Opinion No. 2011-151

December 20, 2011

The Honorable Robert S. Moore, Jr.
State Representative
Post Office Box 446
Arkansas City, Arkansas 71630-0446

Dear Representative Moore:

You have asked for my opinion on whether a county can sell its interest in a hospital. Your question contains three distinct sub-questions, which I have enumerated in brackets:

> May a County [1] sell its interest in a hospital facility, which has been constructed or maintained in whole or part by taxes approved by the voters of the County, to a municipality located within the County, [2] for nominal consideration, [3] without seeking a vote of the electors of the County?

RESPONSE

In my opinion, the answer to each sub-question is "yes," pursuant to A.C.A. § 114-16-108.

DISCUSSION

Two statutes govern the sale of county-owned hospitals: A.C.A. § 14-16-108 and A.C.A. § 14-16-105(g). Because these two statutes provide contradictory rules for the sale of county-owned hospitals, we must determine which one governs your question. If two statutes apparently speak to the same subject matter and one is

more specific than the other, the more specific statute controls.[1] So we must determine which of the two foregoing statutes is more specific to your question. Section 14-16-105(g) deals with the sale of county hospitals in general. But section 14-16-108 deals with the sale of county hospitals *to municipalities*. Given that your question posits a sale *to a city*, section 14-16-108 controls.

In my opinion, section 14-16-108(a) answers each of your questions. As for your first sub-question, the answer is clearly "Yes, provided that the county-owned hospital has no outstanding bonded indebtedness":

> Any other law notwithstanding in this state…the county court of each county in the State of Arkansas shall have the right to sell or lease any county-owned hospital, where there is no outstanding bonded indebtedness….[2]

Your second question asks whether the sale can be for "nominal consideration." You have not defined what you mean by "nominal consideration." Because the modifier "nominal" typically approximates to some objective standard, I will assume that you are asking whether the quorum court can sell the county's ownership interest for something less than three-quarters of its fair market value.[3] The answer to that question is "yes," in my opinion.[4] According to subsection 14-16-108(a), the quorum court can agree to the sale "upon such terms and conditions as the [quorum] court may deem advisable for the best interests of the county…."

Your third question asks whether the voters must approve the proposed sale. Subsection 14-16-108(b), which explains how the sale is to be approved, indirectly indicates that the answer is "no":

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[1] *E.g.*, *Donoho v. Donoho*, 318 Ark. 637, 639, 887 S.W.2d 290, 291 (1994) ("[A] general statute does not apply when there is a specific statute covering a particular subject matter.").

[2] A.C.A. § 14-16-108(a) (Repl. 1998).

[3] This standard (i.e., three-quarters of the fair market value) derives from A.C.A. § 14-16-105(e)(1)(B) (Supp. 2011). I take it that your question about nominal consideration is posed from the perspective of not being sure whether subsection 105 applies (in which case "nominal consideration" would be insufficient) or whether subsection 108 applies (in which case the sale price can be less than what is mentioned in subsection 105).

[4] My predecessor reached the same conclusion. *See* Op. Att'y Gen. No. 96-126.

> (b)(1) Before any such sale or lease shall be entered into, the proposition shall be submitted to the county quorum county quorum court for approval or rejection.
>
> (2) If a majority of the county quorum court voting thereon approves it, then the county [quorum] court is authorized to execute other instruments that may be necessary to facilitate the sale or lease.

This subsection clearly indicates that if a majority of the members of the quorum court approve the sale, then the quorum court is authorized to execute the instruments required to complete the sale. Based on the interpretive principle of *expressio unius*, it is my opinion that this provision is properly interpreted as indirectly indicating that no vote is required.[5]

Assistant Attorney General Ryan Owsley prepared this opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

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[5] The Arkansas Supreme Court has explained that, under the principle for interpreting statutes called *expressio unius est exclusio alterius*, "the express designation of one thing may properly be construed to mean the exclusion of another." *MacSteel Div. of Quanex v. Arkansas Oklahoma Gas Corp.*, 363 Ark. 22, 31, 210 S.W.3d 878, 883 (2005). Here, it seems reasonable to infer from the expression of a procedure for the quorum court's voting on and approving the sale that the matter need not be referred to the people for a vote.