



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

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ATTORNEY GENERAL

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OPINION NO. 86-42

February 20, 1986

The Honorable Charlotte Schexnayder
Representative, District 85
Box C
Dumas, AR 71639

Dear Representative Schexnayder:

This is in response to your request for an opinion regarding funds of a non-profit county hospital.

Your question is whether the funds of the McGehee-Desha County Hospital are public funds for the purposes of Act 21 of 1935 as amended.

We understand that the hospital is operated under a board of governors appointed pursuant to Act 13 of 1977 (Extraordinary Session). The hospital is self sustaining. Other than a one-mill maintenance tax, it receives no appropriations from and remits no funds to the county.

The purpose of defining "public funds" under Act 21 appears to be to guide the appropriate bodies in depositing certain funds in insured institutions. Ark. Stat. Ann. §13-802 creates the County Depository Board which is to supervise the deposit "of all county funds, and all other public funds held by the county treasurer (except funds of a school district) and shall also designate depositories and supervise the depositing of all funds collected and held by the collector (and the sheriff when acting as ex officio tax collector)." The deposit of such funds in the designated depositories shall relieve the public officers having custody of the funds of liability by reason of the default or insolvency of any such depository. Ark. Stat. Ann. §13-803.

Public funds are defined as any and all funds coming into the hands of all treasurers, collectors, commissioners, sheriffs and clerks by reason of their official capacity as such; "funds" or "public funds" means any and all kinds of funds so handled by these parties. Ark. Stat. Ann. §13-804.

The ambiguity that exists is whether funds held by the hospital's board of governors are county or public funds as

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used in §13-802. The statute is intended to protect public funds, is therefore in the public interest and should be broadly construed to fulfil that purpose. Laman v. McCord, 245 Ark. 401, 432 S.W.2d 753 (1968).

To construe the Act to fulfil the legislative purpose to protect public monies, "commissioners", as used in Ark. Stat. Ann. §13-804 should include the hospital's board. It is a body appointed and empowered to exercise jurisdiction of a public nature. Black's Law Dictionary. Therefore, it is my opinion that funds held by the hospital's board are public funds subject to Act 21 of 1935 as amended.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Thomas S. Gay.

Sincerely,


STEVE CLARK
Attorney General

JSC:TSG:jk