

The State of South Carolina



Office of the Attorney General

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June 4, 1991

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Gentlemen:

On behalf of Newberry County Council and the Newberry County Hospital, you have requested that this Office reconsider the conclusion expressed in an opinion of this Office dated September 23, 1982, 1/ that Newberry County Council could take over appointment of the hospital's Board of Trustees "because the appointment of that board is not provided for by the general law or the Constitution." You have asked whether the hospital would actually be a special purpose district; whether Newberry County Council could take over the appointment of members of the board of trustees; and whether Newberry County Council would be empowered to restrict or limit the board of trustees in its exercise of authority or powers expressed in Act No. 808, § 2, of 1971.

Standard of Review

It is the policy of this Office that where a prior opinion governs, this Office will not issue a new opinion and will presume that the prior opinion is correct. We will not reverse a prior opinion unless such prior opinion is clearly erroneous or the applicable law has been changed. Op. Atty. Gen., October 3, 1986; Office Manual, p. 50.

1/ The letter of April 10, 1991 was only a cover letter transmitting the prior opinion and was not, itself, an opinion of this Office.

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Review of Prior Opinion

Former Attorney General McLeod's opinion of September 23, 1982, examined the issue of appointment of members of various boards or commissions of Newberry County, established prior to the advent of home rule, in light of S.C. Code Ann. § 4-9-170, a part of the Home Rule Act, which provides in pertinent part:

The council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution [B]ut this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly; provided, however, that beginning January 1, 1980, the council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly.

As stated earlier, the prior opinion stated that Newberry County Council could provide for appointment of the hospital's board of trustees because such was not provided for by general law or the Constitution. Inferentially, Attorney General McLeod could have also concluded that the hospital was not a special purpose district or political subdivision.

Examining the other entities which were also subjects of the prior opinion lends credence to that inference. Of the eight entities discussed, only the Newberry County Water and Sewer Authority was determined to be a special purpose district whose members were not subject to the appointment powers of § 4-9-170. Conversely, the Board of Rural Fire Control, Newberry County Commission on Alcohol and Drug Abuse, Newberry County Airport Commission, Newberry County Park Commission, Newberry County Nursing Home Commission, and Newberry County Community Hall Commission, in addition to the hospital's board of trustees, were deemed to be not provided for by general law or the Constitution and hence subject to the county council's appointment powers of § 4-9-170.

The Newberry County Water and Sewer Authority was established by Act No. 119 of 1963, as amended by Act No. 190 of 1969. It was created as a body politic and corporate, of perpetual succession.

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Its service area was specified. It may sue and be sued. It was given the powers of eminent domain and of borrowing money and issuing bonds, notes, or other evidence of indebtedness. The Authority was not permitted to pledge the credit of the state, county, any municipality, or political subdivision for its debts. Based on the factors considered in Op. Atty. Gen. No. 84-132, Attorney General McLeod's conclusion that the Authority would be a special purpose district is amply supportable and is not clearly erroneous.

By comparison, the Board of Rural Fire Control, established by Act No. 291 of 1961, was to investigate the needs of communities in Newberry County for fire fighting equipment. Communities needing a fire house would convey a lot for erection of a fire house for the county. Equipment purchased would be county property. Reference is made to the "fire departments of Newberry County." Evidence of indebtedness would be signed by the county treasurer and county supervisor. The full faith, credit, and taxing power of Newberry County would be pledged for its debts. By inference, Attorney General McLeod did not find this entity to be a special purpose district or political subdivision.

The Newberry County Commission on Alcohol and Drug Abuse, established by Act No. 733 of 1973, was created as a commission and declared to be a body corporate and politic. It was to study the county's needs as to alcohol and drug abuse, determine priorities, and develop a county plan for services. The Airport Commission, established by Act No. 472 of 1946, was established as a commission and given full power to manage the Newberry Airport. The Park Commission, by Act No. 735 of 1936, was established as a body corporate for the care, management, control, and development of a county park. The Nursing Home Commission, by Act No. 679 of 1965, was created as a commission; its most significant attributes of a political subdivision would be its power to formulate policies, rules, and regulations. The Community Hall Commission, by Act No. 221 of 1949, 2/ was created; it was empowered to make rules and regulations for use of the community hall. In comparison to the Newberry County Water and Sewer Authority and considering the attributes of special purpose districts and political subdivisions as discussed in Op. Atty. Gen. No. 84-132, it is obvious that these entities lack many, if not most, of the attributes usually found in special purpose districts or political subdivisions. Thus, there is ample support for Attorney General McLeod's conclusions and we cannot say they are clearly erroneous.

2/ The opinion of September 23, 1982, should contain references to 46 STAT. 339 (Act 221 of 1949).

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The Newberry County Hospital Board of Trustees was established by Act No. 808 of 1971, as amended by Act No. 809 of 1971. The board of trustees was created; no mention is made in the acts to a district, to a body politic or corporate, to the specific granting of corporate powers or use of a corporate seal, or to the power to sue or be sued in its own name. Newberry County Council, rather than the hospital's board of trustees, would be authorized to issue bonds to provide for public hospital facilities. Section 2(10) of Act No. 808 clearly states the General Assembly's intention that the board of trustees not be vested with "any ownership of such hospital facilities, it being intended that such hospital facilities will be owned by Newberry County." Section 14 of Act No. 808 states that the "full faith, credit and taxing power of Newberry County shall be irrevocably pledged" for the payment of bonded indebtedness. Certain proceeds of bonds may be expended for specified purposes by the board when approved by County Council. Section 16 of Act No. 808 also empowers County Council to take certain other actions with respect to bond proceeds. Considering these factors, it appears that there would be ample support for Attorney General McLeod's inferable conclusion that the hospital board of trustees was not the governing body of a special purpose district or separate political subdivision but would be a "county board, committee or commission" for purposes of § 4-9-170.

As your letter states, the hospital board was established for a single purpose; it does possess certain corporate powers (though, as stated above, a broad or general grant of corporate powers was not given by the General Assembly); its governing body was to be recommended by the county legislative delegation and appointed by the Governor (with the exception of one member); and may expend various funds and bond proceeds. As noted, the provision of hospital services is one recognized as a purpose for which a special purpose district may exist. See Op. Atty. Gen. No. 85-49 (Loris Community Hospital District would be a special purpose district and political subdivision). The close relationship to Newberry County is hard to ignore, however, and seems to suggest a lack of autonomy or independence from the county. For comparison, see Op. Atty. Gen. No. 85-49, enclosed, and see also Op. Atty. Gen. No. 85-36 as to the Greenville Airport Commission, particularly footnote 1, as to that entity's independence from the City and County of Greenville. An argument may be made that the Newberry County Hospital Board is the governing body of a special purpose district, but we believe that Attorney General McLeod's opinion, with the necessary inferences, is supportable and not clearly erroneous.

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Comparison to Other Hospitals

This Office has examined several other hospital boards and districts in previous opinions; comparison of the Newberry County Hospital to those entities is helpful. One such entity already noted is the Loris Community Hospital District, examined in Op. No. 85-49, which was felt to be a special purpose district and political subdivision.

The Lower Florence County Hospital District, created by Act No. 1095 of 1962 as amended by Act No. 725 of 1967, was determined to be a special purpose district. Op. Atty. Gen. dated March 5, 1990. The legislation specifically established a hospital district; among the expressed powers and duties would be the power to adopt and use a corporate seal. The full faith, credit, and resources of the district would be pledged for repayment of its indebtedness.

The Union County Hospital, established by Act No. 848 of 1946, was created as a district, as a body politic and corporate. The entity has the power to condemn property, an attribute of a political subdivision. The full faith, credit, and taxing power of the district is pledged for its indebtedness. See Ops. Atty. Gen. dated October 17, 1980 and January 14, 1980. This entity was deemed a special purpose district.

By an opinion dated January 29, 1980, the Chester County Hospital was deemed not to be a special purpose district or political subdivision, since it did not possess sufficient sovereignty. The hospital board was created by Act No. 365 of 1947 (note similarity to the Newberry County Hospital Board), to operate and maintain adequate hospital facilities. The board was given the power to adopt and use a corporate seal. The legislation contained no provisions as to bonded indebtedness or pledging the credit of any political subdivision.

The Upper Greenville Hospital District, created by Act No. 744 of 1967, was created as a special purpose district; the full faith, credit, and resources of the district were to be pledged for its bonded indebtedness. See, Op. Atty. Gen. dated August 14, 1978.

The Stroud Memorial Hospital District, created by Act No. 1239 of 1964, was created as a district and called a political subdivision and public corporation within its enabling legislation. The full faith, credit, and resources of the district would be pledged for repayment of its bonded indebtedness. See Op. Atty. Gen. dated May 2, 1978.

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By an opinion dated May 2, 1978, this Office opined that Beaufort County Council could change the method of appointment of the Beaufort County Memorial Hospital Board of Regents after January 1, 1980; inferentially, this entity would not be a special purpose district or political subdivision. Created by Act No. 1197 of 1966, the hospital was to be governed by a board of regents. Property was declared to be owned by Beaufort County Memorial Hospital. The regents were authorized to adopt and use a corporate seal. Bonds issued for hospital purposes would be issued by the governing body of the county (note similarity to the Newberry County situation).

Considering all of the foregoing, those entities previously deemed special purpose districts or political subdivisions by our Office seem to have more autonomy or independence from the county governing body than does the Newberry County Hospital. Again, there is support for the conclusion that the Newberry County Hospital Board is more likely a county board, committee, or commission than a special purpose district or separate political subdivision. Thus, the opinion of September 23, 1982, is not deemed to be clearly erroneous and continues to represent the opinion of our Office that, pursuant to § 4-9-170, Newberry County Council may provide for the appointment of members of the Newberry County Hospital Board. 3/

Other Considerations

You have also asked what other actions might be taken by Newberry County Council respecting the Newberry County Hospital Board. The following from Section 3 of Act No. 283 of 1975 (the Home Rule Act) is helpful:

All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full

3/ You have advised that the Secretary of State has taken the position that the hospital is a special purpose district, apparently for purposes of the report required by § 6-11-1610 et seq. You may wish to share the opinions as to the status of the hospital with the Secretary of State and request reconsideration, though of course such a determination that an entity be subject to § 6-11-1610 et seq. is within the province of the Secretary of State rather than this Office. If questions still remain, perhaps a declaratory judgment should be sought to resolve the issue with finality.

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force and effect until otherwise implemented by ordinance of the council pursuant to this act. Provided, however, that county councils shall not enact ordinances in conflict with existing law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner,

Clearly, Acts 808 and 809 of 1971 are local laws. The Supreme Court interpreted this portion of the Home Rule Act vis a vis local laws in Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986), noting that the "proviso following [the] main portion prohibits county councils from enacting ordinances in conflict with existing local laws until those existing laws are repealed by the General Assembly, or until January 1, 1980, whichever occurs sooner." 289 S.C. at 168. It is noted that the local acts in question were not repealed by the General Assembly.

Applying the reasoning of Graham v. Creel, supra, it appears that Newberry County Council would not be prohibited from enacting ordinances in conflict with the local acts relative to Newberry County Hospital. Under the Home Rule Act, at least two options are presented by Newberry County Council: (1) to let the Hospital Board continue as it was being operated when home rule became effective in Newberry County; or (2) otherwise provide by ordinance pursuant to its home rule powers. See Op. Atty. Gen. dated October 1, 1990 (actions which Richland County Council could take vis a vis The Township).

Conclusions

Based on the foregoing, we are of the opinion that:

1. The opinion of September 23, 1982, is not clearly erroneous and thus remains the opinion of this Office.
2. The Newberry County Council may provide for appointment of members of the Newberry County Hospital Board, pursuant to § 4-9-170.
3. Newberry County Hospital is most probably not a special purpose district or political subdivision but is instead most likely a board, committee, or commission of Newberry County.
4. Section 3 of Act No. 283 of 1975 empowers Newberry County Council to adopt ordinances inconsistent with Acts No. 808 and 809 of 1971, or to follow those acts if it desires.

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We trust that the foregoing satisfactorily resolves your inquiries. If we may be of further assistance, please advise. With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions