



GEORGIA DEPARTMENT OF LAW

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

SAMUEL S. OLENS
ATTORNEY GENERAL

www.law.ga.gov
(404) 656-3300

April 22, 2013

WRITER'S DIRECT
(404) 651-6247
FAX (404) 657-3239

Honorable Jason Spencer
State Representative, District 180
28 Yachtsmen Court
Woodbine, Georgia 31569

Re: Hospital Authority of the City of St. Marys, Georgia

Dear Representative Spencer:

This responds to your letter of March 28th requesting input regarding several issues related to the powers of the Hospital Authority of the City of St. Marys, Georgia (the "Authority").

The questions you have raised appear to focus on the central issue of how the Authority is legally empowered to expend proceeds from the sale of a convalescent center previously operated by the Authority. The specific question is whether those proceeds may properly be expended for the purpose of funding what is described as a Senior Citizens Center ("Senior Center"). The answer to this question appears likely to determine the resolution of five of the six questions you have raised. Therefore, based on the information you have provided, we are writing to address this question along with the question you have posed related to whether the Authority is required to comply with certain audit requirements.

As an initial matter, we note that we have not looked into the facts of this matter beyond reviewing the information you have provided. We also have not reviewed any legal opinions or other advice that may have been prepared for the Authority related to its use of the proceeds from the sale of its convalescent center. If such opinions or advice exist and are provided to us, we would undertake to review the analysis therein.

Upon review of the materials you provided, it appears that the City of St. Marys, Georgia and the Authority were previously adverse parties in a lawsuit involving the Authority's expenditure of funds resulting from the sale of St. Marys Convalescent Center. In order to resolve that litigation, the Hospital Authority and the City agreed to a Consent Order which the Superior

Court of Camden County entered on March 20, 2007. The Consent Order provides relevantly that:

[t]he Court finds, by stipulation of the parties, that the parties agree that Defendant will use the net proceeds received from the sale of the St.Marys Convalescent Center in strict accordance with O.C.G.A. § 31-7-75.1(a).

The Order goes on to provide that:

These net proceeds shall be held in an irrevocable trust fund. More specifically, the income from the money in that trust fund shall be used exclusively for funding the provision of hospital care for the indigent residents of the City of St Marys, Georgia, as provided by O.C.G.A. § 31-7-75.1.

O.C.G.A. § 31-7-75.1(a) provides that:

The proceeds from any sale or lease of a hospital owned by a hospital authority or political subdivision of this state, which proceeds shall not include funds required to pay off the bonded indebtedness of the sold hospital or any expense of the authority or political subdivision attributable to the sale or lease, *shall be held by the authority or political subdivision in an irrevocable trust fund.* Such proceeds in that fund may be invested in the same way that public moneys may be invested generally pursuant to general law, but *money in that trust fund shall be used exclusively for funding the provision of hospital care for the indigent residents of the political subdivision which owned the hospital or by which the authority was activated or for which the authority was created.* If the funds available for a political subdivision in that irrevocable trust fund are less than \$100,000.00, the principal amount may be used to fund the provision of indigent hospital care; otherwise, only the income from that fund may be used for that care. Such funding or reimbursement for indigent care shall not exceed the diagnosis related group rate for that hospital in each individual case.

(Emphasis added.)¹ O.C.G.A. § 31-7-75.1(a) appears to expressly state that proceeds from a sale of a hospital shall be held in an irrevocable trust, the money of which shall be used exclusively for funding hospital care for indigent residents. This is also consistent with the above quoted Order which gives the same direction and to which the Authority consented.² Thus, it appears fairly clear that the Authority's utilization of the proceeds from the sale of the convalescent center is governed by the Order and O.C.G.A. § 31-7-75.1(a). Consequently, it seems that the Authority may not have the power to use the funds from the sale of the convalescent center for the Senior Center.³

In your letter, you also request clarification on whether the Authority is still subject to annual audit requirements under O.C.G.A. §§ 31-7-91, 31-7-92 and 31-7-93.

O.C.G.A. § 31-7-91 states:

Each hospital authority created by and under this article shall ensure that an annual audit of the financial affairs, books, and records, of such authority is conducted at the end of each fiscal year for the preceding year . . . All audits provided for in this Code section shall be certified to and shall include, but in no way be limited to, a full and complete audit containing a balance sheet, profit and loss statement, and statement of receipts and disbursements.

¹ Your letter states that, in 2011, the Authority amended its ByLaws to provide for a Senior Center to meet the needs of senior citizens of the City of St. Marys. You also included copies of correspondence between this office and the Authority's attorney and between the Authority's attorney and the City of St. Marys' attorney about the Authority's intent to fund the Senior Center. These documents do not set forth any legal analysis about the proceeds from the sale of the convalescent center.

² The Court of Appeals has implied that parties who enter into a consent order effectively enter into a contract. Immel v. Immel, 298 Ga. App. 424 (2009)(applying rules of contract construction when interpreting and enforcing a consent order).

³ It appears that you are also asking whether a senior center would fit into the definition of a "project" found in O.C.G.A. § 31-7-71(5). The Code section appears to define "project" rather broadly to be any public health facility used to promote the health needs of the community. However, the limitation of O.C.G.A. § 31-7-75.1(a) and the Order of March 20, 2007 appear to control the use of the proceeds from the sale of the convalescent center.

Honorable Jason Spencer
April 22, 2013
Page 4

O.C.G.A. § 31-7-93 states:

In the event any hospital authority shall fail or refuse to provide for an annual audit and have such audit prepared and filed as set forth in Code Sections 31-7-91 and 31-7-92, any taxpayer of any participating unit of such authority or the governing authority of such unit may petition the superior court of the county wherein the authority operates a hospital to require the authority to have such audit prepared and filed as provided by the above Code sections.

Based on the above referenced Code sections, it appears that the Authority is subject to the annual audit requirements under O.C.G.A. §§ 31-7-91, 31-7-92, and 31-7-93.

We hope that this is helpful. If you have any questions, please contact us.

Sincerely,



W. WRIGHT BANKS, JR.
Deputy Attorney General



STEPHANIE K. HYDE
Assistant Attorney General

wwb/skh