

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

October 3, 2003

Opinion No. 03-131

Rhea Medical Center

---

**QUESTION**

The Rhea County Board of Hospital Directors (the “Board”) operates the Rhea Medical Center under 1957 Tenn.Priv.Acts Ch. 21. Is the Board authorized to sell two of its buildings by a private sale, or must it sell them to the highest bidder in a publicly announced invitation?

**OPINION**

The Board is not authorized to sell hospital real property without the authorization of the Rhea County Commission. Unless the county has adopted the County Purchasing Law of 1957, Tenn. Code Ann. §§ 5-14-101, *et seq.*, or the County Financial Management System of 1981, Tenn. Code Ann. §§ 5-21-101, *et seq.*, the County Commission may authorize the Purchasing and Finance Commission to sell surplus county real property without advertising for bids.

**ANALYSIS**

This opinion concerns the authority to sell Rhea Medical Center buildings. Rhea Medical Center is maintained and operated by the Rhea County Board of Hospital Directors (the “Board”) created under 1957 Tenn.Priv.Acts Ch. 21. Under Section 2 of the act, actions to be taken by the County under the authority of the act “not herein or by other applicable law expressly or by necessary implication authorized to be otherwise taken for and on behalf of said County, shall occur by or pursuant to action of the Quarterly County Court of said County, as its governing body.” County quarterly courts have since been replaced by county commissions. Section 3 of the act authorizes the county to acquire and to “own, purchase, sell, lease or otherwise dispose of, a General Hospital within the County.” Section 4 of the act provides:

That said County be and it is hereby authorized to maintain and operate such a Hospital by and through a Board of Hospital Directors, hereby created, which Board shall have and exercise, for and on behalf of the County, full authority and powers in and for the purpose of the *general and governing control and supervision of the maintenance and operation* of such hospital by the County, including the authority and powers to formulate, adopt, prescribe and carry out policies, plans, rules and regulations for the maintenance and

operation of such a Hospital by the County, which shall include, among all other ones deemed necessary or proper by the Board, those as to employment, discharge and compensation of personnel, purchase of materials, supplies and equipment, *use and disposition of materials, supplies and equipment* and making and keeping of books and other records, accountings and reports, public health programs, coordination of the efforts and integration of the functions of public health units and such a hospital so maintained and operated, admission and discharge of patients, rates and payments for services furnished, requisite deposits for admission and services, prepayment hospitalization plans, responsibility and accountability of all employees or other hospital or staff personnel as to funds, records, occupation and use of premises, equipment, materials, supplies and equipment, examinations and audits of books and other records.

(Emphasis added). The Board is authorized to administer its own financial affairs, and maintain separate banking arrangements. 1957 Tenn.Priv.Acts Ch. 21, § 9. The county commission approves the Board's annual budget. *Id.*

The Board has only the powers expressly granted by statute or necessarily arising therefrom. *Professional Home Health & Hospice, Inc. v. Jackson-Madison County General Hospital District*, 759 S.W.2d 416 (Tenn. Ct. App. 1988). The Board is not expressly authorized to buy or sell real property, nor do we think a court would find that this authority is necessarily implied from its other powers. The county commission is generally authorized to acquire and dispose of property for county purposes. Tenn. Code Ann. § 5-7-101. The county commission, therefore, is authorized to sell county hospital real property. Op. Tenn. Atty. Gen. U91-96 (July 16, 1991); Op. Tenn. Atty. Gen. 98-119 (July 2, 1998).<sup>1</sup>

The question then becomes whether the county commission may sell hospital buildings by private sale, or must advertise and receive bids. Tenn. Code Ann. § 5-7-101 authorizes a county to make “*any order for the disposition of its property.*” (Emphasis added). Tenn. Code Ann. § 5-1-124 provides:

Notwithstanding any other provision of law to the contrary, any county that owns and operates a hospital is authorized to enter into *any contract or agreement that any privately owned hospital operating under title 68 is authorized to enter into*, including, but not limited to, agreements authorized by title 68, chapter 11, part 13, and Acts 1995, ch. 466.

---

<sup>1</sup> In addition, for the reasons discussed in the 1998 opinion, an argument can be made that the Board may sell hospital real property with the approval of the county commission under the Private Act Hospital Authority Act of 1996, Tenn. Code Ann. §§ 7-57-601, *et.seq.* That statutory scheme has not been amended since the 1998 opinion was issued.

(Emphasis added). Under Tenn. Code Ann. § 5-1-125, a county official or employee may only buy surplus county property by bid at a public auction.

Under 1955 Tenn.Priv.Acts Ch. 313, the Purchasing and Finance Commission for Rhea County acts as the county's purchasing agency. Section 3 of this act provides in part that "[s]aid Commission shall, upon authorization of the County Court, sell any real or personal property of the County not needed or suitable for public use or that may have been condemned or discarded; *either at public or private sale.*" (Emphasis added). Assuming this act still applies in Rhea County, the county commission, therefore, may authorize the Purchasing and Finance Commission to sell hospital buildings without seeking public bids, but neither a county official nor a county employee may purchase the buildings at a private sale.

The County Purchasing Law of 1957, Tenn. Code Ann. §§ 5-14-101, *et seq.*, governs county purchases and sales in counties that have adopted it. Under this act, sales of surplus county-owned property must be by public auction or sealed bid. Tenn. Code Ann. § 5-14-108(o)(1). Similarly, the County Financial Management System of 1981, Tenn. Code Ann. §§ 5-21-101, *et seq.*, applies in counties that have adopted it. Under Tenn. Code Ann. § 5-21-118(b), in counties that have adopted that act, the finance director is responsible for the "public sale of all surplus materials, equipment, buildings and land." Op. Tenn. Atty. Gen. U91-23 (February 20, 1991). Unless Rhea County has adopted either of these acts, however, neither of these restrictions would apply to the sale of Rhea County property.

---

PAUL G. SUMMERS  
Attorney General and Reporter

---

MICHAEL E. MOORE  
Solicitor General

---

ANN LOUISE VIX  
Senior Counsel

Requested by:

Honorable Tommy Kilby  
State Senator  
Suite 3, Legislative Plaza  
Nashville, TN 37243-0212