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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Public Corporations –Hospital Boards –
Real Property – Advertising – Sales

It is permissible for the Bullock County Hospital Board to sell real property to an individual for valuable consideration/fair market value without advertising the sale.

Dear Mr. Reed:

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

QUESTION

Is it permissible for a public corporation, the Bullock County Hospital Board, to sell real property to an individual without advertising said sale?

FACTS AND ANALYSIS

From your request, this Office understands that a request has been made to the Bullock County Hospital Board (“Board”) by a private individual to buy real property that the hospital board owns but for which it has no use. This request prompted you to ask for an opinion from this Office addressing the matter.

State law provides for the incorporation of public corporations in the counties of the state that are empowered to operate public hospitals. *See* ALA. CODE § 22-21-70, *et seq.* (1997). The purpose of these sections is expressly stated to be as follows:

It is the intention of the Legislature by the passage of this division to authorize in each of the several counties of the state the organization of one or more public corporations for the purpose of acquiring, owning and operating public hospitals and other public health facilities in the county in which such corporation shall be organized, or in a portion of the said county. . . . Corporations organized under this division shall be nonprofit corporations, and no part of the net earnings thereof shall inure to the benefit of any member thereof or other individual or private corporation.

ALA. CODE § 22-21-71 (1997). This Office understands that the Bullock County Hospital Board is organized as a public corporation under sections 22-21-70 through 22-21-83 of the Code of Alabama. The powers of the Board are set forth, in pertinent part, as follows:

The corporation shall have the following powers, together with all powers incidental thereto or necessary to the discharge thereof in corporate form:

* * *

(4) To receive, acquire, take and hold, whether by purchase, gift, lease, devise or otherwise, real and personal estate of every description and to manage and dispose of same by any form of legal conveyance.

ALA. CODE § 22-21-77 (1997). As a public corporation, the Board may exercise those powers given to it under these provisions of state law. State law expressly provides that a corporation established under section 22-21-70, *et seq.*, may dispose of the property it owns "by any form of legal conveyance." *Id.* Pursuant to these provisions, the Bullock County Hospital Board may sell its assets to a private entity. Funds received by the Board, pursuant to the sale of its assets, are to be retained by the Board and utilized in compliance with its stated corporate purposes.

In an opinion to Mr. Morgan Reynolds, the Attorney General determined that section 22-21-77(4) of the Code of Alabama authorizes a county hospital board to sell real property belonging to it for valuable consideration. Opinion to Mr. Morgan Reynolds, Attorney for the Chilton County Hospital Board, dated October 10, 1980, A.G. No. 81-00020. The state law makes no requirement that the sale be advertised. It should be noted, however, that the Board has a fiduciary duty, as part of its corporate existence, to acquire the best price possible. In

Alabama Hospital Association v. Dillard, 388 So. 2d 903 (Ala. 1980), the court stated as follows:

The powers of public hospital associations and corporations are defined by statute. Section 22-21-1, Code 1975, et seq.

[2] . . . Of course, they are not authorized by statute, nor by common law, to exceed the corporate powers, *nor may they ignore the fiduciary responsibilities and duties which are an integral part of all corporate existence.*

Dillard, 388 at 905 (emphasis added).

CONCLUSION

It is permissible for the Bullock County Hospital Board to sell real property to an individual for valuable consideration/fair market value without advertising the sale.

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

Sincerely,

TROY KING
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division

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