of a petition, signed by not less than five percent of the qualified electors of the county, requesting that the election be called. The election shall be conducted in the manner which the governing body of the county prescribes.

ALA. CONST. art. XI, § 215.02 (amend. 72).

The Supreme Court has stated that ad valorem tax funds derived from Amendment 72 may only be used for public health facilities, despite the fact that the amendment specifically states that such funds may be used by "non-profit hospitals." The Court has stated as follows:

> [T]he electorate of the state has set up a vehicle by which the electorate of the several counties falling within the purview of the amendment may tax themselves for the purpose of acquiring and maintaining ***county*** hospitals and ***public health facilities*** as a county institution. This much is clear. But just what the framers of the proposed amendment had in mind by the use of the words and phrases '***or other public hospitals, non-profit hospitals***' is not entirely clear to us. However, we believe we are on safe ground in holding that said phrases were added to emphasize that such

> county institutions, so acquired, were not to be operated for profit and should be maintained by the tax levied under the amendment.

In re Opinion of the Justices No. 93, 252 Ala. 194, 198, 41 So. 2d 559 (1949) (emphasis in original); *see also, In re Opinion of the Justices* No. 110, 253 Ala. 547, 45 So. 2d 771 (1950), *citing In re Opinion of the Justices* No. 93, at 198. Based solely on the foregoing, proceeds from Amendment 72 may not be used to assist a private, nonprofit hospital.

A properly adopted constitutional amendment, however, becomes the supreme law in place of the previous constitutional section. In *State v. Grayson*, 220 Ala. 12, 123 So. 573, 583 (1929), Justice Brown stated that "[i]f the requirements of the Constitution are complied with in the adoption of an amendment, the courts are without power to destroy it, because when adopted in accordance with the constitutional requirements, it is the expression of the sovereign will, and becomes the supreme law of the land." *Id.* The electorate of Chambers County passed section 5 of the Chambers County Local Constitutional Amendments in 1969. This amendment authorizes tax proceeds derived from section 215.02 to be used for public or private, nonprofit hospitals. This local amendment states as follows:

> Whenever the tax authorized to be levied by amendment No. LXXII [§ 215.02] to the Constitution shall have been approved by vote of the qualified electors of Chambers county and levied by the governing body of the county, the proceeds of such tax may be used for any health purposes of the county, including providing health facilities of all kinds and of health services; and the governing body of ***Chambers county may, in its discretion, expend any part of the proceeds thereof*** in cooperation with any one or more of the municipalities of the county, or ***in cooperation with any public or private nonprofit hospital corporation***; or the county governing body may cooperate in the consolidation of all such hospitals, facilities and services in Chambers county and expend all or any part of the proceeds of the said tax in support thereof.

ALA. CONST. LOCAL AMENDS., Chambers County § 5 (amend. 307) (emphasis added).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). Based upon the plain language used in section 5 of the Chambers County Local Amendments, it is the opinion of this Office that upon the passage of a tax pursuant to section 215.02 of the Recompiled Constitution of Alabama, Chambers County may, at its discretion, expend those ad valorem tax proceeds on any public or private, nonprofit hospital corporation. *See, generally*, *Opinion of the Justices* No. 158, 266 Ala. 218, 220, 95 So. 2d 923, 926 (1957) (discussion of § 2 of the Marion County Local Amendment, previously constitutional amendment 75).

Although the passage of a tax by Chambers County pursuant to section 215.02 of the Recompiled Constitution of Alabama would permit the local governing authority to collect ad valorem tax proceeds to be used in support of a private, nonprofit hospital, such ad valorem tax proceeds may not be used for the purpose of providing indigent care. Instead, such funds may only be used in acquiring, constructing, operating, equipping, and maintaining the hospital. *Id.* at 925; opinion to Honorable H. Dean Buttram, Jr., Attorney, Cherokee County Healthcare Authority, dated July 11, 2006, A.G. No. 2006-120, at 3.

Section 215.04 of the Recompiled Constitution of Alabama authorizes proceeds of any special county tax to be used for the care and treatment of indigent residents of a county. This section states as follows:

> The legislature may authorize the use of any portion of the proceeds of any special county tax levied for the purpose of acquiring, constructing, equipping, operating, and maintaining public hospitals, public clinics, public health centers, and related public health facilities of any kind, or for any one or more of the purposes included within the meaning of the term "public hospital purposes," for the purpose of providing hospital care and treatment for indigent residents of the county, or for the purpose of matching any state or federal funds made available for use in providing hospital care and treatment for indigent residents of the county, any provision of the Constitution to the contrary notwithstanding. Provided, however, that if any portion of the proceeds of such tax shall have been pledged to the payment of any bonds, warrants, notes, or other obligations or evidences of

> indebtedness, such portion of the proceeds of the tax as shall have been so pledged shall not be used for any purpose except in payment of such bonds, warrants, notes or other obligation or evidences of indebtedness.

ALA. CONST. art. XI, § 215.04 (amend. 125). Accordingly, should Chambers County seek to use ad valorem tax proceeds derived from section 215.02 to defray the cost of indigent care within the County, the County should also consider passage of legislation pursuant to section 215.04 of the Recompiled Constitution of Alabama. Opinion to Honorable Sidney Johnston, Chairman Limestone County Commission, dated October 31, 1983, AG. No. 84-00041.

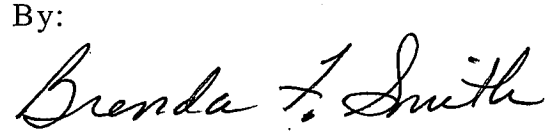
CONCLUSION

If the voters of Chambers County pass a special tax pursuant to section 215.02 of the Recompiled Constitution of Alabama, section 5 of the Chambers County Local Amendments authorizes those tax proceeds to be used in the acquiring, constructing, equipping, operating, and maintaining of a private, nonprofit hospital.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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