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April 11, 2013
OPINION 13-0034

62-B LEGISLATURE – Acts & Bills

La. R.S. 17:1519, *et seq.*

La. R.S. 17:3351

La. R.S. 24:177(C)

La. R.S. 39:366.11

La.C.C. art. 2

Honorable Jared Brossett
State Representative-District 97
6305 Elysian Fields Avenue, Ste. 404-C
New Orleans, Louisiana 70122

Pursuant to La. R.S. 17:1519, *et seq.*, as amended, legislative approval is not required in order for the Louisiana State University Board of Supervisors ("Board") to lease an entire state public hospital facility under its control and management. However, notwithstanding such a lease, the Board is still required to perform all of its statutorily required duties and responsibilities for and on behalf of these state public hospital facilities.

Dear Representative Brossett:

Our office has received your opinion request regarding the authority of the Louisiana State University Board of Supervisors ("Board") to enter into partnerships or contractual agreements with private entities. Specifically, you have asked whether legislative approval is required before the Board, the Louisiana Department of Health and Hospitals ("DHH"), and/or the Governor may enter into public/private partnerships or contractual agreements (leases) with private entities for the management and operation of certain state public hospital facilities.

Prior to 1997, the ownership, management and operation of certain state public hospitals were vested in DHH. However, Act 3 of the 1997 Legislative Session transferred responsibility for these state public hospitals from DHH to the Board. In that statutory transfer the Board was tasked with the ownership, management and operation of the following hospitals: Medical Center of Louisiana at New Orleans, Earl K. Long Medical Center in Baton Rouge, University Medical Center in Lafayette, Leonard J. Chabert Medical Center in Houma, Lallie Kemp Regional Medical Center in Independence, Bogalusa Medical Center in Bogalusa, W.O. Moss Regional Medical Center in Lake Charles, University Hospital Shreveport, E.A. Conway Medical Center in Monroe, and Huey P. Long Medical Center in Pineville.¹

In 1997, the powers of the Board regarding the above mentioned hospitals included the following:

- A. The board shall have the following general powers and duties, any or all of which it may delegate to the medical center or the division:

....

(3) To hold title to immovable and movable property, to acquire such property through purchase, gift, lease, construction or otherwise and to dispose of such property by sale or lease in accordance with the general laws of the state. However, the sale of any immovable property on which a hospital is located, the lease of an entire hospital facility to any entity other than another state agency, or the sale of an entire hospital facility shall be subject to approval by the legislature.

La. R.S. 17:1519.3(A)(3)(1997) (emphasis added).

As stated above, the powers of the Board contained a specific limitation that the Board did not have the authority to lease an entire hospital facility to any entity other than another state agency without approval of the legislature.

In 2003, Act 906 of the 2003 Louisiana Legislative Session amended the statutes which described and set forth the powers and duties of the Board, including those powers relating to the operation and control of the enumerated state hospitals.² After 2003, the powers of the Board, as set forth in La. R.S. 17:1519.5, provide as follows:

A. The board as a body corporate shall have authority to exercise all power to direct, control, supervise, and manage the division and the hospitals, including without limitation each of the powers set forth in this Section.

(1) Each such power shall be construed as in addition to and not in limitation of the powers inherent in the board and those set forth elsewhere in this Subpart.

...

B. With respect to its operation of the division and the hospitals, the board shall have and may exercise all of the powers otherwise vested in it. Its powers shall include without limitation the power and right:

...

(5) To enter into such contracts and agreements with any state or federal agency or instrumentality or any other public or private party as may be necessary to procure aid, grants or other funding to assist the division and the hospitals in carrying out the purposes of this Subpart.

...

(10) To perform any other acts necessary or appropriate for the carrying out of the objects and purposes of this Subpart.

...

E. Nothing in this Subpart shall restrict the authority inherent in the board or otherwise conveyed to it by law.

La. R.S.17:1519.5.

² Specifically as it relates to this opinion, La. R.S. 17:1519.3 was amended and re-enacted as La. R.S. 17:1519.5.

As this issue deals with statutory interpretation, we begin our analysis with La.C.C. art. 2, which provides that legislation is the solemn expression of legislative will and Legislators are presumed to have acted deliberately and with the knowledge of all laws and jurisprudence related to that same matter.³ Additionally, it is presumed the legislature's actions were undertaken with the knowledge of the principles of statutory construction and the knowledge of the effect of legislative action.⁴

Prior to 2003, La. R.S. 17:1519.3 (now La. R.S. 17:1519.5) required the Board to obtain the approval of the legislature to lease an entire hospital facility. In 2003, the Louisiana Legislature amended La. R.S. 17:1519.3 and in doing so specifically removed that requirement. Such an explicit removal presumes the legislature intended to change the law.⁵ Therefore, the legislature's intentional removal of the requirement for legislative approval to lease an entire hospital facility amounts to a clear indication that the legislature intended to permit such a lease without their approval.

The Louisiana First Circuit Court of Appeals recently analyzed a similar explicit statutory language removal in *Texans Credit Union v. Louisiana Dept. of Agriculture & Forestry*, 2010-1476 (La.App. 1 Cir. 5/3/11), 64 So.3d 869, 873, writ denied, 2011-1482 (La. 10/14/11), 74 So.3d 215. At issue in *Texans Credit Union*, was the legislature's elimination of the requirement for State Bond Commission approval for loan guarantees made by the Department of Agriculture, a change in the law analogous to the removal of legislature approval for the lease of an entire hospital facility that was conferred by Act 906 of 2003.⁶

In *Texans Credit Union*, the Department of Agriculture, through the State Market Commission ("Commission"), executed a loan guarantee relating to its statutory authority in La. R.S. 3:446.1.⁷ The Commission was specifically authorized to "participate in loans and loan guarantees to private business enterprises." La. R.S. 3:446.3(E). Pursuant to this authority, the Commission guaranteed a loan that Louisiana State Cypress, L.L.C. owed to Texans Credit Union. When Louisiana State Cypress, L.L.C. defaulted on the loan the Department of Agriculture was sued by Texans Credit Union. The Department argued that the loan guarantee was unenforceable based on the failure to obtain State Bond Commission approval. However, this assertion was rejected by the Court, which noted that while the initial legislative grant of authority to the Department expressly required State Bond Commission approval for any such loan guarantee that requirement was eliminated by

³ *ABL Mgmt., Inc. v. Bd. of Sup'rs of S. Univ.*, 2000-0798 (La. 11/28/00), 773 So.2d 131, 135.

⁴ *Borel v. Young*, 2007-0419 (La. 11/27/07), 989 So.2d 42, 48.

⁵ La. R.S. 24:177(C); *Brown v. Texas-LA Cartage, Inc.*, 1998-1063 (La. 12/1/98), 721 So.2d 885, 889; *Texans Credit Union v. Louisiana Dept. of Agriculture & Forestry*, 2010-1476 (La.App. 1 Cir. 5/3/11), 64 So.3d 869, 873, writ denied, 2011-1482 (La. 10/14/11), 74 So.3d 215.

⁶ *Id.*

⁷ La. R.S. 3:446.1 has since been repealed but was good law in 2011.

the legislature in 1978.⁸ According to the First Circuit, the explicit removal of the requirement to get State Bond Commission approval within the law indicated the legislature's intent to change the law.⁹

Further, under the doctrine of *Expressio Unius est Exclusio Alterius*, when the Legislature creates a specific list of powers, duties, authority, etc., the omission of an item that could have been included is considered an intentional exclusion.¹⁰ In 2003, when the Legislature amended these statutes, it listed out specific instances that required the Board to seek legislative approval prior to undertaking. Specifically, after 2003 La. R.S. 17:1519.3(B) and (C) require legislative approval for the closure of a hospital, an emergency room, and the reduction of services by more than fifteen percent. The failure of the 2003 amendment to include the leasing of an entire hospital facility as one of the actions requiring legislative approval clearly evidences an intentional exclusion by the Legislature for such approval.

We also note that, in addition to the powers granted to the Board under La. R.S. 17:1519 *et seq.*, the Board also has the general authority to enter into lease agreements. La. R.S. 17:3351(A)(8) grants the Board the general power to "[l]ease land or other property belonging to it or to any college or university within its system, in accordance with law."

In conclusion, it is the opinion of this office that legislative approval is not required in order for the LSU Board of Supervisors to lease an entire hospital facility under its management and control. It is the further opinion of this office that any such hospital lease must include a provision that assures that the leased facilities continue to provide the same level of health care services at these hospitals as required by current law as well as provide assurance that any such lease agreement must be executed in accordance with the law regarding the operation and management of these public hospital facilities.¹¹

While this opinion does not address the specific terms of any proposed lease agreement or cooperative endeavor agreement to be executed in connection with the transfer and/or lease of these hospitals, we note that any proposed cooperative

⁸ *Texans Credit Union*, 64 So.3d at 873 (discussing the elimination of this requirement in Act 1978, No. 242, § 1).

⁹ *Id.*

¹⁰ *Int'l Paper Co., Inc. v. Hilton*, 2007-0290 (La. 10/16/07), 966 So.2d 545, 559 (citing *Filson v. Windsor Court Hotel*, 2004-2893, p. 6 (La. 6/29/05), 907 So.2d 723, 728 (citing *State Through Dep't of Public Safety & Corrs., Office of State Police, Riverboat Gaming Div. v. Louisiana Riverboat Gaming Comm'n & Horseshoe Entm't*, 1994-1872 (La. 5/22/95), 655 So.2d 292, 302 (citing *State ex rel. Fitzpatrick v. Grace*, 187 La. 1028, 175 So. 656 (1936))).

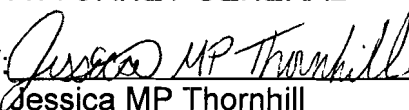
¹¹ Louisiana Revised Statute Title 17, Chapter 4, Part II, Subpart C-2, titled the Louisiana State University Health Care Services Division Act (La. R.S. 17:1519.1-17:1519.18) details the specific statutory requirements that exist for the operation and management of the above mentioned public hospital facilities. Such a lease agreement must be in accordance with the Louisiana Constitution and the general lease laws of the state.

endeavor agreement to be executed in connection with the lease may be subject to the provisions of La. R.S. 39:366.11, which require presentment of the agreement to the Joint Legislative Budget Committee who may conduct a hearing on the agreement.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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