



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

April 8, 2024

Jeffrey S. Moore, Esq.
Singing River Health System
105 E. Main Street, Suite 201
Tupelo, Mississippi 38804

Re: Potential Lease of Pascagoula Hospital Facility

Dear Mr. Moore:

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

Background

According to your request, Singing River Health System (“SRHS”) is a 501(c)(3) tax-exempt Mississippi community hospital owned by Jackson County. Currently, SRHS operates three hospital facilities certified under two Medicare numbers. First, SRHS directly owns and operates a multi-campus hospital known as “Singing River Hospital,” consisting of Pascagoula Hospital (“PH”) and Ocean Springs Hospital (“OSH”). PH and OSH are separately licensed hospital locations, with PH designated as a satellite, but they are enrolled under a single Medicare provider number linked to SRHS’s tax-identification number (“TIN”). Independent of Singing River Hospital, SRHS is the sole member of Singing River Gulfport, a 501(c)(3) tax-exempt Mississippi nonprofit corporation (“SRG Corporation”). The SRG Corporation owns and operates Singing River Gulfport Hospital (“SRG Hospital”), which has its own hospital license and Medicare provider number linked to SRG Corporation’s TIN.

It has recently been determined that SRHS would be able to obtain substantial savings via the 340B Drug Discount Program if the PH facility were to be operated as a satellite of SRG Hospital rather than part of Singing River Hospital. To accomplish this, the PH facility would need to be operated under the ownership and control of the SRG Corporation for Medicare-provider requirements. Accordingly, SRHS would like to lease the PH facility and its related assets to the SRG Corporation, allowing PH to be added as a satellite location under the SRG Hospital’s Medicare enrollment. SRHS would obtain approval from the Jackson County Board of Supervisors prior to entering into any lease agreement as required by Mississippi Code Annotated Section 41-13-35(5)(ff).

Questions Presented

1. Is the board of trustees of SRHS authorized under Mississippi law, including without limitation Mississippi Code Annotated Section 41-13-35(5)(dd), to lease the Pascagoula Hospital facility to its wholly owned nonprofit subsidiary, SRG Corporation, with the consent of Jackson County?
2. If so, would either the board of trustees or Jackson County be required to comply with the public bidding process set forth in Section 41-13-15?
3. Is SRG Corporation, as a wholly owned nonprofit subsidiary of SRHS, covered by the protections, limitations, and immunities of the Mississippi Tort Claims Act under Sections 11-46-1 *et seq.*, as an instrumentality of the State?

Brief Response

1. Yes. This office has previously opined that “the board of trustees of a community hospital is empowered to lease the hospital.” MS AG Op., *Dearman* at *2 (Oct. 15, 2007).
2. In MS AG Op., *Dukes* (Apr. 2, 2010), this office opined that the procedures for notice and advertisement for bids set out in Section 41-13-15(7)-(10) were not applicable when one community hospital owner leased said hospital to another owner. For the same reasons as stated in that opinion, the advertisement and bidding procedures set forth in Section 41-13-15(7)-(10) are likewise not required when a community hospital is leased to its wholly owned nonprofit subsidiary without changing ownership.
3. This office has previously opined that a corporate entity may receive coverage under the Mississippi Tort Claims Act (“MTCA” or “Act”) if it is determined to be an “instrumentality of a governmental entity.” MS AG Op., *Hill* at *3 (Dec. 8, 2017). However, the question of “[w]hether a nonprofit is an instrumentality of a governmental entity involves an in depth factual examination on a case by case basis.” *Id.* This office may only opine upon questions of state law and may not make such factual determinations. Miss. Code Ann. § 7-5-25.

Applicable Law and Discussion

As an initial matter, this opinion concerns authority under Mississippi law only and does not address any contractual considerations.

You first ask if the SRHS Board of Trustees —with the prior consent of the owner, Jackson County— is authorized under Mississippi law to lease the PH facility to its wholly owned nonprofit subsidiary, SRG Corporation. In short, this office has previously opined, yes, “the board of trustees of a community hospital is empowered to lease the hospital.” MS AG Op., *Dearman* at *2.

Section 41-13-35(5) sets forth a specific, but inexhaustive, list of powers and duties granted to the board of trustees of a community hospital such as SRHS. As set forth in *Dearman*, this list includes the power:

[t]o contract by way of *lease*, lease-purchase or otherwise, with any agency, department or other office of government or any individual, partnership, corporation, owner, other board of trustees, or other health care facility, *for the providing of property, equipment or services by or to the community hospital or other entity* or regarding any facet of the construction, management, funding or operation of the community hospital or any division or department thereof, or any related activity.

Miss. Code Ann. § 41-13-35(5)(g) (emphasis added). Further, as highlighted in your request, the 2023 amendment of Section 41-13-35 also granted community hospital boards of trustees the more specific power:

to accomplish and facilitate the creation, establishment, acquisition, operation or support of any such subsidiary, affiliate, nonaffiliated corporation or other lawful business organization, by means of loans of funds, acquisition or transfer of assets, *leases of real or personal property*, gifts and grants of funds or guarantees of indebtedness of such subsidiaries, affiliates and nonaffiliated corporations.

Miss. Code Ann. § 41-13-35(5)(dd) (emphasis added).¹ In sum, Section 41-13-35(5) clearly allows a community hospital board of trustees to enter a lease with its wholly owned subsidiary. This said, it should also be noted that prior owner approval will be necessary for the contemplated lease pursuant to Section 41-13-35(5)(ff), which provides:

The board of trustees shall not sell, purchase, convey, *lease*, or enter into agreements that have the effect of selling, purchasing, conveying, or *leasing* any real property or enter into management agreements, merger agreements, joint ventures, joint-operating agreements or similar arrangements that transfer control of any real property or the operations of a community hospital described in this subsection without the *prior approval* of the owners of the real property.

(emphasis added). Accordingly, it is the opinion of this office that the board of trustees of SRHS is authorized under Mississippi law to lease the PH facility to its wholly owned nonprofit subsidiary, SRG Corporation, with the prior approval of owner Jackson County.

You next ask if either the board of trustees or Jackson County would be required to comply with the public bidding process set forth in Section 41-13-15 for the SRHS board of trustees to lease the PH facility to its wholly owned nonprofit subsidiary, SRG Corporation. In MS AG Op., *Dukes* (Apr. 2, 2010), this office opined that the procedures for notice and advertisement for bids set out in Section 41-13-15(7)-(10) were not applicable when one community hospital owner leased said

¹ Section 41-13-35(dd) specifies that this specific power is granted to community hospital boards of trustees “[w]ithout limiting the generality of any provisions of this section.”

hospital to another owner.² We reasoned that Sections 41-13-15(3) and (6), which specifically address contracts and conveyances between community hospital owners, contain no reference to the bid and public notice procedures in the subsequent subsections. *Id.* at *3. Specifically, Sections 41-13-15(3) and (6) provide:

(3) The owners may likewise contract with each other, or on behalf of any subordinate political or judicial subdivision, or with the board of trustees of a community hospital, and/or any agency of the State of Mississippi or the United States Government, for necessary purposes related to the establishment, operation or maintenance of community hospitals and related programs wherever located, and may either accept from, sell or contribute to the other entities, monies, personal property or existing health facilities.

. . .

(6) Owners may convey to any other owner any or all property, real or personal, comprising any existing community hospital, including related facilities, wherever located, owned by such conveying owner. Such conveyance shall be upon such terms and conditions as may be agreed upon and may make such provisions for transfers of operating funds and/or for the assumption of liabilities of the community hospital as may be deemed appropriate by the respective owners.

Following the logic set forth in *Dukes*, the advertisement and bidding procedures set forth in Section 41-13-15(7)-(10) are likewise not required when a community hospital is leased to its wholly owned nonprofit subsidiary without changing ownership. It is thus the opinion of this office that neither the board of trustees nor Jackson County would be required to comply with the public bidding process set forth in Section 41-13-15 for the SRHS board of trustees to lease the PH facility to its wholly owned nonprofit subsidiary, SRG Corporation.

Finally, you ask if SRG Corporation, a wholly owned nonprofit subsidiary of SRHS, a community hospital and governmental entity, is covered by the protections, limitations, and immunities of the MTCA as an instrumentality of the state. As stated by the Mississippi Supreme Court, “[t]he MTCA is the exclusive remedy for filing a lawsuit against governmental entities and its employees.” *S. Cent. Reg’l Med. Ctr. v. Guffy*, 930 So. 2d 1252, 1255 (Miss. 2006) (quoting *City of Jackson v. Brister*, 838 So. 2d 274, 277–78 (Miss. 2003)). “The Act defines ‘governmental entity’ as ‘the state and [its] political subdivisions.’” *Woodall v. AAA Ambulance Service, Inc.*, 161 So. 3d 1072 (Miss. 2015). Generally speaking, community hospitals, as defined by Section 41-13-10, are political subdivisions. Miss. Code Ann. § 11-46-1(i). Specifically, “[i]t is undisputed that [SRHS] is a governmental entity and therefore entitled to the protections under the [MTCA]”. *McLeod v. Millette*, 401 So. 3d 568, 572 (Miss. 2020).

This office has previously opined that a corporate entity may receive coverage under the MTCA if it is determined to be an “instrumentality of a governmental entity.” MS AG Op., *Hill* at *3 (Dec. 8, 2017); see also *Woodall*, 161 So. 3d at 1072 (holding same). As noted in *Woodall*, “[a]n

² Pursuant to Section 41-13-10(d), “[o]wner” shall mean any board of supervisors of any county having an ownership interest in any community hospital or leased facility on behalf of the county.”

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instrumentality is ‘something that serves as an intermediary or agent through which one or more functions of a controlling force are carried out: a part, organ, or subsidiary branch esp. of a governing body.’” *Woodall*, 161 So. 3d at 1073 (quoting *Bolivar Leflore Med. Alliance, LLP v. Williams*, 938 So. 2d 1222, 1226 (Miss. 2006)).

While there is no question that SRHS is a government entity and political subdivision of the state entitled to the protections of the MTCA, “[w]hether a nonprofit [here, SRG Corporation] is an instrumentality of a governmental entity involves an in depth factual examination on a case by case basis.” MS AG Op., *Hill* at *3. Pursuant to Section 7-5-25, this office may only issue official opinions on prospective matters of state law and cannot make such factual determinations. It is therefore the opinion of this office that if SRG Corporation is determined to be an instrumentality of SRHS, a community hospital and governmental entity, then SRG Corporation may be entitled to MTCA protection.

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

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Maggie Kate Bobo*

Maggie Kate Bobo
Special Assistant Attorney General

OFFICIAL OPINION