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Opinion No. 06-174

Woods Memorial Hospital District

QUESTIONS

1. The General Assembly recently passed the Public Benefit Hospital Sales and Conveyance Act of 2006 (the "Hospital Act"). 2006 Tenn. Pub. Acts ch. 930. Does the Hospital Act impose restrictions in addition to any under the Hill-Burton Act, 42 U.S.C. §§ 291, *et seq.*?

2. Does the Hospital Act apply to a transfer of the assets and liabilities of Woods Memorial Hospital District to the City of Etowah?

3. Under the Hospital Act, each member of the governing boards and the chief financial officers of the parties to a hospital conveyance violating the act may be subject to a civil penalty of up to one million dollars. Would this provision apply to the members of the "Strategic Partnership Committee" appointed by the Board of Trustees of the Woods Memorial Hospital District?

4. Does McMinn County own the Woods Memorial Hospital District?

5. If McMinn County does not own the District, is the County Commission prohibited from influencing district operations?

6. The Mayor of McMinn County and three county commissioners serve on the Strategic Partnership Committee. In addition, the McMinn County Commission recently lent the District $1,700,000 on the condition that the hospital be sold. Further, the McMinn County Commission requires the district administrator to report to the Commission each month. Is the County authorized to take these actions?

7. The Strategic Partnership Committee includes three district trustees, three county commissioners, the McMinn County mayor, three physicians, and two members from the public. Do any of these members have an illegal conflict of interest?

8. The McMinn County Commission authorized the County to co-sign a loan for the District. In the authorizing resolution, the Commission stipulated that it would authorize the action only on condition that the District would sell its assets within twelve months and place the money received from the sale in the county general fund. Was this action legal?

9. Under Chapter 13 of the 1965 Private Acts, McMinn County is authorized to pay district debts. About five years ago, the County paid a million-dollar debt the District was unable to pay. Is the District legally obligated to repay those funds to the County when its assets are sold?

10. In light of the Hill-Burton Act, how should funds received from the sale of the District's assets be used?

OPINIONS

1. The Hospital Act does not mention the Hill-Burton Act, nor could a state law amend a federal law. Any restrictions imposed under the Hospital Act are independent of any restrictions imposed by the Hill-Burton Act or any other provision of federal law.

2. Yes.

3. The request indicates that the Board of Trustees of the Woods Memorial Hospital District appointed a "Strategic Partnership Committee" to provide recommendations as to the sale, transfer, or lease of the hospital. Service on the Committee is not equivalent to service on the "governing board" of the District, nor as its chief financial officer. Committee members, therefore, are not subject to the penalty provision. The provision would apply to members of the District's Board of Trustees or its chief financial officer, whether or not any of these individuals serves on the Committee.

4. The private act creating the District does not specify whether the District or the County owns the assets of the county hospital system. Under the private act creating the District, however, the District is an agency of the County. For this reason, regardless of which entity formally owns any particular property, the McMinn County Commission must authorize a sale of all of the District's assets.

5. Under the private act creating the District, the County Commission is accorded a measure of influence over the District's affairs.

6. In light of the legal relationship between the County Commission and the District, we think that all of these actions are within the County Commission's authority.

7. Whether a conflict of interest exists under district or county commission rules and policies would depend on the terms of those policies. Unless the Committee is considering transferring the assets directly to one of its members or to a business in which one of its members holds the controlling interest, no direct conflict of interest prohibited under Tenn. Code Ann. § 12-4-101(a)(1) appears to be present. Whether any of these individuals has an indirect interest that must be disclosed under Tenn. Code Ann. § 12-4-101(b) depends on specific facts and circumstances, especially that individual's private business connection with the hospital.

8. We think a court would conclude that the County Commission was authorized to

stipulate, and the District to accept, these conditions for guaranteeing a loan.

9. Nothing in the private act requires such repayment. Of course, the District may have incurred such an obligation in contracts with the County. Further, given the close legal relationship between the County and the District, we think the County could legally require such repayment as a condition to approving a sale of the District's assets.

10. Presumably, these proceeds are public funds and must be used for a public purpose. Tenn. Const. Art. II, § 29. No state statute provides any more detailed guide for their use. Use of the proceeds may also be limited by relevant bond documents or other obligations that the District has incurred, including obligations in connection with federal grant funds. Those conditions would depend on the terms of the grant agreement under which the hospital received the funds. Interpretation of the terms of any such agreement should be referred, first, to the agencies who were parties to it and are authorized to enforce it. The Attorney General retains the common law and statutory authority to ensure that proceeds from the proposed transaction will be used consistently with the trust under which the assets are held by the public benefit hospital entity. In some circumstances, a court may impose a constructive trust over proceeds from a local government's sale of a hospital and require them to be administered and secured for the general healthcare. Whether a court would impose a similar constructive trust on proceeds from the sale of Woods Memorial Hospital would depend on all the facts and circumstances, particularly whether local government funds were used to build and operate the hospital.

ANALYSIS

1. The Hill-Burton Act

This opinion involves several issues regarding the supervision, operation, and sale of the assets of the Woods Memorial Hospital District (the "District"). The request indicates that federal funds were made available to build the hospital under the Hill-Burton Act. This title refers to a federal statutory scheme originally enacted in 1946, 42 U.S.C. §§ 291, *et seq.* The Hill-Burton Act established a hospital grant program. The General Assembly recently passed the Public Benefit Hospital Sales and Conveyance Act of 2006 (the "Hospital Act"). 2006 Tenn. Pub. Acts ch. 930. The first question is whether the restrictions imposed by the Hospital Act are in addition to any imposed under the Hill-Burton Act. The Hospital Act does not mention the Hill-Burton Act, nor could a state law amend a federal law. Any restrictions imposed under the Hospital Act, therefore, are independent of any restrictions imposed by the Hill-Burton Act or any other provision of federal law.

2. Applicability of the Hospital Act

The next question is whether the Hospital Act would apply to a transfer of the assets and liabilities of the Woods Memorial Hospital District to the City of Etowah. Under the Hospital Act, any public benefit hospital entity must provide written notice to the Attorney General prior to entering into any public benefit hospital conveyance transaction. 2006 Tenn. Pub. Acts ch. 930, §

4(a). A "public benefit hospital entity" means:

> any public benefit corporation, as defined in title 48, chapter 51, part 2 or any governmental entity that is licensed as a hospital under title 68, chapter 11, part 2 or considered a hospital under title 33, chapter 1, including entities affiliated with any of these through ownership, governance, or membership, such as a holding company or subsidiary.

Id., § 3(4). Under Tenn. Code Ann. § 68-11-204(a)(1), a county or local government unit, among others, must be licensed to operate a hospital. The Woods Memorial Hospital District ("the District") is created "for and in behalf of" McMinn County under Chapter 13 of the Private Acts of 1965. It appears, therefore, that the Woods Memorial Hospital is a "public benefit hospital entity" within the meaning of the Hospital Act. The term "public benefit hospital conveyance transaction" means:

> (A) The sale, transfer, lease, exchange, optioning, conveyance or other disposition of a material amount of the assets or operations of any public benefit hospital as defined in this act to another *entity* or person; and
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> (B) The transfer of control or governance of a material amount of the assets or operations of a public benefit hospital entity to another *entity* or person.

2006 Tenn. Pub. Acts Ch. 930, § 3(3) (emphasis added). The term "person" means "any individual, partnership, trust, estate, corporation, association, joint venture, joint stock company or other organization." *Id.*, § 3(2). The Hospital Act does not define the term "entity." The term "acquiring entity" means the person who gains ownership or control in a public benefit hospital entity as a result of a public benefit hospital conveyance transaction." 2006 Tenn. Pub. Acts ch. 930, § 3(1). Under its Charter, the City of Etowah is a "municipal corporation and a body politic under the laws of the State of Tennessee." Etowah City Charter, Art. I, § 1. The City, therefore, falls within the term "corporation" or "any . . . other organization" under the Hospital Act. For this reason, the act applies to a transfer of the district assets to the City of Etowah.[1] Finally, as to the transfer of the district's assets, the Attorney General retains all common law authority to protect and ensure the proper disposition of charitable trusts and assets in this State. 2006 Tenn. Pub. Acts Ch. 930, § 12(b).

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[1] It should be noted that the caption of the Hospital Act contains the restrictive phrase, "relative to the dissolution of not-for-profit hospitals and the conveyance or transfer of assets of not-for-profit hospitals to *for-profit entities* through lease, sale, or other transactions." (Emphasis added). The definitions in the act, however, contain no such restriction. Courts seeking legislative intent should look to the entire statute, including the caption and policy statement. *Hyatt v. Taylor*, 788 S.W. 2d 554 (Tenn. 1990). But courts must attempt to give effect to the legislative purpose and intent of a statute, as determined by the ordinary meaning of its text, rather than seek to alter or amend it. *State v. Hawk*, 170 S.W.3d 547 (Tenn. 2005).

3. Applicability of Civil Penalties under the Hospital Act

Section 12(a) of the Hospital Act provides:

> Any public benefit hospital conveyance transactions entered into in violation of this act shall be null and void, and each member of the governing boards and the chief financial officers of the parties to the public benefit hospital conveyance transaction may be subject to a civil penalty of up to one million dollars ($1,000,000), the amount to be determined by a court of competent jurisdiction in Davidson County. The attorney general shall institute proceedings to impose such a penalty. In addition, no license to operate a hospital may be issued or renewed under title 68, chapter 11, part 2, or applicable regulation, if there is a public benefit hospital conveyance transaction entered into in violation of the notice, public hearing, and review requirements of this act.

Question 3 is whether this provision would apply to the members of the "Strategic Partnership Committee" appointed by the Chairman of the Board of Trustees of the Woods Memorial Hospital District. By its terms, the statute expressly applies to each member of the governing boards and the chief financial officers of the parties to the public benefit hospital conveyance transaction. The request indicates that the Board of Trustees of the Woods Memorial Hospital District appointed a Strategic Partnership Committee to provide recommendations as to the sale, transfer, or lease of the hospital. Individuals who are merely members of the Committee, therefore, are not on the "governing board" of the District, nor are they its chief financial officer. Therefore, they are not subject to the penalty provision. The provision would apply to individuals on the District's Board of Trustees or its chief financial officer, whether or not any of these individuals serves on the Committee.

4. Ownership of the Woods Memorial Hospital District

The next question is whether McMinn County owns the Woods Memorial Hospital District. Both the County and the District are governmental entities. The private act creating the District does not specify which governmental entity — the District or the County — owns the assets of the county hospital system. A definitive answer on this issue would require an examination of deeds and other documents reflecting ownership of these assets. The request includes copies of a number of warranty deeds transferring land to the District. As to this property, therefore, the District holds formal title. In this context, however, the real question is whether the McMinn County Commission must approve a transfer of all the assets of the District. The answer to this question requires us to examine the District and its relationship to the McMinn County Commission.

The private act creating the District, read in its entirety, makes the District an agency of the County. The District was established "for and in behalf of McMinn County, Tennessee." 1965 Tenn. Priv. Acts ch. 13, § 1. Section 2 provides that the District will include a defined tract of land, "together with all buildings and other improvements thereon and all appurtenances thereto." The

second paragraph of the land description states:

> Being the site and grounds of the Woods Memorial Hospital. There shall also be included herein *any and all real estate purchased or otherwise acquired by McMinn County* for the enlargement of the Hospital site, and any and all buildings constructed thereon, including a Nursing Home.

(Emphasis added). Under Section 3, the District is to be controlled by a nine-member Board of Trustees. One member must be from the Etowah area, one from the Niota area, one from the Englewood area, and one from the Athens area. Two members are to be selected from the county at large, and one member is selected from the McMinn County Commission.[2] The McMinn County Commission appoints all members of the Board of Trustees. 1965 Tenn. Priv. Acts ch. 13, §§ 5 & 6. Under Section 5, the county auditors audit the books of the Board of Trustees annually, and more often if the McMinn County Commission deems it necessary. The expense of the audit is included in the budget of the Board of Trustees.

The County Commission is accorded other authority over the District Board of Trustees. Section 8 of the private act provides:

> That the Board of Trustees shall be vested with full, absolute and complete authority and responsibility for the operation, management and control of the business and affairs of the Hospital District herein created; such operation, management, conduct and control, however, shall not be inconsistent with existing contractual obligations of the City of Etowah and the County of McMinn. Said authority and responsibility shall include, but shall not be limited to the operation of the Woods Memorial Hospital and the operation of the Nursing Home, if the same shall be constructed, the establishment, promulgation and enforcement of the rules and regulations, and policies of the District, the upkeep and maintenance of the property, the administration of all financial affairs of the District, the execution of all contracts, agreements, and other instruments, and the employment, compensation, discharge and supervision of the District Administrator, in connection with the operation of said Hospital and Nursing Home.
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> However, since the Nursing Home is not yet constructed, it is the intent of this Act that McMinn County retain full and complete authority concerning the construction of said building, and the Board of Trustees created herein, may have full and complete authority to operate said Nursing Home after the building has been completed and turned over to them for operation.

Thus, under the private act, the District is authorized to operate a hospital and county nursing home once they have been built. Under Section 10 of the private act, the Board of Trustees must

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[2] The Act refers to the McMinn County Council. The legislative body of a county is now generally referred to as a county commission. Tenn. Code Ann. §§ 5-5-101, *et seq.*

submit its annual budget to the County Commission each year. The budget must be submitted at least sixty days before the fiscal year begins. Under Section 11 of the private act, the Board is also required to prepare and submit a financial statement and report to the County Commission quarterly. The statement should reflect a comparison of actual receipts and disbursements with budgeted receipts and disbursements as of the dates of such financial statements. Section 12 of the private act provides:

> That the McMinn County Council is hereby authorized to appropriate to the Hospital District from the General Fund such sums as may be required to commence the operation of said District, and such sums thereafter as may be required to pay any deficits arising in the operation and maintenance of said District, and said County and Board of Trustees is further authorized to receive by way of gift, contract, agreement, donation, or otherwise, any property or sums of money from any City, Municipality, Corporation, or individual to aid in the commencement of the operation of the District; and said County is, also, authorized to levy a tax sufficient for this purpose upon all taxable property within the said County.

Thus, the Board has the general authority to operate the hospital. The private act, however, does not explicitly give the Board authority to transfer all of the District's assets. 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). We do not think a court would find that the authority to dispose of all the assets of the hospital necessarily arises from the power to operate the hospital under the private act. On the other hand, a county commission is generally authorized to acquire and dispose of property for county purposes. Tenn. Code Ann. § 5-7-101. Further, as discussed above, the District is an agency of the County. For this reason, we think a court would conclude that the McMinn County Commission must authorize the sale of all the assets of the District.

5. County Role in District Affairs

The next question is whether the County Commission is legally prohibited from influencing the activities of the District. Under the private act creating the District, the Commission appoints board members, reviews the District's audit and budget, and is authorized to pay deficits from the operation of the hospital. One member of the County Commission serves on the Board of Trustees of the District. The County Commission and the Board are authorized to accept gifts and donations to benefit the hospital. Finally, the County Commission is expressly authorized to levy a countywide property tax to support district operations. Through these mechanisms, the County Commission is accorded a measure of influence over the District's affairs by the private act.

6. Activities of the McMinn County Commission

The next question concerns three respects in which the McMinn County Commission is playing a role in district activities. First, as noted above, the request indicates that the Board of Trustees of the Woods Memorial Hospital District appointed a Strategic Partnership Committee to

provide recommendations as to the sale, transfer, or lease of the hospital. The McMinn County Mayor and three members of the McMinn County Commission serve on the Strategic Partnership Committee. Second, the McMinn County Commission recently lent the District $1,700,000 on the condition that the hospital be sold. Third, the McMinn County Commission requires the district administrator to report to the Commission each month.

The request suggests that these examples of involvement by the McMinn County Commission in the District's activities constitute improper political interference in the affairs of the District. The private act, however, does not support this view. In light of the relationship between the County Commission and the District outlined in the private act, especially considering that the County Commission has extended financial support to the District and must approve the transfer of the District's assets, we think that all of these actions are within the County Commission's authority.

7. Conflicts of Interest

The next question concerns service on the Strategic Partnership Committee, appointed to review the sale of district assets. The Committee includes three members of the District Board of Trustees, three county commissioners, three physicians, and two members of the public. The request asks whether any of these members has an illegal conflict of interest. Whether a conflict of interest exists under district or county commission rules and policies would depend on the terms of those policies. Whether a conflict of interest exists under state law depends on particular facts and circumstances. The general provision on conflicts of interest concerning public officers, Tenn. Code Ann. § 12-4-101, pertains to contracts. The statute provides in relevant part:

> (a)(1) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. *"Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation.* The provisions of this subdivision shall not be construed to prohibit any officer, committeeperson, director, or any person, other than a member of a local governing body of a county or municipality, from voting on the budget, appropriation resolution, or tax rate resolution, or amendments thereto, unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which such person is directly interested.
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> (b) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by

> statute shall or may be interested, to be *indirectly interested* in any such contract unless the officer publicly acknowledges such officer's interest. "*Indirectly interested" means any contract in which the officer is interested but not directly so,* but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county.

Tenn. Code Ann. § 12-4-101(a)(1) & (b) (emphasis added). A person who becomes unlawfully interested in a contract under this statute must forfeit all pay and compensation for the contract. Tenn. Code Ann. § 12-4-102. Further, the person must be dismissed from office and remain ineligible for the same or a similar position for ten years. *Id.*

It is not clear whether this provision applies to members of the Strategic Partnership Committee in their roles as committee members. The Committee was apparently appointed by the Board of Trustees to help it review sale or lease of district assets. Members are not appointed under any statute, and their role in the transfer is advisory. Even if this provision applies, however, based on the facts presented, no direct prohibited conflict of interest appears to exist. The statute prohibits officials from being directly interested in a contract that they have a duty to award or supervise. An individual is "directly interested" in a contract only if the contract is with that individual personally or with a business in which the individual owns the controlling interest. Unless the committee is considering transferring the assets directly to one of its members or to a business in which one of its members holds the controlling interest, no direct conflict appears to be present.

Under subsection (b) of Tenn. Code Ann. § 12-4-101, a member of the committee would be required to acknowledge his or her indirect interest in a contract for the transfer of district assets. Under the statute, "indirectly interested" means any contract in which the officer is interested but not directly so. This Office has indicated in the past that the interest referred to under the statute is a pecuniary interest. Op. Tenn. Atty. Gen. U96-043 (June 4, 1996). Under this statute, a member of the Committee would be required to disclose any indirect pecuniary interest in a proposed contract for the transfer of district assets. Whether any of these individuals has such an indirect interest depends on specific facts and circumstances, especially that individual's private business connection with the hospital.

8. County Loan to District

The next question concerns the decision of the McMinn County Commission to co-sign a loan for the District. The request states that the Commission authorized this action but stipulated in the authorizing resolution that the District must sell its assets within twelve months and place the money received from the sale in the county general fund. The question is whether these conditions were within the County's authority. We think a court would conclude that the County Commission was authorized to stipulate, and the District to accept, these conditions for guaranteeing a loan. The request suggests that the conditions constitute an illegal bribe or restraint of trade. We see no basis for this conclusion. The County is authorized, but not required, to pay the District's operating deficits. Similarly, the District was free to accept the conditions or not. Moreover, as discussed above, there is a close legal relationship between the County and the District. For all these reasons,

based on the facts presented, the arrangement does not violate any state law.

9. District Repayment to County

Under Chapter 13 of the 1965 Private Acts, McMinn County is authorized to pay district debts. About five years ago, the County paid a million-dollar debt that the District was unable to pay. The request asks whether the District is legally obligated to repay those funds to the County when its assets are sold. Nothing in the private act requires such repayment. Of course, the District may have incurred such an obligation in contracts with the County. Further, given the close legal relationship between the County and the District, we think the County could legally require such repayment as a condition to approving a sale of the District's assets.

10. Disposition of Assets from Hospital Sale

The last question is how proceeds from the sale of Woods Memorial Hospital should be used. Presumably, these proceeds are public funds and must be used for a public purpose. Tenn. Const. Art. II, § 29. No state statute provides any more detailed guide for their use. The request cites the Hill-Burton Act. Assuming the hospital received federal funds under this act, then it must comply with any conditions that are still in effect governing the funds. Those conditions would depend on the terms of the grant agreement under which the hospital received the funds. Interpretation of the terms of any such agreement should be referred, first, to the agencies who were parties to it and are authorized to enforce it. Use of the proceeds may also be limited by relevant bond documents or other obligations that the District has incurred. In addition, the Attorney General retains the common law and statutory authority to ensure that the proceeds from the proposed public benefit hospital conveyance transaction will be used consistently with the trust under which the assets are held by the public benefit hospital entity.

A court may also impose a constructive trust over proceeds from a local government's sale of a hospital and require them to be administered and secured for the general healthcare. *LaFollette Medical Center v. City of LaFollette*, 115 S.W.3d 500 (2003), *p.t.a. denied* (2003). In that case, a hospital and its board of trustees sued to prevent the city from selling the city hospital without the board's consent. The Court found that the city was authorized to sell the hospital but that the proceeds of the sale would be held in trust to be used for one of the original purposes for which the hospital was built, to render indigent health care. The Court noted that city funds had never been used to build or to operate the hospital and that the hospital had never received funds that would otherwise have gone to the city. The Court stated:

> We conclude that given the fact that no City funds were used in the construction of the Hospital and no funds were received by the Hospital that would otherwise have gone to the City, it would be "unconscionable conduct" for the City to insist that the proceeds of the sale be used for any general purpose the City might choose.

115 S.W.3d at 505. Whether a court would impose a similar constructive trust on proceeds from the sale of the Woods Memorial Hospital would depend on all the facts and circumstances, particularly

whether local government funds were used to build and operate the hospital.

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