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Honorable C. Mark Bain
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Health Care Authorities – Ad Valorem Taxes – Hospitals – Health Care – Elmore County

The Elmore County Health Care Authority may not use ad valorem taxes derived from section 215.02 of the Recompiled Constitution of Alabama (amendment 72) to assist Community Hospital, a private, not-for-profit entity.

Dear Mr. Bain:

This opinion of the Attorney General is issued in response to your request on behalf of the Elmore County Health Care Authority ("Authority").

QUESTIONS

(1) May *ad valorem* tax revenue be used to support Community Hospital, a private, not-for-profit entity?

(2) If so, does the Elmore County Commission or the Authority have the power to determine the amount of *ad valorem* tax revenue allocated to Community Hospital?

FACTS AND ANALYSIS

According to your request and additional information provided to this Office, the Authority is incorporated pursuant to the provisions of sections 22-21-310 through 22-21-344 of the Code of Alabama for the purposes of

facilitating, assisting, and participating in the construction, equipping, maintenance and operation of suitable hospitals and related medical facilities within Elmore County. The Authority is publically supported by *ad valorem* taxes levied and collected pursuant to Section 215.02 of the Recompiled Constitution of Alabama. Historically, the Authority has utilized the *ad valorem* taxes exclusively for the support of Elmore County Hospital, a public hospital located in Wetumpka, Alabama.

Community Hospital, also located in Elmore County, is a private, not-for-profit entity organized for charitable, scientific, and educational purposes. Community Hospital has asked the Authority whether ***ad valorem*** tax revenue may also be used for the support of Community Hospital.

Section 215.02 of the 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 every 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, <u>non-profit hospitals</u> 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) (emphasis added).

This Office has previously opined on the permissible uses of *ad valorem* taxes collected pursuant to section 215.02 of the Constitution in an opinion to Honorable DuWayne Bridges. Therein, this Office stated the following:

> 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."
>
> ***Based solely on the foregoing, proceeds from Amendment 72 may not be used to assist a private, nonprofit hospital.***

Opinion to Honorable DuWayne Bridges, Member, House of Representatives, dated January 12, 2011, A.G. No. 2011-027, quoting *In re Opinion of the Justices* No. 93, 252 Ala. 194, 198, 41 So. 2d 559 (1949) (internal citations omitted) (emphasis added).

The *Bridges* opinion ultimately concluded that, because Chambers County had a subsequent local constitutional amendment that more specifically authorized the use of *ad valorem* taxes to assist public or private nonprofit hospitals, Chambers County could use amendment 72 *ad valorem* tax proceeds to assist a private, nonprofit hospital. *Bridges* at 4-5. The research of this Office, however, has revealed no similar local constitutional amendment applicable to Elmore County.

CONCLUSION

The Elmore County Health Care Authority may not use ad valorem taxes derived from section 215.02 of the Recompiled Constitution of Alabama (amendment 72) to assist Community Hospital, a private, not-for-profit entity.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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