STATE OF MISSISSIPPI

JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

November 16, 2018

Crane D. Kipp, Esquire
South Central Regional Board of Trustees
Post Office Box 651
Jackson, Mississippi 39205-0651

Re: Community Hospital Board of Trustees' Authority to Finance Purchase of Building

Dear Mr. Kipp:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

In your letter dated October 29, 2018, you ask that our office reconsider our opinion dated October 26, 2018, in which we opined that there is no authority for a community hospital board of trustees to enter into a long term loan agreement. You assert that the language of Miss. Code Ann. Section 41-13-35(4) grants a community hospital the broad authority to enter into a long term loan agreement, because it is not expressly prohibited in Miss. Code Ann. Section 41-13-10 through Section 41-13-53. Miss. Code Ann. Section 41-13-35(4) provides:

> The decisions of the board of trustees of the community hospital shall be valid and binding unless expressly prohibited by applicable statutory or constitutional provisions.

Under the common law in Mississippi, governing bodies, whether they be elected or appointed, may not bind their successors in office by contract, unless expressly authorized by law, because to do so would take away the discretionary rights and powers conferred by law upon successor governing bodies. *Northeast Mental Health-Mental Retardation Com'n v. Cleveland*, 187 So.3d 601, 604 (Miss. 2016). This rule is applicable to leases, lease-purchases, notes, bonds, etc. *Biloxi Firefighters Assoc. v. City of Biloxi*, 810 So.2d 589 (Miss. 2002). Although a community hospital board of trustees does have the authority to enter into a loan contract or financing agreement, we must look to see if Section 41-13-35 or any other statutory authority expressly provides that it may enter into long term loan contracts or financing agreements that bind successor boards.

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Our Legislature has granted many public entities the authority to enter into contracts and lease agreements. The Legislature also has taken further steps by granting specific entities the power to enter into long-term agreements that exceed their governing members' terms. For example, the Legislature expressly has authorized state institutions of higher learning to enter into long-term leases that do not exceed thirty-five (35) years. Miss. Code Ann. Section 37-10-141. Airport authorities may enter into leases not to exceed fifty (50) years. Miss. Code Ann. Section 61-5-11. Miss. Code Ann. Section 31-8-3 permits counties and municipalities to enter into lease agreements for facilities not exceeding twenty (20) years. (*See also Oktibbeha Cty. Bd. of Educ. v. Town of Sturgis*, 531 So.2d 585 (Miss.1988))(voiding a ninety-nine (99) year lease because the county was granted authority only to enter into a twenty-five (25) year, not a ninety-nine (99) year, lease). Boards of supervisors, as owners of a community hospital, may lease all or part of the real and/or personal property of the community hospital for a term of up to fifty (50) years. Miss. Code Ann. Section 41-13-15(7). The owners of community hospitals may also provide financing by issuing bonds, notes or other evidences of indebtedness for a term of up to either twenty (20) or thirty (30) years depending on whether the financing is a general obligation or revenue financing. Miss. Code Ann. Section 41-13-21. However, unlike these governing authorities, the Legislature has not granted community hospital board of trustees the independent authority to enter into long term contracts or leases.

You cite our opinion to Barry Cockrell dated November 3, 2010, as support that a community hospital has the broad authority to enter into a long term loan contract or financing agreement that binds and extends past the term of the board of trustees entering into such contract or agreement. In the Cockrell opinion, our office opined that a board of trustees was authorized pursuant to Section 41-13-35(4) and 41-13-35(5)(g) to enter into a long-term lease of up to thirty-five (35) years and that the lease would not be void or voidable by a successor board, thus, binding any successor board to a lease entered into by the current board. It is important to note that the Cockrell opinion did not deal with a loan or financing agreement, but rather a lease of a real property. You mention that the analysis of the Cockrell opinion was founded on several previous opinions of our office, which we will now review.

In the Heidelberg opinion, dated August 5, 1986, our office opined that the community hospital board of trustees had the authority to grant an easement, ***with the approval of the owner (Board of Supervisors)***, to a private corporation and enter into a long term use agreement, ***also with the approval of the owner***, for the use of the crosswalk by its patients. However, the requestor noted that contemplated in the lease agreement was the authority of the board of trustees to terminate the agreement and to have the crosswalk removed. Consequently, a successor board would not be bound by the easement or use agreement.

In the McKenzie opinion, dated April 22, 1992, our office opined that a community hospital could enter into a long term twenty-five (25) year lease with a private corporation with the option to renew for two (2) successive ten (10) year terms. However, the requestor acknowledged in the facts provided that due to the extended term of the ground lease the

agreement would be entered into only with the approval of the owner. The opinion did not provide that the owner or board of trustees lacked the authority to terminate the lease agreement if it was determined to be in the best interest of the community hospital. Our office did not opine that the successor board would be bound by the long term lease previously entered into. It would, in fact, be voidable at the discretion of the successor board of trustees.

In the Gore opinion, dated May 15, 2009, the requestor inquired as to whether a board of trustees could enter into a lease without the approval of the owner and if so, what would be the maximum term of such lease. Our office noted that the contract described was, in fact, a management services contract that could be entered into by the board of trustees pursuant to Section 41-13-35(5)(g). We opined that implicit in the authority of the board of trustees to enter into a management contract is the authority to do so for a term of years that is reasonable and necessary to carry out the purpose of the contract. Thus, our office opined that the board of trustees could enter into a long term management contract, but the board of trustees would have the authority to terminate said contract when deemed to be in the best interest of the hospital, again supporting the long standing rule of law that a current board cannot bind a successor board without specific authority to do so.

In the Cockrell opinion dated March 7, 2003, the requestor asked whether a community hospital has the authority to enter into a lease pursuant to Section 41-13-35(5)(g). The factual scenario presented was that the lease would be for a three (3) year term with successive three (3) year renewals, but included in the lease was the right of either party to terminate the lease at the end of each three (3) year term. Our office simply stated that a board of trustees has the authority to enter into said lease pursuant to Section 41-13-35(5)(g), which also provides that the contract could be terminated when deemed in the best interest of the community hospital. The opinion in no way granted a board of trustees the authority to bind its successor boards into a long term lease or contract.

In the Galloway opinion, dated March 17, 2000, the requestor inquired as to the authority of the owner, not the board of trustees, to convey surplus real property to a nonprofit corporation pursuant to either Section 19-7-3 or Section 21-17-1 and also whether the owner, not the board of trustees, had the authority to convey real property pursuant to Section 41-13-15(7). There was no discussion or analysis of the authority to enter into a long term lease nor discussion of the authority to bind a successor board.

Lastly, in the Dukes opinion, dated August 15, 2010, this office responded to the requestor's questions regarding whether a hospital clinic could be sold pursuant to Section 19-7-3(3) and whether such clinic was a "community hospital" as defined in Section 41-13-10(c). There was no discussion or analysis by our office of a board of trustees' authority to enter into a long term lease or contract and bind a successor board to such lease or contract.

After a thorough review of the opinions cited in the 2010 Cockrell opinion, we conclude that those opinions do not support the proposition that a board of trustees has the authority to

enter into a long term lease agreement pursuant to Section 41-13-35(4) and Section 41-13-35(5)(g) or (j) and to bind a successor board to such agreement. Accordingly, we find no support in the 2010 Cockrell opinion to support an opinion that a community hospital board of trustees may enter into a long term loan contract or financing agreement. Our opinion to Barry Cockrell dated November 3, 2010, is modified to the extent it implies that Section 41-13-35(4) or Section 41-13-35(5)(g) or (j) authorizes a board of trustees to bind a successor board to a long term lease or contract without specific statutory authority to do so. Such lease agreement would be voidable at the discretion of the successor board.

You also assert that because the Legislature expressly authorizes a community hospital to borrow money and no statute specifically prohibits a community hospital from entering into a long term loan contract or financing agreement, it is implied that a community hospital has the right to enter into a long term loan contract or agreement. We disagree. In *Northeast Mental Health-Mental Retardation Com'n*, 187 So.3d 601, the Supreme Court considered an analogous factual scenario. The case dealt with a dispute over whether the Commission could void a ninety-nine (99) year lease of state-owned land to the City of Cleveland. The Commission argued that the Legislature had not granted mental health commissions the authority to enter into **long term** contracts or leases. So, the Commission argued that any contract it entered into must be for either a term not exceeding four (4) years, or it was voidable by subsequent commissions. The City countered that if the Legislature had intended to authorize the Commission only to enter into contracts for the remaining length of its term, then the Legislature easily could have placed that restriction in the statute. The Court agreed with the Commission and rejected the City's argument. The Court stated:

> We evoke the rule that "ordinarily a new statute will not be considered as reversing long-established principles of law and equity unless the legislative intention to do so clearly appears." *Thorp Commercial Corp. v. Mississippi Road Supply Co.*, 348 So.2d 1016, 1018 (Miss. 1977). The rule that current governing bodies may not bind their successors by contract in the exercise of their discretionary powers has been a long-established rule in Mississippi for more than a century. *See Edwards Hotel & City R. Co. v. City of Jackson*, 51 So. 802 (Miss. 1910). We do not believe that Section 41-19-33, when read as a whole, shows a clear legislative intent to abrogate the common-law rule against binding successors. Thus, we believe that, had the Legislature intended to grant the Commission authority to enter into contract and lease agreements for ninety-nine years and to bind successor boards, it specifically would have provided so in the statute.

Northeast Mental Health-Mental Retardation Com'n, 187 So.3d at 609 (Miss. 2016).

We reaffirm our previous opinion to you that although a community hospital has the authority to borrow money or to pledge a percentage of its revenues to secure such a financing transaction pursuant to Section 41-13-35(5)(k), there is no express authority to enter into a long term loan contract or financing agreement that would authorize the board of trustees to bind a successor board. Thus, any loan contract or financing agreement

entered into would be voidable at the discretion of a successor board as a matter of law because its excessive duration would prevent the successor board of trustees from exercising its full authority.

If this office may be of any further assistance to you, please let us know.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By: Avery Mounger Lee

Avery Mounger Lee
Special Assistant Attorney General

OFFICIAL OPINION