

Hospitals, sale or lease of facilities

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Mr. Lewis W. Fishman
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Dear Mr. Fishman:

You ask whether the Lower Florida Keys Hospital District may lease or sell its hospital facilities to a for-profit Florida corporation. Attorney General Butterworth has asked me to respond to your letter.

The Lower Florida Keys Hospital District was created and incorporated as a special taxing district in Monroe County by special act for the provision of health care to residents of the district.[1] You state that the district's enabling legislation was subsequently amended to allow the district in 1990 to complete a proposed merger with dePoo Hospital. However, in light of the amendment to section 155.40, Florida Statutes, you ask about the district's authority to lease or sell its facilities to a for-profit corporation.

Section 155.40(1), Florida Statutes, provides:

"In order that citizens and residents of the state may receive quality health care, any county, district, or municipal hospital organized and existing under the laws of this state, acting by and through its governing board, shall have the authority to sell or lease such hospital to a for-profit or not-for-profit Florida corporation, and enter into leases or other contracts with a for-profit or not-for-profit Florida corporation for the purpose of operating and managing such hospital and any or all of its facilities of whatsoever kind and nature. The term of any such lease, contract, or agreement and the conditions, covenants, and agreements to be contained therein shall be determined by the governing board of such county, district, or municipal hospital. *The governing board of the hospital must find that the sale, lease, or contract is in the best interests of the public and must state the basis of such finding.* If the governing board of a county, district, or municipal hospital decides to lease the hospital, it must give notice in accordance with paragraph (4)(a) or paragraph (4)(b)." (e.s.)

In Attorney General Opinion 98-70, this office concluded that a hospital authority created by special act clearly falls within section 155.40(1), Florida Statutes, which by its own terms applies to any county, municipal or district hospital "organized and existing under the laws of this state." Thus, this office stated that the statute applied to the West Volusia Hospital Authority created, like the Lower Florida Keys Hospital District, by special act as a special taxing district.

Section 155.40, Florida Statutes, however, imposes certain conditions that must be met. Any

such agreement must, for example, provide that the articles of incorporation of such for-profit or not-for-profit corporations be subject to the approval of the board of directors or board of trustees of such hospitals, and that indigent patients will continue to receive treatment pursuant to the Florida Health Care Responsibility Act and Chapter 87-92, Laws of Florida.[2] Any sale must be for fair market value and comply with all applicable state and federal antitrust laws. Furthermore, any funds received by the district from a sale must be used in accordance with the purposes of the district as set forth in its enabling legislation.

This office further recognized in Attorney General Opinion 98-70 that in light of the community support provided by the public in the establishment and operation of these hospitals, and the concerns that may arise regarding the continued provision of health care within the district should these facilities be sold or transferred, the affected public should be provided with adequate notice and information to reasonably evaluate the fairness and effect of such a transfer before any sale or transfer is consummated. This office stated that such disclosures should include sufficient information to determine whether the authority is receiving fair market value for the facilities as required by law, whether the proposed transfer was negotiated at arm's length, how the proceeds of the proposed transaction are to be used, and whether members of the authority have been offered or accepted any personal or familial benefit from the entity seeking to lease or purchase the facilities.

Thus, this office concluded that while section 155.40, Florida Statutes, authorizes the hospital authority, subject to the conditions specified in the statute, to lease or sell its facilities to a qualified private party, the authority should provide the affected public with the opportunity to make a reasonable evaluation of the proposed transfer through public notice hearings to ensure that disposition of facilities established and supported by public funds is in the best interests of the hospital district.

The analysis and conclusions contained in Attorney General Opinion 98-70 appear to be equally applicable to the Lower Florida Keys Hospital District. Whether the conditions imposed on such a sale or transfer of hospital facilities have been met, however, involves questions of fact that this office cannot resolve.

I am enclosing a copy of Attorney General Opinion 98-70 for your review. I trust that above informal advisory comments may be of some assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

Enclosure

[1] See s. 1, Ch. 67-1724, Laws of Florida, as amended. See, e.g., s. 33, Ch. 67-1724, *supra*,

providing that "[e]ach hospital established under this act shall be for the use and benefit of the residents of the district."

[2] See s. 155.40(2)(a) and (e), Fla. Stat., respectively. *And see* s. 155.40(4), Fla. Stat.