

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL



OPINIONS
DIVISION

February 10, 2017

The Honorable Orlando Trainer
President, Oktibbeha County Board of Supervisors
Post Office Box 80285
Starkville, Mississippi 39759

Re: Referendum on sale or lease of community hospital

Dear Mr. Trainer:

Attorney General Jim Hood received your letter of request and assigned it to me for research and reply.

Background

Your letter states:

Our county is in the midst of a most contentious issue as to whether to sell or lease our community hospital (OCH Regional Medical Center) as governed by Title 41 (Public Health), Chapter 13, Community Hospitals, Sections 41-13-1 - 41-13-107 of the Mississippi Code.

We have conducted a public hearing, a condition precedent on the matter, but our Board has not yet adopted a resolution - for publication - of its intent to sell or lease that includes reasons why such would be in the best interests of people living in our area.

There is also a petition circulating that likely contains more than the requisite 1500 signatures requesting a public referendum on the issue as required by Section 41-13-15(10) of the Code.

As an aside, our longtime chancery clerk recently passed and we have a special election set for this coming November.

Based on your citation of subparagraph (10) of Section 41-13-15, it is our understanding that the proposal is to sell the hospital or lease it with an option to sell.

In a footnote, you cite Section 19-3-55 which provides for citizens to file a petition with their board of supervisors "touching any matter affecting the entire county and over which it has jurisdiction."

The footnote further cites *Leigh v. Board of Supervisors of Neshoba County* 525 So. 2d 1326 (Miss. 1988). In *Leigh*, the Court upheld the validity of a petition filed pursuant to Section 19-3-55 setting forth the proposition that a community hospital should continue to be operated as such and not be sold or leased without first submitting the issue to the people by election.

We note that subsequent to *Leigh*, the Mississippi Legislature, in 1993, amended Code Section 41-13-15 by adding subsection (10), which sets forth the specific procedure that must be followed in order to sell or lease with an option to sell a community hospital, including prerequisites to the holding of a referendum.

Questions and Responses

Question: Would a public referendum petition be valid even though the Board has not adopted and published its intent to sell or lease the hospital?

Response: No. We are of the opinion that, as a prerequisite to the filing of a petition seeking a referendum on the sale or lease with an option to sell a community hospital, Section 41-13-15(10) requires the Board of Supervisors to adopt a resolution describing its intention to sell or lease with the option to sell the hospital and publish the resolution in accordance with said statute.

The provisions of Section 19-3-55, a general statute authorizing qualified electors to petition their board of supervisors to act on a "matter affecting the entire county and over which it has jurisdiction," is, in our opinion, inapplicable to this situation because Section 41-13-15(10) is a very specific statute that sets forth the procedure that must be followed in order for a petition on this particular matter to be valid.

Question: May the Board legally order an election be conducted where qualified voters could decide the issue without a petition?

Response: No. We are of the opinion that a binding referendum on the matter must be based on a sufficient and lawful petition filed on or before the date proposed in the resolution for the sale or lease with an option to sell the hospital in accordance with Section 41-13-15(10).

Question: If the answer to question 2 is in the affirmative, may the issue be put on the special election ballot this November in the interest of saving money?

Response: Our response to your second question renders this question moot.

However, please see our discussion below.

Applicable Law and Discussion

Mississippi Code Annotated Section 41-13-15, *inter alia*, governs the sale or lease of community hospitals.

Section 41-13-15(9) provides, in part:

After the review and analysis under subsection (8) of this section, an owner may choose to sell or lease the community hospital. If an owner chooses to sell such hospital or lease the hospital with an option to sell it, the owner shall follow the procedure specified in subsection (10) of this section.

Section 41-13-15(10) provides:

If an owner wishes to sell such community hospital or lease the hospital with an option to sell it, the owner first shall conduct a public hearing on the issue of the proposed sale or lease with an option to sell the hospital. Notice of the date, time, location and purpose of the public hearing shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of the notice shall be made not less than twenty-one (21) days before the date of the public hearing and the last publication shall be made not more than seven (7) days before that date. If, after the public hearing, the owner chooses to sell or lease with an option to sell the hospital, the owner shall adopt a resolution describing its intention to sell or lease with an option to sell the hospital, which shall include the owner's reasons why such a sale or lease is in the best interests of the persons living in the area served by the facility to be sold or leased. The owner then shall publish a copy of the resolution; the requirements for proposals for the sale or lease with an option to sell the hospital, which shall state clearly the minimum required terms of all respondents and the evaluation process that will be used when the owner reviews the proposals; and the date proposed by the owner for the sale or lease with an option to sell the hospital. Such publication shall be made

once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the county or city, as the case may be, or if none be so published, in a newspaper having a general circulation therein. The first publication of the notice shall be made not less than twenty-one (21) days before the date proposed for the sale or lease with an option to sell the hospital and the last publication shall be made not more than seven (7) days before that date. **If, on or before the date proposed for the sale or lease of the hospital, there is filed with the clerk of the owner a petition signed by twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of the owner, requesting that an election be called and held on the question of the sale or lease with an option to sell the hospital, then it shall be the duty of the owner to call and provide for the holding of an election as petitioned for.** In that case, no such sale or lease shall be entered into unless authorized by the affirmative vote of the majority of the qualified voters of the owner who vote on the proposition at such election. Notice of the election shall be given by publication in the same manner as provided for the publication of the initial resolution. The election shall be conducted and the return thereof made, canvassed and declared in the same manner as provided by law in the case of general elections in the owner. **If, on or before the date proposed for the sale or lease of the hospital, no such petition is filed with the clerk of the owner, then the owner may sell or lease with an option to sell the hospital.** Such sale or lease shall be made to the respondent submitting the highest and best proposal. In no case may the owner deviate from the process provided for in the request for proposals. (Emphasis added)

With respect to your first question, it is a well-settled principle of statutory construction that a specific statute controls over a general statute. In *Benoit v. United Copies Mortgage of Mississippi, Inc.*, 504 So.2d 196, 198 (Miss. 1987), the Court stated that "where a special and particular statute deals with a special and particular subject its particular terms as to that special subject control over general statutes dealing with the subject generally."

With respect to your second question, we find no authority for a board of supervisors, on its own initiative, to order a binding referendum on the matter.

However, Section 41-13-15(10) does not specify a time period during which a referendum must be held when so required by the filing of a sufficient and lawful petition in accordance with that statute.

Therefore, upon a determination by the Board of Supervisors, consistent with the facts, that the petition is sufficient and timely filed and that conducting the referendum in November constitutes a reasonable exercise of its discretionary authority to set the date of the referendum, the matter may be placed on the November 7, 2017 Regular Special

Election Day Ballot as a local issue in accordance with Sections 23-15-375 and 23-15-359.

Section 23-15-375 provides:

Local issue elections may be held on the same date as any **regular or general election**. A local issue election held on the same date as the regular or general election shall be conducted in the same manner as the regular or general election using the same poll workers and the same equipment. **A local issue may be placed on the regular or general election ballot pursuant to the provisions of Section 23-15-359, Mississippi Code of 1972.** The provisions of this section and Section 23-15-359 with regard to local issue elections shall not be construed to affect any statutory requirements specifying the notice procedure and the necessary percentage of qualified electors voting in such an election which is needed for adoption of the local issue. Whether or not a local issue is adopted or defeated at a local issue election held on the same day as a regular or general election shall be determined in accordance with relevant statutory requirements regarding the necessary percentage of qualified electors who voted in such local issue election, and only those persons voting for or against such issue shall be counted in making that determination. As used in this section "local issue elections" include elections regarding the issuance of bonds, local option elections, elections regarding the levy of additional ad valorem taxes and other similar elections authorized by law that are called to consider issues that affect a single local governmental entity. As used in this section "local issue" means any issue that may be voted on in a local issue election.
(Emphasis added)

Section 23-15-359(6) provides:

The (county election) commissioners may also have printed upon the ballot any local issue election matter that is authorized to be held on the same date as the regular or general election pursuant to Section 23-15-375; however, the ballot form of such local issue must be filed with the commissioners of election by the appropriate governing authority not less than sixty (60) days previous to the date of the election.

Section 23-15-833 designates the first Tuesday after the first Monday in November of each year as the **regular** special election day to fill vacancies in county, county district, district attorney offices and the offices of circuit judge and chancellor.

We are of the opinion that the regular special election day constitutes a regular election as contemplated by Section 23-15-375.

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Please note that Section 23-15-359(6) requires that the ballot form of the local issue must be filed with the County Election Commission by the Board of Supervisors not less than sixty (60) days prior to the date of the election.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Phil Carter
Special Assistant Attorney General

OFFICIAL OPINION