Sunshine Law-Hospital District Board as Lessor

Number: INFORMAL

Date: March 05, 2021

Subject:
Sunshine Law-Hospital District Board as Lessor

Mr. Joseph M. Hanratty
General Counsel
Marion County Hospital District
P.O. Box 2340
LaBelle, Florida 33975-2340

Mr. Hanratty,

On behalf of the Marion County Hospital District ("District"), you have asked substantially the following question:

> Does section 395.3035(4)(a), Florida Statutes (under which portions of a public hospital governing board meeting addressing confidential strategic plans are exempt from statutory and constitutional open meeting requirements) apply to a meeting of the board of directors of the District at which the corporate assignee of a lease/purchase agreement ("Agreement") pertaining to AdventHealth Ocala hospital would present information regarding the assignee's hospital expansion project plans so that the District--which is the lessor, but not the governing board, of AdventHealth Ocala--can ascertain whether such plans are consistent with a capital improvement condition of the Agreement?

In sum, because the District has identified itself as the lessor, but not the governing board, of AdventHealth Ocala, and the exemption "from s. 286.011 and s. 24(b), Art. I of the State Constitution" provided by section 395.3045(4)(a) is confined to meetings of the governing board of a public hospital, that exemption would not apply to the District meeting described.

Background Facts

In 2008, the Legislature created the Marion County Hospital District, a dependent special district. Under its enabling legislation, the District is authorized to establish, construct, lease, operate, and maintain any hospital or clinic necessary for the preservation of the public health, for the public good, and for the use of the public of the special tax district described in the special act charter.1

In 2014, the District entered into a forty-year Lease and Asset Purchase Agreement with Community Health Systems ("Agreement") pertaining to Florida Hospital Ocala / Munroe

Regional Medical Center. The District represents that an important element of the Agreement is a condition that the lessee expend $150,000,000.00 (one hundred fifty million dollars) in capital improvements.

In 2018, the Agreement was assigned to Florida Hospital Ocala, Inc., a Florida not-for-profit corporation and a subsidiary of Adventist Health System Sunbelt Healthcare Corporation. Both Florida Hospital Ocala, Inc. and Florida Hospital Ocala / Munroe Regional Medical Center are now known as AdventHealth Ocala. The District has identified itself solely as the "lessor," and not as the "governing body," of the hospital.2

In furtherance of its role overseeing contract compliance, the District board plans to meet with AdventHealth Ocala to discuss the lessee's proposed development of new service lines and other future expansion plans, and thereby obtain information needed to ultimately determine whether these comply with the Agreement's capital expansion condition. In the District's view, the subject matter of these discussions, if addressed in a meeting of the governing board of a public hospital, would meet the definition of a "strategic plan" under section 395.3035(6). A "strategic plan," as defined in section 395.3035(6), is made "confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution" under section 395.3035(2)(b). These informal comments reflect no assessment regarding whether the hospital expansion project plans generally described in the District's submittal letter would or would not constitute a "strategic plan" within the meaning of section 395.3035(6), nor do they address whether such plans might be confidential and exempt from the provisions of section 119.07(1) and section 24(a), Article I of the State Constitution pursuant to section 395.3035(2)(b).3 The District agrees, however, that if the exemption provided by section 395.3035(4)(a), Florida Statutes, does not apply, then such District board meeting would be subject to otherwise applicable open meeting requirements.

Legal Analysis

We are asked to consider whether a statute creating a limited exemption from the Sunshine Law (section 286.011, Florida Statutes), and applicable only to a meeting of the governing board of a public hospital involving discussion of a "strategic plan," may be interpreted to apply to a meeting between a non-governing, hospital special district/lessor and its hospital operator/lessee to consider matters related to the latter's compliance with lease agreement conditions regarding hospital expansion project plans. Mindful of the express limitation contained in the statute, District counsel has correctly construed the exemption as inapplicable, by its terms, to the proposed meeting.

Chapter 395, Florida Statutes, relates to hospital licensing and regulation. Section 395.3035(1) provides that "[a]ll meetings of a governing board of a public hospital and all public hospital records shall be open and available to the public in accordance with s. 286.011 and s. 24(b), Art. I of the State Constitution and chapter 119 and s. 24(a), Art. I of the State Constitution, respectively, unless made confidential or exempt by law." Thereafter, the statute provides for a number of exemptions and for the confidentiality of certain hospital records and meetings. Among these, subsection (4)(a) provides that "those portions of a board meeting at which one or more written strategic plans that are confidential pursuant to subsection (2) are discussed,

reported on, modified, or approved by the governing board [of a public hospital] are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution."

Section 395.3035(1) makes clear that unless an exemption applies, all meetings of the governing board of a public hospital are to be open to the public. "Where a statute sets forth exceptions, no others may be implied to be intended."4 As the Florida Supreme Court has observed, where the legislature has provided express exceptions to a statute, "[w]e must assume that it thoroughly considered and purposely preempted the field of exceptions to...the statute," and that, "had the legislature intended to establish other exceptions[,] it would have done so clearly and unequivocally."5 "We cannot write into the law any other exception[.]"6 As applied here, because the exemption in section 395.3035(4)(a) applies only to "a governing board of a public hospital," it is inapplicable to a meeting of the District, which is not such a governing board.

Conclusion

Based on the foregoing, the exemption provided for in section 395.3035(4)(a) would not apply to the proposed meeting between the District board and its lessee, AdventHealth Ocala, to discuss information related to the District's determination of whether the lessee's proposed plans for development comply with the capital improvements requirement of the Agreement. I trust these informal comments will be useful to you.

Sincerely,

Teresa L. Mussetto
Senior Assistant Attorney General

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1 *See* ch. 2008-273, Laws of Florida.
2 *See* submittal letter dated March 4, 2020 at 2 (describing the District solely as the "lessor," and not as the "governing body," of the hospital, and opining that the exemption in section 395.3035(4)(a) is inapplicable for that reason); *see generally* Op. Att'y Gen. Fla. 2007-28 (2007) ("Whether the terms of the lease [alter] the status of the [lessor] as the governing body of the hospital is a determination that the [lessor] must make.").

3 These informal comments reflect no assessment regarding whether the hospital expansion project plans generally described in the District's submittal letter would or would not constitute a "strategic plan" within the meaning of section 395.3035(6), nor do they address whether such plans might be confidential and exempt from the provisions of section 119.07(1) and section 24(a), Article I of the State Constitution pursuant to section 395.3035(2)(b). They also reflect no comment regarding the alternative to a public meeting suggested in the District's submittal letter.

4 Op. Att'y Gen. Fla. 2014-10 (2014) (concluding that, because an evaluation undertaken pursuant to section 155.40(5), Florida Statutes, for purposes of the sale or lease of a public

hospital could not be characterized as a "strategic plan," as defined in section 395.3035(6), the exemption provided for in section 395.3035(4)(a) did not apply).

5 *Dobbs v. Sea Isle Hotel,* 56 So. 2d 341, 342 (Fla. 1952).
6 *Id*.