



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-136

February 19, 2016

The Honorable Chris Richey
State Representative
P. O. Box 2356
West Helena, AR 72390-0356

Dear Representative Richey:

This is in response to your request for my opinion concerning the distribution of surplus revenue from a hospital tax. As background for your question, you state:

On November 7, 1944, the electors of Phillips County voted a one-mill tax on the assessed valuation of real and personal property for the purpose of "... operating, maintaining, and supporting the Helena Public Hospital." [Exhibit omitted.] This county hospital tax was levied, until November 3, 2005, pursuant to Amendment 32 to the Constitution of the State of Arkansas.

The public hospital for which the tax was levied is owned by the City of Helena-West Helena. Initially, the public hospital was leased to a benevolent association, Helena Hospital Association. Currently, the hospital is leased by the City of Helena-West Helena to a private, for profit corporation, Phillips Hospital Corporation D/B/A Helena Regional Medical Center....

The other material submitted with your correspondence further indicates that the hospital tax levy was suspended in 2005 because the hospital was leased to and operated by a private, for-profit corporation (the Phillips Hospital Corporation); and there remains \$315,440.84, in what is referred to as "surplus hospital taxes."

With this background in mind, you ask "[w]hether the \$315,440.84 collected pursuant to a one-mill tax for hospital operation must be given to the Helena

Health Foundation, a 501(c)(3) nonprofit corporation?” You state as follows regarding this Foundation:

The Helena Health Foundation formerly operated the city’s public hospital under the non-profit name of “Helena Hospital Association.” “The mission of the Helena Health Foundation is to support and improve the public well-being and quality of life in Phillips County, especially in health care matters.”

RESPONSE

Your question raises factual issues that preclude me from offering a conclusive opinion. I lack both the resources and the authority to act as a factfinder. My opinion must therefore be limited to a general discussion of pertinent state law bearing on a property tax levied for the support of a public hospital.

DISCUSSION

Amendment 32 to the Arkansas Constitution authorizes county voters to approve an ad valorem property tax of up to one mill “for the purpose of maintaining, operating and supporting” a “public hospital owned by [a] county or by any municipal corporation.”¹ Of particular relevance to your question, the tax may be levied regardless of whether the hospital is operated by the county or municipality or by a “benevolent association as agent or lessee” of the county or municipality:

Whenever in any county where there is located a public hospital owned by such county or by any municipal corporation therein, *whether such hospital be operated by such county or municipal corporation or by a benevolent association as the agent or lessee of such county or municipal corporation*, one hundred or more electors of such county shall file a petition with the county judge asking that an annual tax on real and personal property in such county be levied for the purpose of maintaining, operating and supporting such hospital and shall specify a rate of taxation not exceeding one mill on the dollar of the assessed value of real and personal property in the county.²

¹ Ark. Const. amend. 32, § 1.

² *Id.* (emphasis added).

Amendment 32 further provides that the tax proceeds shall be paid to the “treasurer of such hospital”:

The proceeds of any tax so voted shall upon the settlement of the collecting officer be *paid by the treasurer of the county to the treasurer of such hospital* to be used by such treasurer in the maintenance, operation and support of such institution....³

Because Amendment 32 plainly contemplates that a public hospital might be operated by a “benevolent association” under an agency or lease arrangement with a county or municipal corporation, it is clear that in the case of such an arrangement, the “treasurer of such hospital,” as used in the above-quoted portion of the Amendment, refers to the treasurer of the benevolent association.

In the case of the Helena Public Hospital at issue, the background information you have supplied indicates that the hospital was in fact operated at one time by such a “benevolent association”—known as the Helena Hospital Association (“Association”)—under a lease agreement with the City of Helena-West Helena. It further appears, however, that the lease was assigned at some point to a private, for-profit entity (“Phillips Hospital Corporation”), and the tax was thereafter suspended.⁴ I have no specific information regarding the collection of the tax revenue in question, but I gather these collections (which are referred to as “surplus hospital taxes” in the material attached to your request for my opinion) were made some time after the lease assignment and prior to the tax’s suspension.

Your question concerns the disposition of such “surplus” hospital taxes, and specifically whether it “must be given to the Helena Health Foundation.” As noted above, and as you have stated, the Foundation’s mission is to support and improve health care in Phillips County. But that does not bear on the proper

³ *Id.*, amend. 32, § 2 (emphasis added).

⁴ You have not stated why the tax was suspended, but it may have been in recognition of Article 12, section 5 of the Arkansas Constitution, which prohibits a county or city from contributing to a private corporation. Article 12, section 5 states that “[n]o county, city, town or other municipal corporation, shall become a stockholder in any company, association, or corporation; or obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual.” The hospital tax authorized by Amendment 32 is an exception to this proscription, but only in the case of a public hospital operated by a “benevolent association,” which would exclude a for-profit entity.

disposition of the hospital tax “surplus” at issue. You also state that the Foundation “formerly operated” the Helena Public Hospital. The Foundation’s former operation of the hospital is certainly potentially relevant to the disposition of the hospital tax “surplus.” But simply knowing that the Foundation operated the hospital at one time is not a sufficient basis to conclude that proceeds from a hospital tax levied under Amendment 31 must go to the Foundation.

I believe it would also have to be established that the former operation by the Foundation occurred during the time the hospital tax revenues at issue were collected. According to Amendment 32, the tax authorized therein may be dedicated to the operation of a municipal hospital “*whether such hospital be operated by such ... municipal corporation or by a benevolent association as the agent or lessee of such ... municipal corporation....*” Amendment 32 further provides that the tax proceeds are to be paid “to the treasurer of such hospital *to be used ... in the [hospital’s] maintenance, operation and support.*” The purpose of the hospital tax is thus clear: it funds the hospital’s operations on an ongoing basis, whether the operator is the city or a benevolent association as the city’s agent or lessee. The benevolent association’s receipt of the tax is thus plainly premised upon the association’s operation of the hospital when the tax is collected.

I cannot opine further regarding the proper disposition of the particular hospital tax revenues in question. There may be other additional factors outside those set out in your request for my opinion that bear on this matter. While I am consequently unable to provide a definitive answer to your question, the foregoing will hopefully be of assistance in framing the necessary legal and factual review.

Sincerely,

A handwritten signature in black ink, appearing to be 'LR', with a large, sweeping flourish underneath.

LESLIE RUTLEDGE
Attorney General