

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

November 20, 1989

SUBJECT: Taxation and Revenue - Tax Levy For The Operation Of The Lee County Hospital.

SYLLABUS: A county could appropriate funds and levy taxes for the costs of management of a county hospital. The present county council could not bind future councils to appropriate such funds or levy a tax for this purpose. A county cannot appropriate public funds and levy a tax for the benefit of a private hospital.

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Lee County Attorney

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: A group of physicians on behalf of Lee County are to manage the Lee County Hospital for a period of ten years. At the end of that period, the hospital would be sold to the group. The inquiry is whether the county may annually levy a ten mill tax for the hospital during and after the ten year period.

APPLICABLE LAW: Article X, Sections 5, 6 and 7(b), of the South Carolina Constitution and Section 4-9-140 of the Code of Laws of South Carolina, 1976.

DISCUSSION:

Article X, Section 6, provides authority to the General Assembly to delegate the power to levy a tax to the political subdivisions of the State. Article X, Section 5, however, limits that authority and requires the tax to be for a "public purpose." The applicable language is that:

" . . . Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied . . ."

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The construction and operation of a hospital by the State or county is clearly for a public purpose. McLure v. McElroy, 211 S.C. 106, 44 S.E.2d 101 (1947); Battle v. Willcox, 128 S.C. 500, 122 S.E.2d 516 (1924).

The question as stated above is broken into two separate issues. First is the ten mill levy when the hospital is operated by the group for the benefit of the county and secondly, when operated by the group for its benefit.

Article X, Section 7(b), of the Constitution provides in part that:

"Each political subdivision of the State . . . shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year . . ."

Section 4-9-140 requires the county to prepare an annual operations budget and additionally sets the county's fiscal year.

The county council could therefore appropriate funds and levy an annual tax to fund the costs for the management of the hospital.¹ A secondary issue is whether the present council could obligate the county for a ten year period.

It is extremely doubtful that the present county council could bind future councils to levy the tax.

"There can be no vested right in an existing law which precludes its change. In this respect, it has been declared that it is the function of the legislature, and of the legislature alone, to change rules of law, that each subsequent legislature has equal power to legislate upon the same subject, and that one legislature cannot

¹For purposes of this Opinion, it is assumed that the hospital will be operated by the county and that during the first ten year period, the group would act as managers for the county.

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abridge the power of a succeeding legislature . . ." 73 Am.Jur.2d, Statutes, Section 34. (For South Carolina cases see 17 S.C.D., Statutes, Key 129.)

See also the case of Caddell v. Lexington County School District No. 1, 296 S.C. 397, 373 S.E.2d 598 (1988).

Article X, Section 11, of the South Carolina Constitution prohibits the tax levy for the benefit of the private hospital.²

CONCLUSION:

A county could appropriate funds and levy taxes for the costs of management of a county hospital. The present county council could not bind future councils to appropriate such funds or levy a tax for this purpose. A county cannot appropriate public funds and levy a tax for the benefit of a private hospital.

JLAJr:wcg

²For purposes of this Opinion, it is assumed that the proposed tax levy would not be for the payment of services provided by the hospital to the county, in example, for services rendered indigents or others.