



ALAN WILSON
ATTORNEY GENERAL

December 14, 2021

Mr. Charles H. "Buddy" Phillips
Chairman, Hampton County Council
P.O. Box 34
Hampton, South Carolina 29924

Dear Mr. Phillips,

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

I am writing this letter to request an opinion confirming that Hampton Regional Medical Center ("HRMC") is eligible to participate in the South Carolina Setoff Debt Collection program under Chapter 56, Title 12 of the South Carolina Code, as amended (the "Setoff Debt Program"), and the Governmental Enterprise Accounts Receivable program under Section 12-4-580 of the South Carolina Code, as amended (the "GEAR Program"), as a "claimant agency" and a "governmental entity," respectively.

...

HRMC is a South Carolina public benefit nonprofit corporation that operates a thirty-two (32) bed charitable hospital located in Varnville, Hampton County (the "County") South Carolina, and has participated in the Setoff Debt and GEAR Programs since their promulgation in 1995 and 1996, respectively. Since the South Carolina General Assembly formed HRMC's predecessor - Hampton General Hospital- in 1947 pursuant to Section 25 of Act No. 445, both HRMC's corporate structure, and its operations and administration qualify it for participation in the Setoff Debt and GEAR Programs.

...

HRMC began as Hampton General Hospital, a public hospital created by the South Carolina General Assembly in 1947, and governed by a board of directors selected by Hampton County Council. In 1995, Hampton County created HRMC as a public benefit nonprofit corporation to take over the operations and receive the assets, liabilities and obligations of Hampton General Hospital. Through the restructuring of Hampton General Hospital into HRMC, the County retained an ownership interest and oversight in the hospital's

operations, and maintains that interest and oversight today. Specifically, under HRMC's bylaws, Hampton County Council is authorized to select at least three members of HRMC's Board of Directors. Furthermore, if HRMC dissolves, its Articles of Incorporation require that its assets be distributed to the County.

Law/Analysis

It is this Office's opinion that a court would likely find HRMC is eligible to participate in the Setoff Debt Program as a "claimant agency," S.C. Code § 12-56-20, and in the GEAR Program as a "governmental entity," S.C. Code § 12-4-580, respectively. In Aiken v. S.C. Department of Revenue, 429 S.C. 414, 421, 839 S.E.2d 96, 100 (2020), the South Carolina Supreme Court described these programs as "vehicle[s] by which the Department is allowed to collect debts owed to various governmental agencies." The Setoff Debt Collection Program allows "'claimant agencies' to seize the South Carolina income tax refunds of taxpayers who owe delinquent debts to the agencies." Gardner v. S.C. Department of Revenue, 353 S.C. 1, 9, 577 S.E.2d 190, 194 (2003). "Claimant agency" is defined, in relevant part, as "a state agency, board, committee, commission, public institution of higher learning, political subdivision, or other governmental or quasi-governmental entity of any state or the United States." S.C. Code § 12-56-20(1) (emphasis added).

This Office's August 3, 2001 opinion found a regional hospital fit within the definition of claimant agency. See Op. S.C. Att'y Gen., 2001 WL 957736 (August 3, 2001). Therein, we considered whether the Williamsburg County Memorial Hospital, a hospital public service district created by the General Assembly, would remain eligible to participate in the Setoff Debt Collection Program after it transferred its assets and responsibilities to a public benefit nonprofit corporation, Williamsburg Regional Hospital ("Hospital Corporation"). Id. The opinion described how the Hospital Corporation was "formed for the sole purpose of receiving these assets and obligations of the Hospital District," that the members of the corporation's board of directors would be appointed by the Governor, and that the corporation would function as the county's regional hospital. Id. The opinion concluded that, "[g]iven the courts' well established approval of the agency relationship between nonprofit public benefit hospitals and public bodies,"¹ the Hospital Corporation would qualify as a claimant agency because it would operate as an agent of the county performing a public function. Id. at 2. Please note, however, this Office subsequently clarified that not all entities that contract with a public body to perform a public function will necessarily qualify as a claimant agency.

[T]he courts have made a distinction between independent contractors and the treatment of such as governmental or quasi-governmental agencies. As a result, in the opinion of this office an independent contractors who contract with a

¹ See e.g. Bolt v. Cobb, 225 S.C. 408, 415, 82 S.E.2d 789, 793 (1954) ("Anderson County is providing for the performance of a public, corporate function through the agency of the existing non-profit and non-sectarian hospital... It is common knowledge that there are other counties in the State which are without publicly-owned and operated hospitals and they aid other existing hospitals.").

government to perform a particular service should not necessarily be considered governmental or quasi-governmental entities.

Op. S.C. Att’y Gen., 2009 WL 580550 (February 5, 2009) (Opining that a non-profit emergency medical service that contracted to provided EMS coverage to a county was an independent contractor and, therefore, should not be considered a claimant agency.).

Based on the opinions discussed above, it is this Office’s opinion that a court would likely hold HRMC falls within the definition of a claimant agency as a quasi-governmental entity.² As described in the request letter, Hampton County created HRMC to operate the Hampton General Hospital, a public hospital created by the General Assembly. The County retains an ownership interest and oversight of HRMC. Moreover, the County would receive HRMC’s assets upon its dissolution. Given that HRMC provides a public service through the continued operation of Hampton General Hospital and its ongoing relationship with the County, it is this Office’s opinion that HRMC is appropriately classified as an agent of the County. Therefore, as an agent of a political subdivision, HRMC would likely be classified as a quasi-governmental entity and qualify as a “claimant agency” in section 12-56-20.

Similarly, it is this Office’s opinion that a court would likely hold HRMC falls within the statutory definition of a “governmental entity,” S.C. Code § 12-4-580(D)(1), as used in the GEAR Program. The GEAR Program allows the Department of Revenue to contract to collect an outstanding liability owed to another governmental entity. See S.C. Code § 12-4-580(A). “Governmental entity” is defined as

the State and a state agency, board, committee, department, or public institution of higher learning; all political subdivisions of the State; all federal agencies, boards, and commissions; and a federal, state, county, or local governmental or quasi-governmental entity. “Political subdivision” includes the Municipal Association of South Carolina and the South Carolina Association of Counties when these organizations submit claims on behalf of a county or local governmental or quasi-governmental entity.

S.C. Code § 12-4-580(D)(1) (emphasis added). This Office has not identified an order from our state courts or other authority construing this statutory definition of governmental entity. As a matter of first impression, this opinion will apply the rules of statutory construction to ascertain its meaning. The primary rule of statutory construction is to “ascertain and effectuate the legislative intent whenever possible.” Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). Because both the Setoff Debt Program and GEAR Program statutes use overlapping terminology to describe a participant’s eligibility, the Legislature likely intended for

² Because this Office cannot find facts in an opinion, for purposes of analysis, we will assume the facts as presented in the request letter. See Op. S.C. Att’y Gen., 2006 WL 1207271 (April 4, 2006) (“Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions”).

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those bodies that qualified as a “quasi-governmental entity” under one program to similarly qualify to participate under the other. Therefore, it is this Office’s opinion that HRMC qualifies as a “governmental entity” under section 12-4-580(D)(1). However, this conclusion is not free from doubt and you may wish to seek a judicial declaration to obtain a binding decision from our state courts. Alternatively, further legislative clarification may be warranted to explain which bodies qualify as claimant agencies and governmental entities under the Setoff Debt Program and in the GEAR Program, respectively.

Conclusion

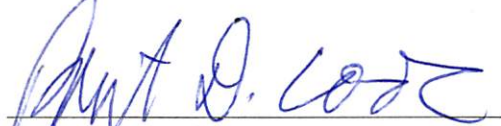
As is discussed more fully above, it is this Office’s opinion that a court would likely find HRMC is eligible to participate in the Setoff Debt Program as a “claimant agency,” S.C. Code § 12-56-20, and in the GEAR Program as a “governmental entity,” S.C. Code § 12-4-580, respectively.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General