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STATE OF ALABAMA
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Honorable Ray L. Watts, President
University of Alabama at Birmingham
AB 1070, 1720 2nd Avenue South
Birmingham, Alabama 35294

CORRECTED

Colleges and Universities – Debt –
University of Alabama at Birmingham –
Agreements – Board of Trustees

The Board of Trustees of the University of Alabama has legal authority to enter into agreements under which it guarantees the debt of an authority or university affiliate pursuant to section 16-17A-17(b) of the Code of Alabama.

Dear Dr. Watts:

This opinion of the Attorney General is issued in response to your request on behalf of the Board of Trustees of the University of Alabama.

QUESTION

Does the Board of Trustees of the University of Alabama, acting through its operating division the University of Alabama at Birmingham, on behalf of the University Hospital, have the legal authority to enter into an agreement under which it guarantees the debt of other corporations affiliated with the University of Alabama School of Medicine and agrees to be jointly bound with them in the performance of certain covenants?

FACTS AND ANALYSIS

The Board of Trustees of the University of Alabama (“Board”) was created by Section 264 of Article XIV of the Recompiled Constitution of Alabama to operate the state university. ALA. CONST. art. XIV, § 264 (amend. 399). Your request states that the Board has three operating divisions: The University of Alabama (main campus in Tuscaloosa), the University of Alabama at Birmingham (“UAB”), and the University of Alabama at Huntsville. You further state that UAB is principally comprised of a university, which includes the University of Alabama School of Medicine (“UASOM”) and the University of Alabama Hospital (“University Hospital”), the primary teaching hospital for UASOM.

There are several supporting entities that support the Board and UASOM. The University of Alabama Health Services Foundation, P.C. (“HSF”) is a nonprofit corporation that employs approximately 1200 physicians who teach and perform research at UASOM. The Board created the Callahan Eye Hospital Care Authority (“CEH”) as a public corporation, which owns and operates Callahan Eye Hospital, the primary teaching hospital for UASOM’s ophthalmology department. The Board, in conjunction with HSF, organized UAB Health System (“UABHS”), a nonprofit corporation, to manage these entities.

These entities, University Hospital, HSF, CEH, and UABHS, seek to enter into a master trust indenture (“MTI”), which is a security document that contains the basic terms and conditions that apply to debt that is secured under that document. An MTI serves as the agreement between the group of borrowers that are obligated to repay the debt and a master trustee that assumes fiduciary responsibility on behalf of all lenders secured by the MTI’s provisions. University Hospital, HSF, CEH, and UABHS would constitute the members of the “Obligated Group” under the MTI. Any debt obligations issued pursuant to the MTI would be the joint and several obligation of each member, meaning essentially that each member would guarantee the debt of every other member.

The Board has been given broad authority pursuant to provisions within the Alabama Constitution and the Code of Alabama, that may provide independent authority for the Board to enter into these transactions. Because, however, the Legislature has enacted specific legislation that addresses your particular concerns, the University Authority Act of 2016, which is now codified at section 16-17A-1, *et seq.*, of the Code of Alabama, this opinion does not consider other possible authority for the contemplated actions. ALA. CODE §§ 16-17A-1 to 16-17A-24 (Westlaw 2016).

The University Authority Act of 2016 authorizes a constitutionally created public university in the state or a public university in the state that operates a school of medicine to organize a new type of public corporation. ALA. CODE §§ 16-17A-3 & 16-17A-4 (Westlaw 2016). This new corporation, which is referred to as an authority, is created for the purpose of, among other things, financing health care facilities necessary or desirable to the operation of an academic medical center and its related facilities. ALA. CODE §§ 16-17A-3, 16-17A-8, 16-17A-10, 16-17A-21, 16-17A-23 (Westlaw 2016).

Your request additionally states that the Board has organized the UAB Medicine Finance Authority (“Authority”) pursuant to the act. It is contemplated that the Authority would issue debt on behalf of the Obligated Group members. The financing structure that will be used by the Group calls for the Authority to issue bonds and loan the proceeds to the member that requested the financing. That member would enter into a loan agreement with the Authority under which it will promise to make payments to the Authority at times and in amounts sufficient to service the debt.

Section 16-17A-17(b) specifically authorizes a university to guarantee the debt of an authority or a university affiliate as follows:

(b) The state, any governmental entity, any university, or any public corporation may ***pledge its full faith and credit*** to or for the benefit of an authority or a university affiliate ***or may pledge any revenues*** that it is legally entitled to pledge to or for the benefit of an ***authority or university affiliate***.

ALA. CODE § 16-17A-17(b) (Westlaw 2016) (emphasis added). “University affiliate” is defined at section 16-17A-2(14) (Westlaw 2016).

Accordingly, the Board may guarantee the debt of the Authority or any university affiliate.

CONCLUSION

The Board of Trustees of the University of Alabama has legal authority to enter into agreements under which it guarantees the debt of an authority or university affiliate pursuant to section 16-17A-17(b) of the Code of Alabama.

Honorable Ray L. Watts
Page 4

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in black ink, appearing to read "G. Ward Beeson, III". The signature is written in a cursive style with a horizontal line at the end.

G. WARD BEESON, III
Chief, Opinions Section

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