



September 29, 2020

Nickita S. Banks, Esq.
Board Attorney, Jefferson County Board of Supervisors
Post Office Box 124
Port Gibson, Mississippi 39150

Re: Board of Trustees of County Hospital

Dear Ms. Banks:

The Office of the Attorney General has received your request for an official opinion.

Background

You state that the county-owned hospital's board of trustees is currently composed of seven (7) trustees, one (1) from each supervisor district and two (2) at-large members. One of the at-large member's term expires in September 2020.

Questions Presented

1. Does the board of supervisors have authority to require the board of trustees to function with only six (6) members, until such time as they can reduce the board of trustees to five members?
2. Does the board of supervisors have authority to dissolve the hospital board of trustees and reappoint an entirely new board of trustees?
3. Does the board of supervisors have authority to order an internal audit of the county hospital?

Brief Responses

In response to your first question, yes. A community hospital board of trustees must be composed of at least five, but not more than seven, members. When the term of office for an at-large trustee serving over and above the mandatory five (5) trustees expires, the Board of Supervisors is not obligated to appoint or re-appoint a trustee to continue in that position. Therefore, the board of

supervisors may allow a six (6) member board of trustees to govern the hospital until such time as the board of trustees can be reduced to five (5) members.

In response to your second question, no. The duly appointed trustees currently serving are entitled to serve the entire term for which they were appointed, unless removed for good cause in accordance with Section 41-13-29(1)(a) of the Mississippi Code. Therefore, the board of supervisors does not have authority to dissolve the current board of trustees and appoint an entirely new board.

In response to your third question, yes. A county board of supervisors is expressly authorized to contract with certified accountants and other professionals for services determined to be “necessary and in the best interest of the county.” It is the opinion of this office that such authority extends to auditing a community hospital owned by the county and governed by a board of trustees.

Applicable Law and Discussion

Mississippi law sets forth the duties and authority belonging to a board of supervisors and community hospital board of trustees, with respect to the ownership and operation of community hospitals, providing, in pertinent part:

(1)(a) The owners are authorized to appoint trustees for the purpose of operating and governing community hospitals. The owner of a community hospital may remove a trustee after appointment *for good cause shown*, upon a unanimous vote of all members of the governing board of the owner that appointed the trustee, or upon a majority vote of the governing board of the owner that appointed the trustee after a recommendation from the board of trustees of the hospital that the trustee be removed. To be eligible for appointment, an appointee must be an adult legal resident of the county which has an ownership interest in the community hospital or the county in which the municipality or other political subdivision holding the ownership interest in the community hospital is located. The authority to appoint trustees shall not apply to leased facilities, unless specifically reserved by the owner in the applicable lease agreement.

(b) *The board of trustees shall consist of not more than seven (7) members nor less than five (5) members*, except where specifically authorized by statute, and shall be appointed by the respective owners on a pro rata basis comparable to the ownership interests in the community hospital. Where the community hospital is owned solely by a county, or any supervisors districts, judicial districts or election district of a county, or by a municipality, the trustees shall be residents of the owning entity.

...

(2)(a) Initially the board of trustees shall be appointed as follows: one (1) for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of four (4) years, and one (1) for a term of five (5) years.

Appointments exceeding five (5) in number shall be for terms of four (4) and five (5) years, respectively. Thereafter, all terms shall be for five (5) years.

Miss. Code Ann. § 41-13-29 (emphasis added).

With respect to your first question, this office has had the occasion to opine with respect to boards of trustees comprised of more than five members:

Duly appointed trustees of a community hospital over and above the mandatory five (5) trustees are entitled to serve the remainder of their current terms of office without being subject to removal. Upon the expiration of their current terms, the board of supervisors has the discretionary authority to continue to appoint or re-appoint the additional trustees authorized by Section 41-13-29(1). If, upon the expiration of the current terms of the additional trustees, the board of supervisors wishes to have a five (5) member board of trustees, said board could simply decline to make any appointments that are in excess of the mandatory five (5).

MS AG Op., *Guice* at *1 (Jan. 3, 2012). When the term of office for an at-large trustee serving over and above the mandatory five (5) trustees expires, the board of supervisors is not obligated to appoint or re-appoint a trustee to continue in that position. Therefore, the board of supervisors may allow a six (6) member board of trustees to govern the hospital until such time as the board of trustees can be reduced to five (5) members.

With respect to your second question, this office has also previously addressed the issue of removing a community hospital trustee:

Once appointed to an office for a specific term, an appointee is entitled to serve the entire term without being subject to removal, as long as he remains qualified to hold office. MS AG Op., *Guice* (January 3, 2012) (citing MS AG Op., *Cardin* (August 26, 2005)). We have also opined that the board of supervisors cannot revoke its appointment of or otherwise terminate a member of the board of trustees prior to expiration of his/her term except for statutorily permitted reasons. MS AG Op., *Guice* (January 17, 2012).

MS AG Op., *Guice* at *2 (Apr. 26, 2013). Consistent with the *Guice* opinions cited herein, because the duly appointed trustees are entitled to serve the entire term for which they were appointed, unless removed for good cause in accordance with Mississippi Code Annotated Section 41-13-29(1)(a), the board of supervisors does not have authority to dissolve the current board of trustees and appoint an entirely new board.

Turning to your third question, Section 19-3-69 expressly authorizes a county board of supervisors to contract with certified accountants and other professionals for services determined to be “necessary and in the best interest of the county.” Citing this code section, this office has previously opined that a board of supervisors may, “in the exercise of their discretion, employ or contract with an independent certified public accounting firm to assist in the audit of . . . a public community hospital which is in part owned and funded by [the county] pursuant to Sections 41-

13-1 et seq., Miss. Code of 1972” MS AG Op., *Hagwood* at *1 (Dec. 16, 1992). Accordingly, pursuant to Section 19-3-69, we are of the opinion that a board of supervisors does have authority to order an internal audit of a community hospital owned by the county.

We would also note that a board of supervisors may order an audit in conjunction with the sale or lease of a community hospital. Miss. Code Ann. § 41-13-15 (“Whenever any owner decides that it may be in its best interests to sell or lease a community hospital as provided for under subsection (7) of this section, the owner shall first contract with a certified public accounting firm, a law firm or competent professional health care or management consultants to review the current operating condition of the community hospital.”). Moreover, a board of supervisors, on an annual basis, should receive an audit report from the community hospital board of trustees. Miss. Code Ann. § 41-13-47 (“On or before the first Monday in March of each year, said board of trustees shall also make, enter on its minutes and file with such owner or owners, a full fiscal year report which shall contain a complete and correct accounting of all funds received and expended for all hospital purposes.”). Finally, the State Auditor is also charged with auditing the books and records of each community hospital “at the same time and in the same manner as the accounts and financial records of the county are audited” Miss. Code Ann. § 27-105-365(3); *see also* MS AG Op., *Reed* at *3 (Mar. 3, 2017).

If we may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Phil Carter

Phil Carter
Special Assistant Attorney General