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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

August 3, 2001

The Honorable J. Yancey McGill
Senator, District No. 32
P.O. Box 759
Kingstree, South Carolina 29556

RE: Informal Opinion

Dear Senator McGill:

By your letter of July 24, 2001, you have requested an opinion of this Office concerning the Setoff Debt Collection Act and its application to a public benefit nonprofit corporation. By way of background you inform us of the following information: The Williamsburg County Memorial Hospital ("the Hospital District") is a hospital public service district established by Act 1255 of the 1962 Acts of the General Assembly. The Hospital District currently qualifies as a "claimant agency" as defined by South Carolina Code Section 12-56-20. Pursuant to the Setoff Debt Collection Act, S.C. Code Ann. § 12-56-10 *et seq.*, the Department of Revenue is authorized to setoff any funds, notably refunds, due to the taxpayer against a delinquent debt of that taxpayer owed to a claimant agency.

The Hospital District is considering transferring its assets and responsibilities to Williamsburg Regional Hospital ("Hospital Corporation"), a public benefit nonprofit corporation. The Hospital Corporation was formed for the sole purpose of receiving these assets and obligations of the Hospital District pursuant to S. C. Code Section 4-9-82. The members of Hospital Corporation's Board of Directors are appointed by the Governor.

You now ask whether the Hospital Corporation can also qualify as a claimant agency and utilize the provisions of the Setoff Debt Collection Act. In our opinion, it can.

South Carolina Code Section 12-56-20 defines "claimant agency" as the following:

... a state agency, board, committee, commission, public institution of higher learning, *political subdivision*, South Carolina Student Loan Corporation, housing authorities established pursuant to Articles 5, 7, and 9 of Chapter 3 of Title 31, and

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the Internal Revenue Service, and the United States Department of Education. It also includes a private institution of higher learning for the purpose of collecting debts related to default on authorized educational loans made pursuant to Chapters 111, 113, or 115 of Title 59. *"Political subdivision" includes the Municipal Association of South Carolina and the South Carolina Association of Counties when these organizations submit claims on behalf of their members, other political subdivisions, or other claimant agencies as defined in this item.* A political subdivision who submits a claim through an association is a claimant agency for the purpose of the notice and appeal provisions and other requirements of this chapter. (Emphasis added).

Although there appears to be no case law applying Section 12-56-20 to public benefit nonprofit hospitals, the courts of South Carolina have upheld the often necessary relationship between public bodies and private entities in the management of regional hospitals. See, for example, Taylor v. Richland Memorial Hospital, 329 S.C. 47, 495 S.E.2d 431 (1998). "The erection, maintenance and operation of hospitals by the State and its subdivisions had long been an approved and common activity." Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789, 792 (1954). Furthermore, in Bolt v. Cobb the Court recognized an eleemosynary hospital's performance of that public, corporate function as an agent of a political subdivision. See id.

Section 12-56-20 obviously includes political subdivisions in its definition of "claimant agency." Upon the transference of the Hospital District's assets and responsibilities to the Hospital Corporation, presumably the Hospital Corporation will function as the county's regional hospital. Given the courts' well established approval of the agency relationship between nonprofit public benefit hospitals and public bodies, it is our opinion that Section 12-56-20 would include an entity such as the Hospital Corporation as an appropriate agent of the county, a political subdivision. Notably, the definition appears to contemplate similar private entity agency relationships such as the Municipal Association and the Association of Counties when these entities submit claims on their members' behalf.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General