

STATE OF MISSISSIPPI



**JIM HOOD**  
**ATTORNEY GENERAL**

**OPINIONS  
DIVISION**

October 26, 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.

### **Facts**

In your letter, you explain that the South Central Regional Medical Center, a community hospital, has been negotiating with the USDA Rural Development program in relation to a direct loan from the USDA as well as a USDA guarantee of a bank loan to finance the purchase of the clinic building and equipment of a group medical practice in Laurel, Mississippi. You also informed our office that the Board of Supervisors has passed a resolution approving the purchase of the real estate of that group practice, as required by state law.

### **Question Presented**

Whether the Community Hospital Board of Trustees has the authority to enter into a loan agreement or a loan agreement with a payback term of up to thirty (30) years?

### **Response**

No. Although Miss. Code Ann. Section 41-13-35(5)(k) does provide the Board the authority to borrow money with certain limitations, it does not provide authority for the Board to engage in a long term loan.

### Legal Research and Response

In general, public boards created by legislative act have only such powers and authority as are expressly granted to them or necessarily implied. "Such powers are to be construed most strongly against an asserted right, if the right is not clearly given." **Hemphill Constr. Co., Inc. v. City of Laurel**, 760 So.2d 720, 723 (Miss. 2000) (citing **City of Jackson v. McMurry**, 288 So.2d 23 (Miss. 1974)). Here, the entity is a hospital board of trustees which does not have home rule authority. Thus, these general provisions apply. Section 41-13-35(5) of Mississippi governs the authority of hospital providers and provides such boards with the authority to:

(g) To contract by way of lease, lease-purchase or otherwise, with any agency, department or other office of government or any individual, partnership, corporation, owner, other board of trustees, or other health care facility, for the providing of property, equipment or services by or to the community hospital or other entity or regarding any facet of the construction, management, funding or operation of the community hospital or any division or department thereof, or any related activity, including, without limitation, shared management expertise or employee insurance and retirement programs, and to terminate said contracts when deemed in the best interests of the community hospital;

(k) To borrow money and enter other financing arrangements for community hospital and related purposes and to grant security interests in hospital equipment and other hospital assets and to pledge a percentage of hospital revenues as security for such financings where needed; provided that the owner shall specify by resolution the maximum borrowing authority and maximum percent of revenue which may be pledged by the board of trustees during any given fiscal year;

While subsection (k) does allow community hospital boards to borrow money for the hospital and related purposes, to grant security interests in hospital assets, and to pledge a percentage of revenues as security for such financings, this subsection requires the board of supervisors to set the maximum borrowing authority and the maximum percent of revenue which may be pledged by the hospital board for repayment of the loans. However, subsection (k) does not grant hospital boards express authority to enter into financing arrangements that extend beyond the term of the current board. Thus, it is the opinion of this office that a board of trustees may not obtain financing under subsection (k) where the financing arrangement would bind successor boards.

Your letter further explains that the proposed contract for a direct loan and the loan guarantee agreement associated with a bank loan is with the USDA. We note that Section 41-13-24 provides the following:

Such counties, cities and towns, supervisors districts, judicial districts and election districts of a county are authorized and empowered to apply for,

Crane D. Kipp, Esquire  
October 26, 2018  
Page 3

contract for, accept and receive grants and loans and loan guarantee agreements relating to assistance for the construction of hospital and medical facilities and to that end the governing bodies of such counties, cities and towns, supervisors districts, judicial districts and election districts of a county are authorized and empowered to enter into such contracts with the United States of America or the agencies or departments thereof as may be necessary to effectuate the purpose of Sections 41-13-15 through 41-13-51.

Any such county, city and town, supervisors district, judicial district or election district, which shall have entered into a binding contract with the United States of America or any agency or department thereof as aforesaid for any such grant, loan or loan guarantee agreement, may borrow money from any private lender for the purpose of providing interim financing for the acquiring, constructing, expanding, equipping and furnishing of the facilities provided for in such contract with the United States of America or agency or department thereof and assign as security for such interim financing the proceeds of any such grant, loan or loan guarantee agreement. Such interim financing shall be upon such terms and conditions as may be determined by the issuing entity but shall not require payment of interest on the sums actually advanced and received at a rate of interest greater than that rate of interest authorized for interim financing by the state, counties, municipalities or political subdivisions thereof in Section 75-17-107, Mississippi Code of 1972.


This office does not have all of the facts or details of the proposed transaction; however, it does appear that Section 41-13-24 may provide a possible solution depending on the specifics of the desired transaction. Your question, in our understanding, is whether the proposed transaction can be accomplished through a loan with a repayment period up to thirty years, a bond issuance by Jones County or financing through the Mississippi Hospital Equipment Financing Authority. It is our opinion that the Board may not engage in a long term loan under Section 41-13-35(5)(k). Given that we do not know all of the facts, we do not opine on whether a bond issuance or financing under the Mississippi Hospital Equipment Financing Authority is authorized. We do note that Section 41-13-21 does allow an owner to do a financing for a twenty or thirty year period depending on whether the financing is a general obligation or revenue financing.

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

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:

  
Avery Mounger Lee  
Special Assistant Attorney General