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ADVISORY OPINION NO. 2015-06

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Applicability Of The Alabama Ethics Law
To Board Of Directors Of A Hospital
Incorporated As A Public Hospital
Corporation

The Board of Directors of a Public Hospital Corporation, organized pursuant to enacting ordinance and Alabama Code Section 22-21-5 is not a healthcare authority under the "Healthcare Authorities Act of 1982" and, therefore, is a governmental corporation with its Board of Directors subject to the Alabama Ethics Law.

Dear Mr. Robichaux:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

QUESTION PRESENTED

Does the Alabama Ethics Law, as codified in Ala. Code § 36-25-1, *et seq.*, apply to the members of the Board of Directors of the Regional Medical Center Board, a public hospital corporation?

FACTS AND ANALYSIS

The facts as have been presented to this Commission are as follows:

This matter came before the Commission in December of 2014, when it was discovered that,

- 1) the matter was in litigation; and,
- 2) there was an underlying issue outside of the Ethics Law that had to be addressed.

That issue was whether or not the Regional Medical Center Board of Anniston was a Healthcare Authority with the power, authority and privileges of a Healthcare Authority or a hospital board subject to the Alabama Ethics Law.

It was undisputed that the Regional Medical Center Board was created pursuant to Alabama Code §22-21-5, Code of Alabama in 1974. The issue became whether or not the board was reincorporated as a Healthcare Authority specifically exempting them from the coverage of the Ethics law.

Section 22-21-334 states:

“The provisions of Chapter 25 of Title 36 shall, any provision thereof to the contrary notwithstanding not apply to any authority, the members of its board or any of its officers or employees.”

The Commission tabled this matter, pending resolution of that underlying issue. The litigation has now been resolved. On April 15, the Office of the Attorney General rendered an Advisory Opinion issued at the request of the Honorable Bruce J. Downey, IV, the City Attorney for the City of Anniston. While the opinion notes that the RMCB was properly incorporated under Section 22-21-5, the RMCB was not reincorporated under Section 22-21-341 and, therefore, unable to avail itself of “all rights, powers and privileges ...’ of a Healthcare Authority.” The opinion went on to state:

“Although RMCB has the power and authority of a Healthcare Authority, it does not have the privileges of a Healthcare Authority unless it incorporates as a Healthcare Authority pursuant to Section 22-21-341 of the Code.”

The issue before the Attorney General’s Office was whether or not the Open Meetings Act applied to the Regional Medical Center Board as a governmental body. The question presented was, “Is the Regional Medical Center Board a governmental body that must comply with the provision of the Alabama Open Meetings Act?” That opinion held that:

“The power and authority granted to public hospital corporations by Section 22-21-5 of the Code of Alabama, does not include the privilege to meet without compliance with the Open Meetings Act. The Regional Medical Center Board is not exempt from the Open Meetings Act.”

Therefore, the Attorney General’s Office determined that the RMCB was a public entity subject to the Alabama Open Meetings Act. By extension, therefore, the Regional Medical Center Board is a public corporation subject to the Ethics Law.

The Board of Directors of Regional Medical Center (the “Board”) was initially created in 1974 and entrusted with the operation of a hospital in Anniston, now known as Regional Medical Center. The Board was created pursuant to an enacting ordinance adopted by the governing body of the City of Anniston on May 7, 1974. (**See Ordinance No. 74-0-13, Exhibit A**) The Medical Center Board is an Alabama body corporate and politic created pursuant to Ala. Code § 22-21-5 (**See Attached Exhibit B**). At the time of the Board’s incorporation, it possessed the powers, obligations and duties of a county hospital board as set out in Ala. Code § 22-21-70 through § 22-21-83.

After the Board’s creation, the Legislature amended § 22-21-5 to provide corporations organized pursuant to this section the power and authority of a “health care authority,” but only to the extent that those powers and authorities are not inconsistent with the enacting ordinance under which the corporation came into existence. While the Board may have the powers and authorities of a healthcare authority, it is not a healthcare authority. This distinction is important due to § 22-21-334, Code of Alabama, commonly referred to as the “Healthcare Authorities Act of 1982.” This section states:

“The provisions of Chapter 25 of Title 36 shall, any provision thereof to the contrary notwithstanding, not apply to any authorities, the members of its board or any of its officers or employees.”

Therefore, entities created under the Healthcare Authorities Act and subject to all its provisions are exempt from coverage by the Alabama Ethics Law.

As previously stated, the Board is a public hospital corporation and not a healthcare authority. The Board itself has recognized this distinction in recent court filings. *See Dodd v. Dawson*, et al., Circuit Court of Calhoun County, Alabama, Case No. 11-CV-2012-900082, Regional Medical Center Board's Post-Judgment Motion for Judgment as a Matter of Law, filed December 12, 2013, pg. 9 (“[T]he RMCB is a public hospital (not a healthcare authority) that was established under the authority of an ordinance of the City of Anniston . . .”). **(See Attached Exhibit C)**

The Board consists of fifteen (15) members. Seven (7) members are appointed by the governing body of the City of Anniston for staggered terms of five (5) years. The governing bodies of Calhoun County, Alabama, and the cities of Oxford and Jacksonville, Alabama, also appoint two (2) members each for staggered terms of five (5) years. The Chief of the Medical Staff of Regional Medical Center and one (1) other physician are elected annually by the medical staff of Regional Medical Center and serve as members of the Board of Directors.

Considering that the majority of the members of the Board are appointed by local governments, with 7 of the 15 members being appointed by the City of Anniston, the City of Anniston seeks the Commission's opinion as to whether the members of the Board are subject to the Alabama Ethics Law, and, more importantly, whether or not the Board is a board or healthcare authority under the “Healthcare Authorities Act of 1982.”

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(27) defines a public official as:

“Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2.”

Section 36-25-1(16) defines governmental corporations and authorities as:

“Public or private corporations and authorities, including but not limited to, hospitals or other health care corporations, established pursuant to state law by state, county or municipal governments for the purpose of carrying out a specific governmental function. Notwithstanding the foregoing, all employees, including contract employees, of hospitals or other health care corporations and authorities are exempt from the provisions of this chapter.”

The requestor of this opinion points out that hospitals and healthcare facilities may be incorporated as Public Hospital Corporations pursuant to Ala. Code § 22-21-5, which is not a

part of the Healthcare Authorities Act. § 22-21-5, which is the section under which the Board was incorporated, states:

“(a) Any public body heretofore or hereafter created and established by ordinance or resolution pursuant to this chapter may become a body corporate and politic under the name set forth in such ordinance or resolution by filing a certified copy of such ordinance or resolution with the Secretary of State, to be recorded in his office. The members of such public body shall constitute the members of the corporation until they are succeeded by other members as provided by said ordinance or resolution. Neither the members of the corporation nor its directors or officers shall be personally liable for the debts, torts or undertakings of the corporation.”

“(b) The corporations provided for by this section shall have all the power and authority of healthcare authorities as provided for by Article 11 of this chapter; except, that such corporations shall not have or exercise any power which is inconsistent with or repugnant to the provisions of the ordinance or resolution under which it came into existence.”

Distinct entities known as “Health Care Authorities” were established under Act 92-418, which is called the “Health Care Authorities Act of 1982” and is codified in Ala. Code § 22-21-310 *et seq.* Section 22-21-311(a) defines an Authority as:

“(2) AUTHORITY. A public corporation organized, and any public hospital corporation reincorporated to the provisions hereof.”

Section 22-21-311(a) defines a Public Hospital Corporation as:

“(21) PUBLIC HOSPITAL CORPORATION. Any public authority, public corporation or public association or entity organized on a local or regional basis by or with the consent of any county or municipality (or any two or more thereof) and having the power to own or operate any healthcare facilities, including (without limitation) any public corporation or authority heretofore or hereafter organized under the provisions of Article 3, Division 1 of Article 4, Article 5, or Article 6 of this chapter, Section 22-21-5, or Chapter 95 of Title 11, but excluding the state, any state institution of higher learning owning or operating healthcare facilities or any other state (as distinguished from local or regional) agency owning or operating healthcare facilities.”

As previously noted, Section 22-21-334 exempts Healthcare Authorities from coverage by the Alabama Ethics Law.

Based on the statutes above, the Alabama Ethics Law applies to public hospital corporations established pursuant to Section 22-21-5, if they have not been reincorporated into a healthcare authority. The Healthcare Authorities Act is clear that only authorities that are incorporated (or reincorporated) under the Healthcare Authorities Act and their Boards' officers and employees are specifically exempt from jurisdiction of the Alabama Ethics Commission and the Alabama Ethics Law. The law does not provide an exemption for public hospital corporations organized and incorporated pursuant to Section 22-21-5, as is the case with the Board. While the Board is afforded by virtue of 22-21-5(b) "power and authority" of a healthcare authority, an exemption from the Alabama Ethics Law is not a "power and authority" of a healthcare authority. Further, the exemption is available only to healthcare authorities and public hospital corporations that have specifically reincorporated pursuant to Section 22-21-341, thereby availing themselves of "rights, powers and privileges" of a healthcare authority, and because the Board has not reincorporated as a healthcare authority, the exemption does not apply. In the absence of an applicable exemption, the Board is subject to and not exempt from the Alabama Ethics Law.

Moreover, the policy and purpose of the Alabama Ethics Act is to protect the integrity of all governmental units of the State. Ala. Code § 36-25-2 states:

“(a) The Legislature hereby finds and declares:

- (1) It is essential to the proper operation of democratic government that public officials be independent and impartial.
- (2) Governmental decisions and policy should be made in the proper channels of the governmental structure.
- (3) No public office should be used for private gain other than the remuneration provided by law.
- (4) It is important that there be public confidence in the integrity of government.
- (5) The attainment of one or more of the ends set forth in this subsection is impaired whenever there exists a conflict of interest between the private interests of a public official or a public employee and the duties of the public official or public employee.
- (6) The public interest requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of public officials and public employees in situations where conflicts exist.”

“(b) It is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so. An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.”

“(c) The Legislature declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to the legislative bodies and to officials of the executive branch, their opinions on legislation, on pending governmental actions, and on current issues. To preserve and maintain the integrity of the legislative and administrative processes, it is necessary that the identity, expenditures, and activities of certain persons who engage in efforts to persuade members of the legislative bodies or members of the executive branch to take specific actions, either by direct communication to these officials, or by solicitation of others to engage in such efforts, be publicly and regularly disclosed. This chapter shall be liberally construed to promote complete disclosure of all relevant information and to insure that the public interest is fully protected.”

“(d) It is the policy and purpose of this chapter to implement these objectives of protecting the integrity of all governmental units of this state and of facilitating the service of qualified personnel by prescribing essential restrictions against conflicts of interest in public service without creating unnecessary barriers thereto.”

The Alabama Legislature expressed its clear intention to include certain hospitals within its jurisdiction. In 1995, the Alabama Legislature broadened the definition of a “public official” in the Alabama Ethics Law to include the newly-defined “governmental corporations and authorities,” pursuant to Act No. 95-194. This newly-defined term expressly includes “hospitals and other healthcare corporations,” and it was added to the Alabama Ethics Law after § 22-21-334 and § 22-21-5(b), which were codified in 1982 and 1991, respectively. By rules of statutory construction, the Alabama Legislature must have intended for the Alabama Ethics Law to apply to hospital corporations that were incorporated outside of the Health Care Authorities Act and otherwise meet the definition of a governmental corporation.

Based on the facts as provided, and the above law, the Board is a governmental corporation because it was established pursuant to State law (§ 22-21-5) and by ordinance of the City of Anniston. The exemption provided the members of boards of healthcare authorities does

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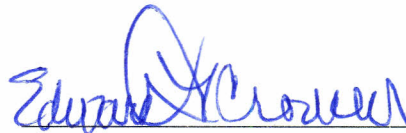
not apply to the Board. Accordingly, the Board and its members are subject to the Alabama Ethics Law.

CONCLUSION

The Board of Directors of a Public Hospital Corporation, organized pursuant to enacting ordinance and Alabama Code Section 22-21-5 is not a healthcare authority under the “Healthcare Authorities Act of 1982” and, therefore, is a governmental corporation with its Board of Directors subject to the Alabama Ethics Law.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on June 3, 2015.



Brig. Gen (R) Edward F. Crowell (USAF)
Chair
Alabama Ethics Commission