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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Tallapoosa County Hospital Board
139 South Broadnax Street
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TO THE EXTENT THAT THIS OPINION IS INCON-
SISTENT, IT HAS BEEN OVERRULED BY THE
OPINION ISSUED TO THOMAS A. RADNEY, DATED
9-1-2005, A.G. NO. 2005-190

Hospital Boards - Health, County
Boards of - Health Care - Health
Care Authorities - Funds - Code
Section 22-21-71

Section 22-21-71 of the Code of
Alabama does not state that the
unused funds must be transferred to
the Tallapoosa County Commission.
The funds, however, must be used in a
manner consistent with the purposes
for which the Tallapoosa County
Hospital Board was established.

Based on the past opinions of this
Office, a distribution to local
volunteer fire departments and
municipal fire departments would not
be for health care purposes and would
not be allowed under the applicable
statutes.

The funds may be transferred to
District Three and District Four
provided, of course, the funds are
used in a manner consistent with the
purposes for which the Tallapoosa
County Hospital Board was
established.

The Tallapoosa County Hospital
Board cannot pay for improvements to
a privately owned hospital.

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Dear Mr. Reynolds:

This opinion of the Attorney General is issued in response to your request on behalf of the Tallapoosa County Hospital Board.

QUESTION ONE

The Tallapoosa County Hospital Board sold real and personal property consisting of Lake Martin Community Hospital and the existing equipment and furnishings to Lake Martin Medical Holdings, L.L.C., a private entity on or about January 5, 2004. Being a public corporation incorporated pursuant to sections 22-21-70, *et seq.*, of the Code of Alabama, the Tallapoosa County Hospital Board intends to dissolve its public corporation in the very near future. Upon completion of payment of debts and winding up the corporation, the Board expects a surplus of funds. Because the funds are derived from District Three and District Four of Tallapoosa County pursuant to Act 46, approved on June 2, 1949, must these funds be transferred to the Tallapoosa County Commission?

FACTS AND ANALYSIS

In your letter of request, you provide the following facts:

The Tallapoosa County Hospital Board was incorporated with the authority and permission of the Tallapoosa County Commission on or about January 8, 1962, pursuant to Act 46, approved June 2, 1949, which is apparently codified today in sections 22-21-70 through 22-21-74 and 22-21-76 through 22-21-83 in article 4 of the Code of Alabama.

Construction of the hospital was made through appropriations from local taxes collected from District Three and District Four of

Tallapoosa County. In addition, the hospital received Hill Burton Funds, although a specific amount of those funds has not been determined.

The provisions for county hospital boards and corporations are set out in sections 22-21-70, *et seq.* of the Code of Alabama. Under section 22-21-71 of the Code of Alabama, generally, each Alabama county is authorized to establish public corporations to own and operate public hospitals. Specifically, section 22-21-71 states 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. It is the legislative intent to confer on corporations organized under this division all the powers requisite for the fulfillment of the purposes of their organization, including the power to do whatever financing may be necessary to accomplish such purposes. This division shall be liberally construed to give effect to its purpose. 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).

Section 22-21-82 of the Code of Alabama, entitled "Dissolution of corporation," states, in part, that "[a]t any time when the corporation owns no property and has no indebtedness outstanding, the county commission of the county in which the corporation was organized may adopt a resolution, which shall be duly entered upon the minutes of said county commission, declaring that the corporation shall be dissolved. . . ." ALA. CODE § 22-21-82 (1997).

In an earlier opinion, this Office opined as follows:

Succinctly, at corporate dissolution the Hospital Authority should have no assets remaining for distribution. Although the statute does not specify how the Hospital Authority's assets should be distributed, it is the opinion of this Office that they must be disposed of in a manner that is consistent with the purposes for which the Hospital Authority was organized. Some such acceptable uses include, but are not limited to, transferring them to the county for the county to use in meeting medical needs within the county, placing them into a trust to be drawn upon to provide indigent medical care to county residents, or transferring them to the county health department to be used to help supply health care within the county.

See Opinion of the Attorney General to the Honorable Robin F. Reynolds, Attorney, Tallapoosa County Hospital Board, dated September 12, 2002, A.G. No. 2002-335.

CONCLUSION

Even though the statute does not state that the unused funds must be transferred to the Tallapoosa County Commission, it is the opinion of this Office that the funds may be transferred to the Tallapoosa County Commission. The funds, however, must be used in a manner consistent with the purposes for which the Tallapoosa County Hospital Board was established.

QUESTION TWO

May the Tallapoosa County Hospital Board distribute a portion of the remaining funds to local volunteer fire departments and municipal fire departments?

FACTS, ANALYSIS, AND CONCLUSION

The Tallapoosa County Hospital Board was established under section 22-21-71 of the Code of Alabama, generally, to own and operate public hospitals. Based on the past opinions of this Office, a distribution to local volunteer fire departments and municipal fire departments would not be for health care purposes. Thus, a distribution to these agencies would not be allowed under the aforementioned statute.

QUESTION THREE

Is the Tallapoosa County Hospital Board required to disburse the remaining funds for health care purposes only?

FACTS, ANALYSIS, AND CONCLUSION

This Office has opined numerous times that public funds may only be expended for public purposes consistent with the goals, duties, and authority of the public body. See Opinion of the Attorney General to the Honorable Bobby L. Crowder, Mayor, City of Valley, dated November 6, 1995, A.G. No. 96-00034; Opinion of the Attorney General to the Honorable John R. Phillips, Attorney, City of Oxford, dated October 19, 2001, A.G. No. 2002-033. Because the Tallapoosa County Hospital Board was established for health-care purposes, the funds should be distributed for the same purposes. In this situation, the public body in question is the Tallapoosa County Hospital Board. The goals and duties revolve around health care. Thus, the distribution of the surplus funds should be for health care purposes.

QUESTION FOUR

Must the Tallapoosa County Hospital Board disburse the funds to the constituents of District Three and District Four who were subject to the original tax for the construction/operation of the local hospital?

FACTS, ANALYSIS, AND CONCLUSION

Within section 22-21-71 of the Code of Alabama, there is no provision covering the return of the unused funds to the districts where the local taxes were collected. The funds, however, may be transferred to the aforementioned districts provided, of course, the funds are used in a manner consistent with the purposes for which the Tallapoosa County Hospital Board was established.

QUESTION FIVE

If the Tallapoosa County Hospital Board intends to disburse the funds to Tallapoosa County, must the county use the funds for health-care purposes for District Three and District Four of Tallapoosa County?

FACT, ANALYSIS, AND CONCLUSION

The county is not required to use the funds in Districts Three and Four. It is the opinion of this Office, however, that if the funds are transferred to the aforementioned districts, the funds must be used in a manner consistent with the purposes for which the Tallapoosa County Hospital Board was established, which is for health-care purposes.

QUESTION SIX

May the Tallapoosa County Hospital Board use a portion of the remaining funds to pay for improvements to Lake Martin Community Hospital, which is now under private ownership?

FACTS, ANALYSIS, AND CONCLUSION

The provisions for county hospital boards and corporations are set out in sections 22-21-70, *et seq.*, of the Code of Alabama. Under section 22-21-77(5), generally, the corporation shall have the power to acquire, construct, equip, enlarge, improve, maintain, and operate a hospital and to do all things necessary to that end. ALA. CODE § 22-21-77(5) (1997). The

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purpose of the Board is to acquire, own, and operate "public" hospitals and other "public" health facilities. ALA. CODE § 22-21-71 (1997). Using a portion of the remaining funds to pay for improvements to Lake Martin Community Hospital would have been acceptable while the hospital was a public hospital; however, the corporation no longer owns the Lake Martin Community Hospital because it is now under private ownership. The corporation is not authorized by statute nor by common law to exceed the corporate powers, nor may it ignore the fiduciary responsibilities and duties that are an integral part of all corporate existence. *Alabama Hosp. Ass'n v. Dillard*, 388 So. 2d. 903, 905 (Ala. 1980). Thus, it is the opinion of this Office that the Tallapoosa County Hospital Board cannot pay for improvements to a privately owned hospital.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Cleophus Gaines, Legal Division, Department of Revenue.

Sincerely,

TROY KING
Attorney General
By:


CAROL JEAN SMITH
Chief, Opinions Division

TK/CGJ/nl

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