



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

May 3, 2004

Robert M. Kerr, Director  
SC Department of Health and Human Services  
P. O. Box 8206  
Columbia, South Carolina 29202-8206

Dear Mr. Kerr:

You have requested an opinion "regarding the status of the Board of Trustees of Richland Memorial Hospital." By way of background, you state the following:

[r]ecently, the Centers for Medicare and Medicaid Services have questioned the public status of the Board. It is currently the practice of the Department to accept intergovernmental transfers of funds from the Board to be used as part of the State's financial participation (State Match) in the Medicaid Program.

Enclosed for your review are several documents, which, we think, show that The Board of Trustees of Richland Memorial Hospital is an instrumentality of Richland County, a political subdivision of the State of South Carolina.

- 1) The sections of the federal regulations regarding the State's financial participation in the Medicaid Program.
- 2) Richland County Ordinance No. 044-96HR. This Ordinance was passed in 1996 in preparation for the hospital operation of Richland Memorial Hospital (at that time a county hospital) to merge with Baptist Hospital to form the "Alliance." At the time of this Ordinance, it was contemplated that Richland County would lease (See item 10) to the Alliance real property occupied by the existing hospital.
- 3) The Table of Contents and an excerpt from Article VII of the Richland County Code, listing the boards, committees and commissions created by Richland County Council. The Board of Trustees of Richland Memorial Hospital is described at Section 2-326(d).

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- 4) The actual 2002 Ordinance, No. 017-02HR, recreating the Board.
- 5) The Report of the Independent Public Accountants, Arthur Anderson, stating that Richland Memorial Hospital is an instrumentality of a political subdivision of Richland County

Based on these, we believe that the Board is a unit of government, and as such an appropriate donor of public funds, which can be used as the State Match for South Carolina's Medicaid Program.

#### Law / Analysis

We agree with your analysis that the Richland Memorial Board of Trustees is a unit of government of Richland County.

It is indisputable that the Richland Memorial Hospital, as well as its predecessor, the Columbia Hospital, have for decades, been considered as a unit of government. As our Supreme Court noted in Belton v. Richland Memorial Hospital, f/d/b/a Columbia Hospital, 263 S.C. 446, 211 S.E.2d 241 (1975), overruled on other grounds, McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985), Richland Memorial Hospital "is successor to and stands in the shoes of the Columbia Hospital" and is "an agency of Richland County ...." The question here is whether the Board of Trustees of Richland Memorial Hospital today remains a unit of government in South Carolina. We conclude that it does.

In Taylor v. Richland Memorial Hospital, 329 S.C. 47, 495 S.E.2d 431 (1998), the South Carolina Supreme Court recognized that "Richland Memorial is a political subdivision of Richland County." In that case, the Court upheld the ordinance approving an alliance between Richland Memorial and the Baptist Healthcare System of South Carolina (Baptist), a non-profit corporation, against a constitutional attack. The Alliance was described by the Court as follows:

Richland Memorial and Baptist have entered into an agreement creating BR Health System, Inc. (System) as a new non-governmental, non-profit corporation which will take over and operate the hospital facilities of both parties. Richland Memorial and Baptist will convey substantially all of their operating assets to the System; Richland Memorial, Baptist, and Richland County will lease to the System all land and buildings involved in Hospital operations; and Richland County will quitclaim to the System any personal property owned by Richland County and used to operate Richland Memorial. The System will pay rent under the leases, assume all financial and other obligations of Richland Memorial and Baptist, and assume Richland County's obligations for indigent health care. Richland County approved the agreement by Ordinance No. 044-96HR.

495 S.E.2d at 432.

The Appellant in Taylor contended that the Alliance violated Art. X, § 11 of the South Carolina Constitution, which provides that “[n]either the State nor any of its political subdivisions shall become a joint owner of or stockholders in any company, association, or corporation.” Specifically, the argument in that case was that “under the proposed alliance a governmental body will be transferring taxpayer assets to a private corporation over which the government will have a vote but not control of the assets.” Id. However, our Supreme Court disagreed, affirming the circuit court’s reasoning, as follows:

[t]he circuit court held Richland Memorial’s involvement with the System as a lessor of real property, transferor of personal property, or member in the System does not violate the joint ownership clause. Further, the circuit court concluded that because Richland County will not be liable for the System’s obligations and the System will not have the powers to tax and to pledge the full faith and credit of any political entity, this alliance does not create a risk that any losses will be shifted to the public. We agree. Richland Memorial will not retain a partial interest in the personal property because it will quitclaim to the System. The System will have exclusive title to the assets following the transfer. The real property lease agreement between the System, Richland County, and Richland Memorial to be executed at closing described the relationship as that of landlord and tenant. While Richland Memorial will be represented on the BR System’s board, Richland Memorial will not have control over the System’s operations.

The intent of Article X, § [11] was to “prevent the state from entering into business hazards which might involve obligations upon the public.” Chapman, supra. There is no evidence the proposed alliance will run afoul of this constitutional provision.

Id. at 433.

It is evident from its analysis in Taylor, that the Court viewed Richland Memorial to continue to be a public entity even after formation of the Alliance. Indeed, the Court referenced Richland County Ordinance No. 044-96HR as the enabling authority for formation of the Alliance. Such Ordinance recited the history of Richland Memorial from the enactment of legislation (Act No. 863 of 1922) creating the former Columbia Hospital and authorizing its Board of Trustees to serve as the fiscal agent of the Hospital, to the creation of Richland Memorial Hospital, to the Alliance itself. Subsection C of the 1996 Ordinance specifically deals with the appointment of members of the Board of Trustees of Richland Memorial following expiration of members’ “current terms.” Such provision reads as follows:

C. APPOINTMENT OF MEMBERS OF THE BOARD; RATIFICATION OF  
CURRENT BOARD; RECOGNITION OF AUTHORITY OF BOARD.

1. The County Council, pursuant to Section 4-9-30, 4-9-80 and 4-9-170 of the Code of Laws of South Carolina (1976), as amended hereby makes provision for superseding certain provisions of Act 502 of 1959 of the General Assembly, as previously amended by Act No. 430 of 1975 and amends County Council Ordinance Article VII, Section 2-326(d), so that the members of the Board, upon the expiration of their current terms (which current terms are not affected hereby) shall be appointed directly by resolution of the County Council. The Board shall consist of 14 members of the chief and vice chief of staff shall serve *ex officio*. Each member shall be appointed for a term of four years and may be removed by adoption of a resolution of the County Council finding cause for removal. No member shall serve more than two consecutive terms, provided that after two consecutive terms, a person may be eligible for one additional full term following an interval of one year. The County Council further ratifies and confirms the appointment of the members of the present Board with the terms currently provided therefor.

2. The County Council hereby confirms that the Board is the fiscal agent of the County and the governing body for all County owned hospital facilities. The County Council hereby acknowledges that the Board is operating within the scope of its authority in providing for the continuation of County owned hospital facilities through the Alliance.

Thus, it is clear that, notwithstanding the Alliance's pending formation and operation, Richland County Council pursuant to its Home Rule powers, created an ongoing governmental entity in the form of the Richland Memorial Hospital's Board of Trustees. This entity is governmental in nature and possesses sovereign authority. Board members are given established terms of office and may be removed only for cause. Members' terms are limited as specified in the Ordinance. Most importantly, the Board is deemed "the fiscal agent of the County and the governing body for all county owned hospital facilities." In that regard, Subsection D of the Ordinance empowers the Board to

... enter into contracts, accept conveyances of real property in the name of the County, accept conveyances of personal property in the name of the Board or RMH, sue and be sued in its own name, and borrow money and give such security for the repayment thereof as the Board deems prudent (provided, however, that neither the full faith, the general credit nor the taxing power of the County may be pledged by the Board to the payment of any of its debts), all as are determined by the Board to be necessary or proper for the accomplishment of the Board's statutory purposes or in the ordinary conduct of the health care services provided by the Board.

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In 2002, years after the Alliance began operating, the Richland County Council amended slightly the earlier 1996 ordinance, relating to the Richland Memorial Hospital's Board of Trustees. Such amendment provided as follows:

(D) *The Board of Trustees of the Richland Memorial Hospital.*

- (1) The board shall consist of 14 members and the chief and vice chief of staff shall serve ex officio. Each member of the board shall be appointed by the County Council for a term of four years, or until his or her successor is appointed. Provided, however, the terms of all current board members shall expire on December 31<sup>st</sup> of the last year of their current term. Thereafter, each term of office shall begin on January 1<sup>st</sup> of the first year and expire on December 31<sup>st</sup> of the fourth year.
- (2) The board shall perform all duties provided by law.

Such duties, "provided by law" are set forth in the earlier Ordinance, discussed above. Again these are sovereign powers of a governmental entity of Richland County. In addition, as your letter indicates, an audit of Richland Memorial Hospital, performed in 1997 after the formation of the Alliance with Baptist, also recognizes Richland Memorial's continuing existence as a unit of government. The audit refers to Richland Memorial as "an instrumentality of a political subdivision of Richland County."

**Conclusion**

Based upon the foregoing authorities, it is our opinion that the Board of Trustees of Richland Memorial Hospital is a political subdivision of Richland County. The Board's members are public officers inasmuch as each serves a definite term of office and the Board as an entity exercises sovereign powers. This legal status of the Board has been affirmed in two separate ordinances of Richland County Council, dated 1996 and 2002, respectively and the legal status as a public entity of Richland Memorial's Board exists notwithstanding formation of the alliance between Richland Memorial and Baptist. Accordingly, in our view, the Board of Trustees of Richland Memorial Hospital is an agency and unit of government of Richland County.

Sincerely,



Robert D. Cook  
Assistant Deputy Attorney General