



ALAN WILSON
ATTORNEY GENERAL

April 25, 2016

Eric Douglass, General Counsel
Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, SC 29201

Dear: Mr. Douglass:

You seek an opinion "as to whether we [Legislative Audit Council] have the authority to audit the Greenville Health System (GHS) office of philanthropy." By way of background, you state the following:

We have received a request from members of the South Carolina Senate and the House of Representatives to audit the GHS Office of Philanthropy and all other related departments or not-for-profit organizations substantially controlled by GHS engaged or assisting with fundraising or the solicitation of charitable donations for GHS projects. Additionally, we have been requested to audit GHS strategic plans, building projects, medical departments, medical practices, and any other initiatives that have received funds through the GHS Office of Philanthropy. A copy of our audit request is attached to this message.

For the purposes of our audits, S.C. Code §2-15-50 defines "state agencies" as:

....all officers, departments, boards, commissions, institutions, universities, colleges, bodies politic and corporate of the State and any other person or any other administrative unit of state government or corporate outgrowth of state government, expending or encumbering state funds by virtue of an appropriation from the General Assembly, or handling money on behalf of the State, or holding any trust funds from any source derived, but does not mean or include counties.

A copy of our enabling legislation is attached to this letter.

GHS was created by Act 432 of 1947. That legislation was last amended in June 2015. A copy of this act is attached to this letter. This legislation established GHS, "For the purpose of operating and at all times maintaining

adequate hospital facilities for the residents of Greenville County, including those residents in the City of Greenville...." The legislation states that the GHS board of trustees must be appointed by the Greenville County Legislative Delegation.

The Legislative Audit Council has never audited a hospital system. To our knowledge, GHS does not receive direct appropriations from the General Assembly. Our agency typically audits other state agencies, including DHHS, SCDOT, SCDE, and DHEC. Attached to this letter is a list of all agencies audited by the LAC.

Law/Analysis

The authority of the Legislative Audit Council is codified at S.C. Code Ann. Section 2-15-10 et seq. The Council is directly responsible to the General Assembly and is independent of any other state agency, board or department. Among the duties of the Council is "[t]o establish a system of post audits for all fiscal matters and financial transactions for all state agencies of the state government." Section 2-15-50. The statute defines "state agencies" as:

. . . all officers, departments, boards, commissions, institutions, universities, colleges, bodies politic and corporate of the State and any other person or any other administrative unit of state government or corporate outgrowth of state government, expending or encumbering state funds by virtue of an appropriation from the General Assembly, or handling money on behalf of the State, or holding any trust funds from any source derived, but does not mean or include counties.

An "audit" is defined by Section 2-15-50 as:

. . . a full-scope examination of and investigation into all state agency matters necessary to make a determination of:

(a)(1) whether the entity is acquiring, protecting, and using its resources, such as personnel, property, and space, economically and efficiently:

(2) the causes of inefficiencies or uneconomical practices; and

(3) whether the entity has complied with laws and regulations concerning matters of economy and efficiency; and

(b)(1) the extent to which the desired results or benefits established by the General Assembly or other authorizing body are achieved;

(2) the effectiveness of organizations, programs, activities, or functions; and

(3) whether the entity has complied with laws and regulations applicable to the program.

The issue you present is, therefore, whether GHS would be considered as a “state agency” for purposes of § 2-15-50. We conclude that a court would likely conclude not.

In Op. S.C. Att’y Gen., 2015 WL 5896029 (September 28, 2015), we addressed the makeup, structure and function of GHS at considerable length. There, we stated the following:

GHS (formerly Greenville Hospital) was created by Act No. 432 of 1947. The 1947 Act established the Greenville General Hospital Board of Trustees and set forth the numerous powers and duties of the Board. In 1966, the General Assembly amended the legislation, changing the name to the Greenville Hospital Systems Board of Trustees. See Act No. 3247 of 1966.

Act No. 105 of 2013 renamed the Greenville Hospital System to GHS. Section 2 of Act 105 sets forth the revised powers and duties of GHS as follows:

Section 2. the Greenville Health System is authorized and empowered to do all things necessary or convenient for the establishment and maintenance of adequate health care facilities for the communities it serves and, without limiting in any way the generality of the foregoing, is empowered to:

- (1) adopt and use a corporate seal;
- (2) amend its name as determined by the board of trustees after receiving input from the Greenville County Legislative Delegation;
- (3) adopt bylaws, rules, and regulations for the conduct of its business and expenditure of its funds, as it may deem advisable, including establishing committees of the board of trustees, which may include community and professional representatives.
- (4) operate the hospital conveyed to it by the City of Greenville, and such other hospitals, health care facilities, clinics, programs, and service as it may lease, acquire, construct, or develop;
- (5) acquire by gift, purchase, or otherwise, all kinds and descriptions of real and personal property;

- (6) accept gifts, grants, donations, devises, and bequests;
- (7) enlarge and improve any facility that it may acquire or construct;
- (8) adequately staff and equip any health care facility that it may operate;
- (9) provide and operate outpatient departments and services;
- (10) establish and operate clinics deemed necessary by the board of trustees to the health of the residents of Greenville County and the communities served;
- (11) provide teaching and instruction programs and schools for physicians, nurses, allied health professionals, pharmacists, case workers, administrators, and other persons;
- (12) employ personnel as may be necessary for its efficient operation;
- (13) establish and promulgate rates for the use of its services and facilities;
- (14) provide regulations concerning the use of its facilities and access to its programs and services, including rules governing the conduct of physicians, nurses, technicians, allied health professionals, social workers, and others while on duty or practicing their profession in its facilities and patients and visitors using its services and facilities; the determination of whether patients presented to the health system for treatment are subject for charity; and to fix compensation to be paid by patients and others utilizing its services;
- (15) provide free or discounted services for residents of the county and the communities it serves;
- (16) contract directly or in conjunction with insurers, employers, and individuals for the provision of health care services on a population risk or episodic basis and to expend the proceeds derived from these activities to support its programs and services;

- (17) determine the fiscal year upon which its affairs must be conducted;
- (18) expend any funds received in any manner, and the proceeds derived from issuance of bonds, to defray any costs incident to establishing, constructing, equipping, and maintaining its facilities and services;
- (19) apply to the federal government and state agencies and any other governmental agencies, industries, and philanthropic programs for a grant of monies to aid in providing any health care facility or program, conducting research, and providing health care services;
- (20) dispose of any property, real or personal, that it may possess;
- (21) conduct periodic investigations into hospital, medical, and health conditions and needs in Greenville County and the communities it serves;
- (22) exercise the power of eminent domain, in the manner provided by the general laws of the State of South Carolina for procedure by any county, municipality, or authority created by or organized under the laws of this State or by the Department of Transportation or by railroad corporations;
- (23) borrow money from banking or other lending institutions in such amounts and on such terms as the board may determine is for the best interest to the board for the operation of the hospital or for the acquisition of real or personal property or to enlarge or improve any hospital facilities and to secure such loan or loans by pledge of revenues;
- (24) enter into affiliation, cooperation, territorial management, joint operation, and other similar agreements with other providers for the:
 - (a) sharing, dividing, allocating, or exclusive furnishing of services, referral of patients, management of facilities, and other similar activities; or
 - (b) reducing or eliminating duplicative services in a market in order to improve quality or reduce cost; and

- (25) exercise all powers now or hereafter granted to regional health service districts pursuant to Articles 15 and 16, Chapter 7, Title 44, Code of Laws of South Carolina, 1976.

Moreover, in Sloan v. Greenville Hosp. System, 388 S.C. 152, 694 S.E.2d 532 (2010), our Supreme Court also dealt with GHS's nature and composition. In Sloan, the issue was whether GHS was subject to the State Procurement Code. Resolution of this question hinged upon whether GHS is a "governmental body" for purposes of the Procurement Code, or is, instead, a political subdivision. Section 11-35-310(18) of the Procurement Code, defines a "governmental body" and Sloan alleged GHS is a "state government board" for purposes of such definition. By contrast, political subdivisions of the State, including public service or special purpose districts "are excluded from the definition of a governmental body and are not subject to the procurement procedures outlined in the Procurement Code." 694 S.E.2d at 535.

As the Supreme Court noted in Sloan, the circuit court "observed that the Hospital does not perfectly fit into any category, but that its purpose is essentially local and it is not a State 'governmental body' as that term is defined by the Procurement Code; rather it is a 'political subdivision,' and more particularly, a 'special purpose district' serving local needs." Id. at 535-36. The Court then traced the history of GHS. Sloan argued that:

The "clear intent" of the legislature's actions in 1965 and 1966 "was that the Greenville Hospital System Board was to continue to operate as a Board created by the General Assembly, and not as a 'special purpose district' or political subdivision." He asserts other districts have been established in the same geographical area; therefore, the Hospital cannot be a special purpose district in the same territory because they would impermissibly overlap. Sloan also contends special purpose districts must have five characteristics: a district geographical description, the authority to issue general obligation bonds, taxing authority, inclusion of "district" in the entity's name and they must serve a local governmental purpose. Sloan states that the hospital does not meet this five-part test.

Id. at 537.

The Supreme Court rejected Sloan's arguments, concluding that GHS is a special purpose district, not a State entity or instrumentality. The Court explained as follows:

[W]e agree with the circuit court's determination that the true essence of a special purpose district is its scope and its focus on serving local, not statewide, needs. In this case, the Hospital was established to provide medical services to all of the residents of Greenville County, where the existing city hospital was found to be insufficient to meet the increasing demand for services.

Although the word “board” was used in the enabling legislation, it was used in a descriptive, generic sense, as the legislation did not, in actuality, create a board that had state-wide authority to impact; rather, it was directed solely to local needs in a limited geographic area, i.e., Greenville County, and was to provide medical services solely in that area. Thus, it was created to serve a local purpose. The board consisted of residents from the city and county of Greenville, the original hospital was built by the city, and part of its funding came from local bond issues. The use of the term “board” or the absence of the specific phrase “special purpose district” is not determinative of the characterization of the entity. Cf. McLure v. McElroy, 211 S.C. 106, 110, 44 S.E.2d 101, 104 (1947) (referring to the “governing board” of a public hospital known as the “Union Hospital District” and noting “the district . . . is a governmental subdivision of the State”), overruled in part by Weaver v. Recreation Dist., 328 S.C. 83, 492 S.E.2d 79 (1997).

Sloan contends there was no intent that the Hospital function as a special purpose district, but our review of the legislative events leads us to the opposite conclusion. It is readily apparent that the 1966 legislation repealing the act creating the district was passed solely because of the pending litigation regarding the authority of the district to issue bonds, and was done after the trial court had already upheld the validity of the district. The legislative change was simply a temporary solution to allow the board to continue functioning on an interim basis until the legal questions involving the district could be resolved. After home rule was implemented in 1973, however, new special purpose districts could no longer be created within one county, but entities created before 1973 were allowed to continue operating. This complex legislative history makes the question of the Hospital’s status difficult, as the circuit court noted, because it does not clearly fall into either category (governmental body or political subdivision), but we hold the circuit court properly resolved the question in favor of finding the Hospital was not a governmental body as that term is defined in the Procurement Code.

The legislative definitions of a “special purpose district” do not contain the five-part test articulated by Sloan and in fact demonstrate the legislature’s intent to be as broad as possible so as to encompass the wide variety of entities serving local needs that were created before the adoption of home rule. As the circuit court found, the statutes enumerated above require only that such entities (1) were created by the General Assembly, (2) that they were created prior to March 7, 1973, and (3) that they serve a local governmental function.

This Court has previously recognized that certain entities were special purpose districts, even though they did not possess all of the characteristics in the five-

part text asserted by Sloan. See, e.g., Newman v. Richland County Historic Pres. Comm'n, 325 S.C. 79, 480 S.E.2d 72 (1997) (observing the Commission is a special purpose district created in 1963 pursuant to 1963 S.c. Acts 69). The Richland County Historic Preservation Commission did not have the authority to tax or to issue general obligation bonds, and the enabling legislation created it without using the word “district” or otherwise defining its geographical scope.

We hold the circuit court did not err in concluding the Hospital is not a state governmental entity subject to the procurement procedures detailed in the state’s Procurement Code; rather, it is a special purpose district that is entitled to, and by law is required to, establish its own provisions embodying sound principles of appropriately competitive procurement as provided by section 11-35-50. The formulation of the Hospital and its board meets the broad parameters of a special purpose district as used in the Procurement Code, as there is no limiting definition that specifies particular requirements other than the essential one of serving a local need or purpose.

Id. at 538-39 (emphasis added).

Further, in Op. S.C. Att’y Gen., 1986 WL 191976 (No. 86-14) (January 30, 1986), we addressed the issue of whether the Legislative Audit Council possessed the authority to conduct an audit of the Horry County School District. The definition of “State agencies” was the same then as now. There, we advised:

[W]e conclude that absent express authority to audit political subdivisions and in view of the Council’s traditional operation and recognition that its audit does not extend to local school districts, it is doubtful that the legislature intended that such authority be inferred.

Likewise, here our Supreme Court has concluded in Sloan that GHS is not a “State agency” or instrumentality, but is instead a “political subdivision,” in this instance, a special purpose district. Thus, we advise that a court is most likely to conclude that the Legislative Audit Council lacks the requisite authority to audit GHS.

Conclusion

Based upon our Supreme Court’s extensive analysis in Sloan, therein concluding that GHS is a special purpose district, not a State agency or instrumentality, it is our opinion that the Audit Council’s authority to audit GHS is lacking. Thus, the Audit Council would not possess the authority to audit the GHS Office of Philanthropy and all other related departments or not-for-profit organizations substantially controlled by GHS engaged or assisting with fundraising or the solicitation of charitable donations for GHS projects.

Eric Douglass, General Counsel
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Sincerely,

A handwritten signature in blue ink, appearing to read "Robert D. Cook". The signature is fluid and cursive, with a large initial "R" and "C".

Robert D. Cook
Solicitor General