

1982 WL 189283 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 6, 1982

*1 The Honorable Harvey S. Peeler, Jr.
South Carolina State Senate
Post Office Box 742
Gaffney, South Carolina 29340

Dear Senator Peeler:

On May 6, 1982, we received from you a letter requesting out opinion by Friday, May 7, 1982, as to which governmental body possesses the authority to either lease or sell the Cherokee County Memorial Hospital. The time limitation prescribed by your letter does not permit exhaustive and reflective research into that difficult issue and, consequently, the opinion expressed below is not free from doubt. Moreover, we would suggest that, before any action is taken either to lease or sell the property in question, the County Attorney be consulted; and should he have doubts about the correctness of our view, then, to protect fully the interest of the county, the hospital and lessee or grantee of the property, a declaratory judgment action should be instituted pursuant to Section 15-53-10 et seq. of the South Carolina Code of Laws (1976) to obtain a judicial determination of the issue.

The Cherokee County Hospital Board was established in 1936. See, 39 STAT. Act No. 685 (1936). Among other things, the Board was given 'full and complete charge and control of the maintenance and operation of [the] hospital.' Id. § 4 at 1328. The statute creating the Board was amended in 1941 [see, 42 STAT. Act. No. 185 at 259 (1941)] and again in 1967 when the governing Board was designated the board of Trustees of the Cherokee County Memorial Hospital. See, 55 STAT. Act No. 685 at 1383 (1967). Section 39 of the 1967 statute provided:

All phases of hospital operations shall be under the sole and separate control and jurisdiction of the Board of Trustees. All properties of the hospital, real and personal, shall be subject to control and management by the Board of Trustees.

The General Assembly in 1978 further amended the statutes relating to the Cherokee County Hospital but not in any way relevant here. See, 60 STAT. Act No. 733 at 2383 (1978).

[Section 4-9-30\(4\) of the Code](#), which provides for 'home rule,' authorizes each county governing body 'to lease, sell or otherwise dispose or real . . . property.'

While the Board of Trustees is charged with the 'control and management' of hospital property, nowhere is there any statute which confers upon it the power to lease or sell hospital property except, possibly, as to that property which is described in Section 40 of the 1967 Act as 'nursing home facilities' and which the Board is expressly given the authority to 'rent or lease' for limited periods. With the exception, then, of the 'nursing home facilities,' which the Board, as we say, may rent or lease for designated periods, only the Cherokee County Council, as best we can determine, has the authority to lease or sell hospital property. The authority given the Board to control and manage hospital property, in our view, does not confer upon the Board the power either to lease or sell that property.

*2 We are not unmindful of the opinion given to you by Senate Research; however, we do not agree with it. Because there is a difference of opinion between this Office and Senate Research, perhaps our suggestion about the County instituting a declaratory judgment action should be seriously considered. In that way, all doubt can be removed.

Best wishes,

C. Tolbert Goolsby, Jr.
Deputy Attorney General

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