S T A T E O F T E N N E S S E E
OFFICE OF THE
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December 31, 2008

Opinion No. 08-197

Copper Basin Hospital District

QUESTIONS

1. The Copper Basin General Hospital District (the "District") was established and operates under 1953 Tenn. Priv. Acts Ch. 225, as amended. Is the District authorized to mortgage its real property to secure a line of credit necessary to save the hospital?

2. If the answer to Question 1 is yes, is the District authorized to place a second mortgage on its real property for the benefit of Polk County, the City of Copperhill, and the City of Ducktown?

OPINIONS

The Copper Basin General Hospital District is a "private act hospital authority" within the meaning of Tenn. Code Ann. §§ 7-57-601, *et seq.* Under Tenn. Code Ann. § 7-57-603 and Tenn. Code Ann. § 7-57-304(5), the board of trustees of the District is authorized to mortgage the District's real property, with or without the approval of either of the cities or of Polk County. The board may mortgage the property to secure a line of credit, and it may place a second mortgage on the property for the benefit of the cities and Polk County, so long as it reasonably deems these transactions necessary or beneficial to operation of the District.

ANALYSIS

This opinion concerns the authority of the Copper Basin General Hospital District to mortgage its real property to secure a line of credit. The request indicates that the line of credit is necessary to save the hospital. Of course, a definitive conclusion on the legality of the proposed transaction would require a review of all the relevant documents. It should also be noted that, under Tenn. Code Ann. §§ 48-68-201, *et seq.*, this Office must receive notice and review any "public benefit hospital conveyance transaction" as that term is defined in Tenn. Code Ann. § 48-68-202(3). This opinion is not a review under that statutory scheme and addresses only the questions raised in the opinion request.

The Copper Basin General Hospital District (the "District") was established and operates under 1953 Tenn. Priv. Acts Ch. 225, as amended. The District was created and established for and in behalf of the City of Copperhill, the City of Ducktown, and Polk County. 1953 Tenn. Priv. Acts Ch. 225, § 1. The act describes the boundaries of the District and provides that it will be operated and controlled by a seven-member board of trustees. Successor trustees are elected by the governing body of Copperhill, Ducktown, or Polk County from a list of three nominees submitted by the remaining trustees. *Id,* §§ 5 & 6, as amended by 1977 Tenn. Priv. Acts Ch. 115. Section 8 of the act, as amended by 1975 Tenn. Priv. Acts Ch 69, provides:

> The Board of Trustees shall be vested with full, absolute and complete authority and responsibility for the operation, management, conduct and control of the hospital district, however, its actions shall not be inconsistent with existing contractual obligations of the cities and county. The board's authority and responsibility shall include, but shall not be limited to, the establishment, promulgation and enforcement of rules, regulations, and policies of the hospital district, upkeep, expansion and maintenance of all property and equipment, administration of all financial affairs including issuance of bonds or notes to finance capital additions, alterations, or equipment for the hospital district, execution of all contracts, agreements and other instruments, and the employment, compensation, supervision and discharge of all personnel.

The legislation also authorizes the governing bodies of Copperhill, Ducktown, and Polk County to appropriate funds to the District to cover a portion of start-up costs and operating deficits. 1953 Tenn. Priv. Acts Ch. 225, §§ 12, 13, and 14.

The private act establishing the District does not authorize its board of trustees to mortgage hospital property for any purpose. But the District is a "private act hospital authority" as defined in Tenn. Code Ann. §§ 7-57-601, *et seq.* That statutory scheme grants private act hospital authorities broad powers. Tenn. Code Ann. § 7-57-602 provides:

> For the purpose of this part, "private act hospital authority" is any hospital owned or operated by one (1) or more local governments or any hospital, hospital authority or hospital district created or authorized by a private act of the general assembly.

Under Tenn. Code Ann. § 7-57-603, a private act hospital authority possesses all powers granted to private act metropolitan hospital authorities in Tenn. Code Ann. §§ 7-57-501, *et seq.* Among other powers, a private act metropolitan hospital authority has the powers of a hospital authority granted in Tenn. Code Ann. § 7-57-304. Tenn. Code Ann. § 7-57-502(a)(2). That statute provides in relevant part:

> ***With the approval of the governing bodies of the creating and participating municipalities***, the authority has the following additional powers, to:
>
> * * * *

> (5) Sell, exchange, transfer, assign, or ***pledge*** any real property, or any interest in real property to any person, firm, corporation, municipality, city, or government.

Tenn. Code Ann. § 7-57-304(5) (emphasis added). As used in Title 7, Chapter 57, unless the context otherwise requires, the term "creating municipality" means:

> any city or metropolitan government having a population of not less than two hundred thousand (200,000), according to the 1970 federal census or any subsequent federal census, or any county in which any such city shall be situated, that shall create an authority pursuant to this chapter.

Tenn. Code Ann. § 7-57-103(3). The term "participating municipality" means:

> any city, town or county, which city, town or county, pursuant to a resolution of its governing body and an agreement with the ***creating municipality***, shall have sold, leased, dedicated, donated or otherwise conveyed its hospitals to the authority for operation by the authority in order to make such hospital an operational part of its health care system.

Tenn. Code Ann. § 7-57-103(9) (emphasis added). Neither the City of Copperhill, the City of Ducktown, nor Polk County appears to be a "creating municipality" or a "participating municipality" within the meaning of these definitions. The District was created by the General Assembly, and has no "creating municipality" as the statute defines that term. The term "participating municipality" includes only a city, town, or county that has conveyed its hospital to a hospital authority under an agreement with a "creating municipality." We noted in an earlier opinion regarding this statute that, in the case of powers of a private act hospital authority, it can be argued that the terms "creating municipality" and "participating municipality" include a city or county that appoints the trustees or supervises the fiscal affairs and budget of a hospital district created by a private act. Op. Tenn. Att'y Gen. 98-119 (July 2, 1998). Under that interpretation, the two cities and the county would be required to approve the mortgage. But only a court of competent jurisdiction could authoritatively reach that conclusion. Under current law, it appears that the board of trustees of the District is authorized to mortgage District real property, with or without the approval of either of the cities or of Polk County. The board may mortgage the property to secure a line of credit, and it may place a second mortgage on the property for the benefit of the cities and Polk County, so long as it reasonably deems these transactions necessary or beneficial to operation of the District.

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