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*Opinion No 85-49*  
*P149*

## Office of the Attorney General

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May 9, 1985

The Honorable J. M. "Bud" Long  
Senator, District No. 33  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Long:

By your letter of April 24, 1985, you have related to this Office some of the difficulties encountered in trying to obtain an exemption for the Loris Community Hospital District under Section 501 (c)(3) of the Internal Revenue Code (26 U.S.C. § 501 (c)(3)). In that context, you have asked this Office to address the following questions:

1. What is the legal status of the Loris Community Hospital District?
2. What is the purpose for which the District was formed?
3. How would the assets of the District be disbursed if the District were to be dissolved?

Because the response to your second question in part determines the response to the first question, both issues will be addressed together; the third question will be addressed separately.

### STATUS AND PURPOSE

The Loris Community Hospital District was created by the General Assembly by Act No. 742, 1946 Acts and Joint

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Resolutions. Section 1 of that Act provides in part:

[I]n order that hospital facilities and services may be made available to the residents of that portion of Horry County, lying [within specified boundaries], there is hereby created a special District in said County to be known as Loris Community Hospital District . . . . Said District is created for the purpose of establishing and maintaining a hospital for the residents therein, and the facilities of such hospital shall at all times be made available to all residents of said District . . . . [Emphasis added.]

Clearly, the District was established for the sole purpose of establishing and maintaining a hospital for the residents of a specified portion of Horry County. In Section 3 of the Act, by part 10, the governing body of the District is empowered to "operate and maintain a charity ward and free services for residents of the District, who are destitute and unable to pay for needed hospitalization." While the specified purpose does not appear to fit within those in Section 501 (c)(3) of the Internal Revenue Code, the charitable nature of such hospitals and hospital districts has been noted in Section 3(10) of Act No. 742 and also discussed by the South Carolina Supreme Court in cases such as Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976); Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789 (1954); and Battle v. Wilcox, 128 S.C. 500, 122 S.E. 516 (1924). Thus, a hospital district such as the Loris Community Hospital District could be said to have been organized for a charitable purpose. 1/

The non-profit nature of the District must also be noted. In Act No. 742 of 1946 and in subsequent acts of the General Assembly relating to the District, there is no scheme to distribute any profits which may be made by the District to any individual or entity. Furthermore, by Act

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1/As you pointed out in your request letter, the General Assembly would be precluded by Article VIII, Section 7 of the State Constitution from enacting a law to amend the purposes as stated in Section 1 of Act No. 742 of 1946. Such could most probably be accomplished only by the enactment of a general law, to insure the constitutionality of such law.

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No. 1308 of 1966, surplus monies resulting from the taxes levied pursuant to Act No. 444 of 1959, to reduce indebtedness of the District, were to be remitted to the District rather than to taxpayers, individuals, or other entities. Similarly, by Act No. 1428 of 1974, any balance remaining from the proceeds derived from the sale of the general obligation bonds authorized by that Act would be used to effect retirement of bonds; again, leftover monies would be expended only for District use, with no individual or entity reaping any benefits. As pointed out in footnote 1, Article VIII, Section 7 of the State Constitution would preclude the amendment of Act No. 742 of 1946, so that the General Assembly could not alter the non-profit status of the District.

This Office would further advise that the Loris Community Hospital District would also be considered a political subdivision and a special purpose or public service district. The criteria as discussed in an opinion of this Office dated November 14, 1984, will be applied to the District to support that conclusion.

To determine that an entity is a special purpose or public service district, the purpose for which the entity was established is important. As noted above, the District was established solely to provide hospital services and facilities to residents of the specified geographic area. This single purpose, rather than a general governmental purpose, is one indicator of a special purpose or public service district. See Orr v. Kneip, 287 N.W.2d 480 (S.D. 1979).

Whether an entity has corporate powers or duties is another consideration. See Berry v. Milliken, 234 S.C. 518, 109 S.E.2d 354 (1959). Among the duties and powers given to the governing body of the District are the powers to adopt and use a corporate seal; to enter into various contracts (to purchase personal property, land, and so forth; to employ various personnel, etc.); to make regulations; to establish rates; to expend funds; and similar powers and duties. It would appear that corporate powers and duties are being exercised; particularly since the entity is to adopt and use a corporate seal, the General Assembly appears to have acknowledged the corporate nature of the entity.

Certain fiscal considerations include the power to issue revenue or general obligation bonds, levy tax assessments, or issue notes or bonds generally. See Berry v. Milliken, *supra*; Jackson v. Breeland, 103 S.C. 184, 88 S.E. 128 (1915). By Acts No. 444 of 1959 and No. 1428 of 1974,

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the District has been empowered to issue general obligation bonds in varying amounts. By Act No. 1424 of 1974, a tax levy of four mills is to be levied by the Horry County Auditor and collected by the Horry County Treasurer for the benefit of the District. The issuance of other bonds by the District is also authorized by Sections 4-11 of Act No. 742 of 1946. It appears that the District meets the fiscal criteria generally associated with special purpose or public service districts.

Other indicia to be considered in the determination of the status of the District include geographic area to be served; how the entity was created; and how the governing body is selected. See Op. Atty. Gen. dated November 14, 1984. As already noted, the District was created by an act of the General Assembly; the District is not merely a taxing district of the county established pursuant to Section 4-9-30(5), Code of Laws of South Carolina (1984 Cum. Supp.). The geographic area served is less than county-wide, typical of many special purpose or public service districts. Cooper River Park & Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979). Finally, the governing body is appointed by the Governor upon the recommendation of a majority of the Legislative Delegation from Horry County and otherwise exercises complete autonomy. See Act No. 599 of 1984.

Considering all factors enumerated in the opinion dated November 14, 1984 and authority cited therein, the Loris Community Hospital District would appear to be a special purpose or public service district.

Similarly, the District may also be considered a separate political subdivision. Attributes of a political subdivision generally include existence to discharge a governmental purpose; prescribed area; authority for subordinate self-government; existence for the benefit of residents of the area; and organized for public, rather than private advantage. See Op. Atty. Gen. dated November 14, 1984 and attachments thereto. As noted above, the District has a prescribed geographic area and exercises autonomous self-government. The District is organized for a public purpose, to serve the residents of the prescribed area of Horry County. Provision of hospital care is recognized as a governmental purpose. See Bolt v. Cobb, *supra*. Thus, in addition to being a special purpose or public service district, the District would also be considered a separate political subdivision.

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### DISBURSAL OF ASSETS UPON DISSOLUTION

As you noted in your request letter, the acts of the General Assembly relevant to the Loris Community Hospital District do not provide for the distribution of assets of the District should the District be dissolved. Section 4-9-80 of the Code would appear to resolve that question; in part, that section provides, after detailing the mechanism by which a special purpose or public service district or other political subdivision may be dissolved:

Upon the dissolution of any district within a county and the assumption of its function by the county government, the county shall take title to the property of the district and assume all of its debts and obligations which shall be retired by charges or assessment of taxes in those areas of the county receiving benefits from the facilities of the district . . . .

Clearly, by operation of general law, the property of the District would pass to Horry County.

Upon the title of such assets passing to Horry County, the assets (funds or other property), being public, must be utilized for public purposes. See, for example, Article X, Section 11 of the State Constitution. Assuming that such assets are utilized or expended according to the State Constitution, it may be said that assets of the District, upon dissolution, would continue to be utilized or expended for public purposes and would not inure to the benefit of any private individuals, companies, associations, or the like.

### CONCLUSIONS

In conclusion, the answers to your questions are as follows:

1. The legal status of the Loris Community Hospital District is that of a political subdivision and special purpose or public service district.
2. The purpose for which the District was established is to provide hospital services and facilities for residents of the geographic area comprising the District. The purpose appears to be charitable in nature.

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3. Upon dissolution of the District, which may be accomplished pursuant to Section 4-9-80 of the Code, title to property of the District would pass to Horry County. Assuming that constitutional provisions are followed, the assets would be utilized for public purposes and would not inure to the benefit of private persons, associations, corporations, or the like.

We trust that we have satisfactorily responded to your inquiries. Please advise if additional information or clarification should be needed.

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

Enclosure: Op. Atty. Gen. dated November 14, 1984

REVIEWED AND APPROVED BY:

*Robert D. Cook*

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