

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 00-045

Management and Sale of Bradley County Memorial Hospital

QUESTIONS

1. Who has the authority to hire and fire the Chief Administrative Officer of Bradley County Memorial Hospital?
2. Does the Bradley County Commission have the authority to sell or lease the Bradley County Memorial Hospital?
3. If the answer to Question 2 is no, who has this authority?

OPINIONS

1. The Bradley County Hospital Board of Directors has the authority to hire and fire the Chief Administrative Officer of Bradley County Memorial Hospital.
2. and 3. Under the applicable private acts, the Bradley County Commission does not have the authority unilaterally to sell or lease the Bradley County Memorial Hospital. Only a court of competent jurisdiction, after reviewing all relevant facts and circumstances, including the deeds under which the property is held, as well as the covenants governing any bonds issued to finance the hospital, could reach a definitive conclusion regarding the authority to lease or sell the hospital.

ANALYSIS

1. Authority to Hire and Fire the Chief Administrative Office of the Bradley County Memorial Hospital

The first question is who has the authority to hire and fire the hospital administrator at Bradley County Memorial Hospital. Private acts vest general management of the Bradley County Memorial Hospital with the Bradley County Hospital Board of Directors (the "Board"). *See* 1947 Tenn. Priv. Acts Ch. 846; 1953 Tenn. Priv. Acts Ch. 197; 1976 Tenn. Priv. Acts Ch. 291; 1989 Tenn. Priv. Acts Ch. 46; 1992 Tenn. Priv. Acts Ch. 208; and 1993 Tenn. Priv. Acts Ch. 22. Pursuant to 1953 Tenn. Priv. Acts Ch. 197, the Bradley County Hospital is to be operated by the Bradley County Memorial Hospital Board of Directors, which was vested with:

full, absolute and complete authority and responsibility for the operation, management, conduct and control of the business and affairs of said hospital. Said authority and responsibility shall include, but shall not be limited to, the establishment, promulgation and enforcement of rules, regulations, and policies, the upkeep and maintenance of all property, the administration of all financial affairs, the maintenance of separate banking arrangements, the execution of all contracts, the purchase of supplies and equipment, and the employment, supervision, compensation and discharge of all personnel including a Hospital Administrator.

1953 Tenn. Priv. Acts Ch. 197, § 1. (Emphasis added). Under this act, we think the Board has the authority to hire and fire the Chief Administrative Officer of the Bradley County Memorial Hospital.

2. and 3. Sale or Lease of Bradley County Memorial Hospital

Questions 2 and 3 concern the authority to sell or lease the Bradley County Memorial Hospital. We assume the question refers to the authority to sell or lease the entire property, including both real property and equipment, to a third party. Private acts creating and governing the Board provide in relevant part:

The Board of Directors shall have the authority to acquire or lease real property, equipment and other personal property related to the business and affairs of the hospital, including medical office buildings, parking structures, real property, buildings and other facilities determined by the board to be appropriate for the operation of the hospital and the provision of health care services. All property acquired by the board shall be acquired subject to the approval of the county legislative body and shall be held and owned in the same manner as the original property conveyed for establishment of the Bradley County Memorial Hospital under Chapter 846 of the Private Acts of 1947, as subsequently amended. The board shall have the authority to make health care services available through any of the various modalities of care requiring licensure under Title 68, Tennessee Code Annotated, or for which reimbursement may be sought under federal medicare or state medicaid programs. In making such health care services available, the board shall be authorized to construct buildings and other facilities, to purchase equipment and supplies, to enter into contracts or arrangements, and to create subsidiary corporations organized under the Tennessee Nonprofit Corporations Act for the purpose of carrying out the activities permitted hereunder. No real property shall be transferred to

another person or entity without the affirmative vote of two-thirds (2/3) of the board of directors.

1947 Tenn. Priv. Acts Ch. 846, § 13, as amended by 1992 Tenn. Priv. Acts Ch. 208 (emphasis added). Under the last sentence of this section, it is clear that the Bradley County Commission does not have the unilateral authority to sell hospital property. Further, we think that a court would read this provision together with the private act granting the Board “full, absolute and complete authority and responsibility for the operation, management, conduct and control of the business and affairs of said hospital,” and conclude that the Bradley County Commission does not have the unilateral authority to lease the hospital property to third parties.

The private acts governing the Board do not clearly specify the process by which the hospital itself may be leased or sold, nor is this Office aware of any general law that would clarify this issue. The Private Act Hospital Authority Act of 1996 accords a “private act hospital authority” a wide variety of powers. Tenn. Code Ann. § 7-57-603. The Board itself, however, is not a “private act hospital authority” within the meaning of that statute. Tenn. Code Ann. § 7-57-602. This Office has concluded that the authority of a county board of hospital trustees under this statutory scheme depends on its authority under the private acts creating it. Op. Tenn. Atty. Gen. 98-119 (July 2, 1998). In that opinion, we noted it could be argued that the McNairy County General Hospital Board of Trustees, under Tenn. Code Ann. §§ 7-57-601, *et seq.*, was authorized to sell the county hospital with the approval of the county commission, but that the Board could not unilaterally sell the hospital since neither this statutory scheme nor the private acts creating it conferred this authority.

Our 1998 opinion involved a county hospital board operating under a private act that did not specifically address the sale of hospital property. The Bradley County Hospital Board of Directors is expressly authorized to acquire or lease real property, and to “transfer” property by a two-thirds vote. But we think only a court of competent jurisdiction could reach a definitive conclusion regarding the authority to lease or sell the hospital. Property *acquired* by the Board must be acquired subject to the approval of the county commission and be held in the same manner as property originally conveyed for the establishment of the hospital. Thus, the manner in which the property is “held and owned” under the 1947 Act and any conditions the county commission might have imposed when it approved acquisition of the property could affect the Board’s authority to “transfer” the hospital by selling or leasing it to a third party. The private acts do not require the county commission’s approval for the Board to *lease* property, but a court might interpret that provision to apply only when the Board is leasing property for “the operation of the hospital,” and not for the purpose of leasing the hospital to a third party. Accordingly, only a court of competent jurisdiction, after reviewing all relevant facts and circumstances, including the deeds under which the property is held, as well as the covenants governing any bonds issued to finance the hospital, could reach a definitive conclusion on this issue.

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