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P-5-19-86

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OPINION NO. 86-187

May 13, 1986

Grady L. Brown, Director
Department of Veterans Affairs
1200 West Third, Room 105
Little Rock, AR 72201

Dear Mr. Brown:

This Office is in receipt of your letter requesting assistance from the Office of the Attorney General and an opinion as to the following:

1. Does the Arkansas Department of Veteran Affairs require a Certificate of Need before we convert our Veterans Home to a 70-bed nursing home and 55-bed domiciliary facility?
2. If a Certificate of Need is required, must we have the Certificate of Need in hand before we negotiate a contract for the proposed conversion of our facility?

As background information you have included excerpts from the following:

\$2 of Act 578 of the 75th General Assembly of 1985 providing \$300,150.00 for major maintenance, renovation, repair and equipment for the Arkansas Veterans Home (the \$300,150 amount was appropriated to convert your Veterans Home from a 150-bed domiciliary to a 70-bed intermediate care nursing home and 55-bed domiciliary facility);

Act 432 of the 75th General Assembly of 1985 (codified as Ark. Stat. Ann. §11-1415), amending §6 of Act 324 of 1979 to require the Department of Veterans Affairs

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Guidelines for Admission to the Arkansas Veterans Home to conform to Federal requirements necessary to qualify the Arkansas Veterans Home as a nursing home and domiciliary for veterans;

Appropriation Act 175 of the 75th General Assembly of 1985 providing additional personnel and operating expenses for a 70-bed nursing home and 55-bed domiciliary at the Veterans Home;

Section §5 of Act 558 of 1975 (codified as Ark. Stat. Ann. §82-2306), which states:

(a) The State Health Planning and Development Agency, with the advice, consent and approval of the Statewide Health Coordinating Council is hereby authorized and directed to implement the below described Certificate of Need Program in this State.

(b) Prior to the construction, expansion, or alteration of any hospital or medical facility increasing bed capacity, or adding major new facilities or categories of service or changing license classifications, a Certificate of Need shall be obtained from the State Health Planning and Development Agency.

(e) Projects requiring approval shall not be instituted or commenced after the effective date of this Act except upon application for and receipt of a Certificate of Need as provided herein.

(f) After the effective date of this Act, no license shall be issued or renewed for any hospital, nursing home or related institution which has been constructed, expanded or altered in a manner subject to this Act, unless a Certificate of Need has first been issued therefor pursuant to this section.

Based upon an examination of the applicable statutes and the background information which you have provided, this Office is of the opinion that a Certificate of Need would be

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required prior to the operation of a 70-bed nursing home. With respect to your second question, there is no prohibition for the negotiation of a contract; however, since a Certificate of Need is required for operation it would appear that it would be advisable to obtain such a certificate prior to obligating the Department.

The foregoing opinion, which I hereby approve, was prepared by Special Assistant Attorney General George A. Harper.

Sincerely,

STEVE CLARK
Attorney General

JSC:GAH:jk