Hospitals -- Counties

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Subject:
Hospitals -- Counties

Mr. Bruce B. Blackwell
Mr. William J. Grant
Counsel for Citrus County Hospital Board
Post Office Box 1631
Orlando, Florida 32802-1631

Dear Messrs. Blackwell and Grant:

On behalf of the Citrus County Hospital Board, you ask substantially the following question:

Does section 155.40, Florida Statutes, require referendum approval of the sale of the Citrus County Hospital?

In sum:

Absent a referendum requirement in the hospital's enabling legislation, section 155.40, Florida Statutes, does not require referendum approval of the sale of the Citrus County Hospital.

Section 155.40, Florida Statutes, as amended by Chapter 2012-66, Laws of Florida, governs the sale or lease of county, district, or municipal hospitals. The statute authorizes the governing board of such a hospital to sell or lease it to a for-profit or not-for-profit Florida entity, if the board finds that the sale or lease is in the best interests of the affected community and states the basis for such a finding.[1] Pertinent to your question, subsection (10) of the act provides:

"The sale or lease of the hospital or health care system is subject to approval by the Secretary of Health Care Administration or his or her designee, *except, if otherwise required by law*, approval of the sale or lease shall exclusively be by majority vote of the registered voters in the county, district, or municipality in which the hospital or health care system is located." (e.s.)

Thus, the plain language of the act states that the sale of a county hospital or health care system is subject to the approval by the Secretary of Health Care Administration, unless approval of the sale by majority vote of the registered voters in the county in which the entity is located *is otherwise required by law*. Where the language of a statute is clear, no need for statutory interpretation or evaluation of the history of a statute's enactment is required.[2]

In your analysis, however, you state that the sale of the hospital requires voter approval, based upon three assertions: (1) the legislative history of section 155.40, requires a referendum;[3] (2) absent voter approval, the sale would result in the disposal of a substantial public assets without

a valid public purpose;[4] and (3) sale of the hospital would eliminate the hospital board's taxing power, thereby amending the board's charter and abolishing the board without voter approval required under the Florida Constitution.[5]

Initially, I would reiterate that given the plain language of the statute, which constitutes the best evidence of the Legislature's intent, there is no need to resort to legislative history. However, in reviewing the bills which were introduced during the 2012 legislative session seeking to amend section 155.40, Florida Statutes, I would note that several different methods for the approval of the sale of a hospital or health care system were considered. For example, Senate Bill 464, as originally filed, required "approval by a majority vote of the registered voters in the county, district, or municipality or, in the alternative, approval from a circuit court[.]" The bill specifically granted jurisdiction to the circuit court to approve the sale or lease of a county, district, or municipal hospital.[6]

The original filed version of House Bill 711, which was ultimately adopted as Chapter 2012-66, contained the same language requiring a majority vote of registered voters or "in the alternative," approval from a circuit court.[7] The first committee substitute for House Bill 711 restricted a governing board's authority to sell a hospital "without first receiving approval from a circuit court or, for any such hospital that is required by its statutory charter to seek approval by referendum for any action that would result in the termination of the direct control of the hospital by its governing board, approval by such referendum."[8] In its third version, House Bill 711 required initial approval of the sale by a circuit court, unless the statutory charter required referendum approval.[9] The Senate amendment struck all language after the enacting clause and inserted language including a newly created subsection (10) requiring approval by the Secretary of Health Care Administration.[10]

It is noteworthy that the Senate amendment appears to have had its genesis in Senate Bill 1568 which provided that the sale or lease would be subject to approval by the Chief Financial Officer, "unless a law (most likely a local charter) requires approval of the sale or lease exclusively by majority vote of the registered voters in the county, district, or municipality in which the hospital or health care system is located."[11] Despite language appearing in a Final Bill Analysis for House Bill 711 indicating a referendum requirement regardless of the district's charter requirements, the history of the bill is replete with references to referendum approval as an alternative *if* the hospital's charter requires a referendum for such a transaction. I am not aware of nor have you directed my attention to any other law which would require referendum approval for the sale of the Citrus County Hospital.

Accordingly, in light of the clear expression of the Legislature's intent evidenced by the plain language in section 155.40, Florida Statutes, as amended by Chapter 2012-66, Laws of Florida, the sale or lease of a county, municipal, or district hospital is subject to approval by the Secretary of Health Care Administration, unless prescribed otherwise by law.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 155.40(1), Fla. Stat.

[2] *See, e.g., M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000); *McLaughlin v. State*, 721 So. 2d 1170 (Fla. 1998); *Osborne v. Simpson*, 114 So. 543 (Fla. 1927) (where statute's language is plain, without ambiguity, it fixes legislative intention and interpretation and construction are not needed); *Holly v. Auld*, 450 So. 2d 217 (Fla. 1984). *And see In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender*, 561 So. 2d 1130 (Fla. 1990) (best evidence of intent of Legislature is generally plain meaning of statute); Ops. Att'y Gen. Fla. 00-46 (2000) (where language of statute is plain and definite in meaning without ambiguity, it fixes the legislative intention such that interpretation and construction are not needed) and 99-44 (1999).

[3] You cite language in the House of Representatives Final Bill Analysis, CS/CS/CS/HB 711, dated March 19, 2012, at p. 7, stating: "However, regardless of the terms of the charter, the transaction must be approved by a majority of the registered voters in the special hospital district."

[4] Subsections 155.40(1) and (6), Fla. Stat., require the board of a hospital to make a determination that the sale or lease of the hospital is in the best interest of the affected community.

[5] This office must presume the constitutionality of a duly enacted statute. Section 155.40(15), Fla. Stat., states: "If a county, district, or municipal hospital is sold, any and all special district tax authority associated with the hospital subject to the sale shall cease on the effective date of the closing date of the sale. Any special law inconsistent with this subsection is superseded by this act."

[6] *See* s. 1, SB 464 (original filed version) (2012 Regular Legislative Session), by Senator Garcia, creating a new subsection (8) for s. 155.40, Fla. Stat.

[7] See s. 1, HB 711 (original filed version) (2012 Regular Legislative Session), creating a new subsection (8) for s. 155.40, Fla. Stat.

[8] *See* s. 1, CS/HB 711 (2012 Regular Legislative Session), creating a new subsection (8) for s. 155.40, Fla. Stat. *See also* s.1, CS/HB 711, stating that "[t]he sale or lease of such hospital is subject to approval by a circuit court unless otherwise exempt under subsection (14) or, for any such hospital that is required by its statutory charter to seek approval by referendum for any action that would result in the termination of the direct control of the hospital by its governing board, approval by such referendum."

[9] *See* s. 1, CS/HB 711 (2012 Regular Legislative Session), creating a new subsection (9) for s. 155.40, Fla. Stat.

[10] Senate Floor Amendment 408312, by Sen. Gaetz, adopted by the Florida Senate on March 7, 2012; concurrence by the House of Representatives on March 7, 2012.

[11] The Florida Senate, Bill Analysis and Fiscal Impact Statement, CS/CS/CS/SB 1568, dated February 28, 2012.