

1982 S.C. Op. Atty. Gen. 18 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-15, 1982 WL 154985

Office of the Attorney General

State of South Carolina

Opinion No. 82-15

March 12, 1982

***1 SUBJECT:** The South Carolina Freedom of Information Act applies only to a ‘public body’ as defined in [Section 30–4–20\(a\) of the South Carolina Code of Laws, 1976](#), as amended. This definition includes not only governmental bodies, but also any legal entity ‘. . . supported in whole or in part by public funds or expending public funds. . . .’. The question addressed is whether or not a private corporation under contract with an acknowledged public body receiving public funds for contractual services rendered becomes subject to the requirements of the South Carolina Freedom of Information Act.

(1) Under [Section 30–4–20\(a\), the South Carolina Code of Laws, 1976](#), as amended, the South Carolina Freedom of Information Act applies to any ‘public body’.

(2) A ‘public body’ is defined by statute to include any governmental body or political subdivision of the state or ‘. . . any organization, corporation or agency supported in whole or in part by public funds or expending public funds . . .’.

(3) Case law defines a private hospital as one which is owned, maintained, and operated by a corporation without any participation by any governmental agency and receipt of public compensation does not transform a private hospital into a public institution.

(4) Receipt of public funds on a contractual basis for services rendered to the county for the care of indigent patients is not ‘. . . support in whole or in part by public funds. . . .’. In these particular circumstances, this private corporation has not assumed the status of a public body and is not subject to the requirements of the South Carolina Freedom of Information Act.

TO: Mr. Joe B. Williams
Colleton County Council

QUESTION:

At issue is whether or not a private hospital corporation is subject to the requirements of the South Carolina Freedom of Information Act, specifically the ‘open meeting’ provisions, due to the fact that it has contracted with the county to provide certain services for the county and is paid for these services with public funds.

OPINION:

Hospital Corporation of America and Walterboro Community Hospital, Inc., a South Carolina corporation which is a wholly-owned subsidiary of Hospital Corporation of America (hereafter referred to as HCA), lease the premises of the former Colleton Regional Hospital from Colleton County through its Board of County Commissioners. HCA and Walterboro Community Hospital, Inc. have purchased all of the assets, inventory, and equipment of the hospital from the county. In addition to the rental amount, HCA pays all taxes, general and special assessments, and any other levies on the property. HCA also maintains all insurance against any loss or damage on the property. The lease contract specifically states that the relationship between HCA and the county is that of landlord and tenant and not a partnership or joint venture. In addition to the lease agreement, which is to endure until HCA constructs a replacement hospital to serve the county and surrounding community, the county

contracted with HCA whereby HCA agreed to provide medical care to indigent residents of Colleton County in return for partial reimbursement by the county. Medical care is to be provided for patients seriously ill or requiring emergency services who are 'medically indigent' or who are in custody for detention purposes or in the protective custody of the county. The maximum amount for which the county shall reimburse HCA is limited to Two Hundred Thousand and ⁰⁰/₁₀₀ (\$200,000.00) Dollars annually to be adjusted in each succeeding year to reflect any changes in the Consumer Price Index.

*2 The issue now specifically becomes: Is HCA a public body or a corporation 'supported in whole or in part by public funds or expending public funds' so as to fall within the parameters of the requirements of the South Carolina Freedom of Information Act.

In considering whether a hospital was a public institution or a private corporation, the South Carolina Supreme Court, in [Strauss v. Marlboro County General Hospital](#), 185 S.C. 425, 194 S.E. 65 (1937), quoting [Trustees of Dartmouth College v. Woodward](#), 4 Wheat. 518, 671, 4 L.Ed. 629, pointed out that in order to be a public corporation the government must have the '... sole right, as trustees of the public interest, to regulate, control, and direct the corporation and its funds and franchises'. In [Shulman v. Washington Hospital Center](#), 222 F.Supp 59 (1963), the United States District Court for the District of Columbia stated that a public hospital is one owned, maintained, and operated by a municipality or county and supported by governmental funds. A private hospital was stated to be one that is owned, maintained, and operated by a corporation without any participation on the part of any governmental agency. The court went on to state that the fact that a private hospital may receive compensation from a city or county for caring for sick or disabled indigent persons did not transform it into a public institution, citing [Van Campen v. Olean General Hospital](#), 210 App.Div. 204, 205 N.Y.S. 554, 556, affirmed 239 N.Y. 615, 147 N.E. 219. Nor if a hospital is constructed with governmental funds does this render it a public entity. [Khoury v. Community Memorial Hospital, Inc.](#), 203 Va. 236, 123 S.E.2d 533 (1962). There is a list of citations given in [Wilmington General Hospital v. Manlove](#) 54 Del. 15, 174 A.2d 135 (1961) stating the uniform holding that neither the receipt of public funds nor an exemption from taxation would convert a private hospital into a public institution. For purposes of legal definition where, as here, the hospital is maintained and operated by a private corporation with no governmental participation in respect to either ownership or control of the corporation and the corporation elects its own officers and directors and manages its own affairs, the conclusion is inescapable that the Walterboro Community Hospital, Inc., a wholly-owned subsidiary of HCA is a private hospital and not a public entity.

As to whether or not receipt of funds from the county on a contractual basis for services rendered to indigent patients is 'support in whole or in part by public funds', the conclusion is less clear. The Louisiana Attorney General has ruled that the Louisiana Freedom of Information Act did not extend to lessees, particularly to a corporation which leased a hospital facility, because that state's law only applied to governmental bodies which received or expended tax funds. Louisiana Attorney General Opinion 77-235 (1977). The South Carolina Act is not limited to governmental bodies as is the Louisiana Act, but includes any entity '... supported in whole or in part by public funds or expending public funds. . . .'. [Section 30-4-20\(a\)](#). The Walterboro Community Hospital, Inc. is not authorized to expend public funds; therefore, the issue is narrowed to whether or not receipt of public funds on a contract basis is sufficient to require the Walterboro Community Hospital, Inc., a private corporation, to comply with the South Carolina Freedom of Information Act. The hospital premises are county-owned, but leased to and operated by a private corporation. The limited county funds are a minute portion of the corporation's expenses and at best do not cover the actual costs of the services rendered. 'Support' generally means to maintain, and to 'maintain' generally means to keep up, to supply with what is needed, to furnish with funds or means for maintenance. [Words and Phrases](#), 'Support', Vol. 40A, pp. 390-402. In [Raton Public Service Co. v. Hobbes](#), 76 N.M. 535, 417 P.2d 32 (1966), the State Court found that a city-owned utility corporation that paid its revenues over to the city was 'supported by public funds' and was subject to the open meeting law requiring subdivisions of governmental bodies supported by public funds to make all decisions at open meetings. Such is not the case here, as no revenues are paid over to the county by the hospital and the hospital is a privately held corporation. This case was the only case discovered dealing with the definition of 'supported by public funds'.

*3 Under the Federal Public Information Act, 5 Section 551 and 5 Section 552, it has been held that a private entity funded by federal grant does not become subject to the Federal Freedom of Information Act 'absent extensive, detailed, and virtually day to day supervision'. [Forsham v. Harris](#), 445 U.S. 169, 180-181, 100 S.Ct. at 984, 63 L.Ed.2d at 304 (1980). The Federal

Freedom of Information Act applies to any federal agency, and the term is extremely broad and encompassing. Excluded from the agency category, however, are private organizations which have contracts with the government, so long as the corporation receiving the appropriated funds is not government controlled. O'Reilly, James T., Federal Information Disclosure Procedures, Forms and the Law, Shepard's Inc. (1978), Chapter 5, pp. 5-2 to 5-6.

HCA and Walterboro Community Hospital, Inc. are not county controlled. They have a lease agreement and a service contract with Colleton County for the care of indigent patients, with reimbursement by the county not to exceed Two Hundred Thousand and ⁰⁰/₁₀₀ (\$200,000.00) Dollars annually. The receipt of public funds towards the hospital's overall operational expenses is non-existent. The county has no involvement with the HCA or the hospital itself beyond its contractual obligation to pay a percentage of the cost incurred by HCA for care of the medically indigent. Therefore, since HCA and Walterboro Community Hospital, Inc. are private corporations, and as public funds are not appropriated for the support 'in whole or in part' of the Walterboro Community Hospital, Inc., but are expended by the county under contract for services rendered to the indigent, there is no flow of unrestricted funds from the public coffer into the coffers of HCA nor does HCA stand in the public shoes of the county performing a public service. A private entity, by entering into a contract for services with a public body, does not itself thereby also assume the status of a public body in its stead. The law, as written, encompasses only such bodies which are 'supported in whole or in part by public funds or which expend public funds', and it is the opinion of this office that the receipt of specific funds on a contractual basis for services rendered to a public body does not render a private corporation subject to the South Carolina Freedom of Information Act.

In the case of Tuomey Hospital, the information given this office was that Sumter County directly supported Tuomey Hospital by county appropriation. Therefore, the two situations are readily distinguishable.

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