



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

April 3, 2024

L.N. Chandler Rogers, Esq.  
Attorney, Union County Board of Supervisors  
Post Office Box 1771  
New Albany, Mississippi 38652

Re: Renewal of Hospital Lease

Dear Mr. Rogers:

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

## OFFICIAL OPINION

### Background

According to your request, in 1989, Union County, Mississippi, acting through its board of supervisors (“County”) entered a thirty-five-year lease agreement with Baptist Memorial Hospital<sup>1</sup> (“Baptist”) for the premises formerly occupied by the Union County General Hospital. You provided a copy of the 1989 lease, which cites Mississippi Code Annotated Sections 41-13-1, *et seq.*, as the legal authority to enter the lease and which grants Baptist the option to renew the lease for one term of not more than fifteen years upon the terms and conditions set forth in the lease. The initial lease expires on May 1, 2024, and Baptist has given notice of its intent to renew the lease with the County for another fifteen years.

You also provided our office with a copy of local and private legislation, 1989 Mississippi House Bill No. 1443 (“H.B. 1443”) (authorizing the County to establish and maintain the Union County Health Foundation and Fund and for related purposes). H.B. 1443 Section 5 specifies how the fund shall be invested and disbursed. According to your request, Baptist previously paid certain sums of monies (the “principal fund”) to the County as part of the lease agreement, which were deposited into a trust. Historically, and continuing to present, not less than fifteen percent of the annual income is added to and becomes part of the principal fund. This corresponds with the language in H.B. 1443 Section 5(b). The remaining eighty-five percent of the annual income is disbursed pursuant to H.B. 1443 Section 5(b)(i)-(xi).

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<sup>1</sup> The request and supporting documentation you submitted refers to Baptist Memorial Health Care Corporation, Baptist Memorial Health Care Development Corporation, Baptist Memorial Hospital – Union County, and simply Baptist. For the purpose of this opinion, these entities are collectively referred to as “Baptist.”

### Questions Presented

1. Because there is no board of trustees, may the County, as owner of the premises, enter into a lease for the renewal period upon such terms and conditions as agreed upon by it and Baptist?
2. May those terms and conditions not include Section 41-13-15(11)(a)-(e), or stated differently, must the terms and conditions include Subsections (a)-(e)?
3. To the extent permitted by contract or agreed upon by the parties, is there any prohibition statutorily or via local and private legislation, that prevents the County and Baptist from altering the use of annual income received from interest accruing on the principal fund, as set forth in H.B. 1443 Sections 5(b)(i)-(xi), in a manner they deem appropriate?
4. To the extent permitted by contract or agreed upon by the parties, is there any prohibition, statutorily or via local and private legislation, that prevents the County and Baptist from altering the use of the principal fund in a manner they deem appropriate?

### Brief Response

1. Section 41-13-15(11) provides, in part: "If no board of trustees is then existing, the owner [here, the board of supervisors] shall have the right to enter into a lease upon such terms and conditions as agreed upon by the parties."
2. The Attorney General's Office neither validates nor invalidates past action or interprets contractual agreements by official opinion. We cannot opine on how the County can comply with a lease that was originally executed in 1989 or on the terms and conditions within said renewal. Notably, if the parties are renewing the lease under the authority of Section 41-13-15, they must comply with the statutory requirements in that section, including Section 41-13-15(11)(a)-(e).
3. The County cannot by agreement alter the requirements of local and private legislation. The County must comply with H.B. 1443 until or unless it is amended by the Mississippi Legislature, or it is determined to be invalid by a court of competent jurisdiction.
4. See Response 3.

### Applicable Law and Discussion

Official Attorney General's opinions are issued on prospective questions of state law pursuant to Section 7-5-25. This office cannot validate or invalidate past action. We also cannot interpret or opine on the validity of contracts. Thus, we offer no opinion on the interpretation of or compliance with the contracts you provided between the County and Baptist. With these limitations, we offer the following for prospective purposes.

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Your first question asks whether the County may enter into a lease for the renewal period upon such terms and conditions as agreed upon by it and Baptist. Section 41-13-15(11) specifically provides that “[i]f no board of trustees is then existing, the owner [here, the board of supervisors] shall have the right to enter into a lease upon such terms and conditions as agreed upon by the parties.” As stated above, the Attorney General’s Office does not approve either the contractual terms and conditions or any contractual agreements by official opinion.

Your second question asks whether the lease renewal must include the requirements set forth in Section 41-13-15(11)(a)-(e). This section provides, in relevant part:

A lessee of a community hospital, under a lease entered into under the authority of Section 41-13-15, in effect prior to July 15, 1993, or an affiliate thereof, may extend or renew such lease whether or not an option to renew or extend the lease is contained in the lease, for a term not to exceed fifteen (15) years, conditioned upon (a) the leased facility continuing to operate in a manner safeguarding community health interest; (b) proceeds from the lease being first applied against such bonds, notes or other evidence of indebtedness as are issued pursuant to Section 41-13-19; (c) surplus proceeds from the lease being used for health related purposes; (d) subject to the express approval of the board of trustees of the community hospital; and (e) subject to the express approval of the owner. If no board of trustees is then existing, the owner shall have the right to enter into a lease upon such terms and conditions as agreed upon by the parties.

Miss. Code Ann. § 41-13-15(11). The original lease was executed in 1989 and contains a fifteen-year renewal option. We cannot by official opinion opine on whether the County may renew an executed lease nor can we approve the terms and conditions of the agreement by official opinion. *See MS AG Op., Hall at \*3 (Dec. 9, 2016).* However, we note that if the parties are renewing the lease under the authority of Section 41-13-15, they must comply with the statutory requirements in that section, including Section 41-13-15(11)(a)-(e).

Your third and fourth questions essentially ask whether the parties must comply with the provisions of H.B. 1443. The County cannot by agreement alter the requirements of local and private legislation. The County must comply with H.B. 1443 until or unless it is amended by the Mississippi Legislature, or it is determined to be invalid by a court of competent jurisdiction.

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/ Beebe Garrard*

Beebe Garrard  
Special Assistant Attorney General