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State of Louisiana
DEPARTMENT OF JUSTICE
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August 9, 2013
OPINION 13-0043

Honorable Herbert B. Dixon
State Representative, District 26
804 Broadway Avenue
Alexandria, LA 71302

90 – B – 4 – PUBLIC MEETINGS – State & Local Governing
Bodies

La. R.S. 42:11 *et seq.*

The Rapides Primary Health Care Center, Inc., a federally
qualified health care center and nonprofit corporation, is not
required to comply with the Open Meetings Law.

Dear Representative Dixon:

Our office received an opinion request from you concerning the applicability of the Open Meetings Law, La. R.S. 42:11 *et seq.*, to the Rapides Primary Health Care Center, Inc. ("Health Care Center"), a non-profit corporation and a federally qualified community health care center that provides health care to area residents, particularly those who are economically disadvantaged. From facts available in the 2012 report submitted to the Louisiana Legislative Auditor, we note that the Health Care Center was incorporated on May 19, 1992 and organized to provide efficient and effective health care meeting the medical needs of the community it serves, which is Central Louisiana.¹ Further, we understand that operations for the Health Care Center are funded through restricted grants from the U.S. Department of Health and Human Services, and other grants and contracts are received from state and local government agencies.²

The Louisiana Constitution protects the right to observe the deliberations of public bodies, except in cases established by law. La. Const. art. XII, §3. The public policy behind requiring open meetings for public bodies is described in La. R.S. 42:12(A), which provides:

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of this Chapter shall be construed liberally.

Consistent with this statement, La. R.S. 42:14(A) requires that every meeting of a public body shall be open to the public unless closed pursuant to exceptions provided for within the Open Meetings Law. A "public body" for the purposes of the Open Meetings Law means:

¹[http://app1.la.state.la.us/PublicReports.nsf/3E6AED96A674972286257AA0006EEFAC/\\$FILE/0002D32A.pdf](http://app1.la.state.la.us/PublicReports.nsf/3E6AED96A674972286257AA0006EEFAC/$FILE/0002D32A.pdf). Accessed on July 17, 2013.

² *Id.*

village, town, and city governing authorities; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies enumerated in this paragraph.

As represented in your opinion request, the Health Care Center is a non-profit corporation. As an initial matter, it is clear that it is not a public entity, but rather a private entity. The Louisiana Supreme Court has held that in order for an entity to be considered public, the following four factors must be considered: (1) whether the entity was created by the legislature; (2) whether its powers were specifically defined by the legislature; (3) whether the property of the entity belongs to the public; and (4) whether the entity's functions are exclusively of a public character and performed solely for public benefit.³ Further, all four factors must be present in order for a court to determine that an entity is public.⁴ The Health Care Center is not an entity created by the legislature, and its powers are not specifically defined by the legislature. If an entity fails to meet the criteria of even one factor, it is not a public entity. Therefore, the Health Care Center is not public.

Jurisprudence has made it clear that the mere fact that an entity is a private non-profit does not mean that it can never be a public body for purposes of the Open Meetings Law, nor does the fact that an entity receives public money mean that it is a public body for purposes of the Open Meetings Law:

The legislative history surrounding the definition of the term "public body" and the jurisprudence construing that term establish that the fact an entity is set up as a private non-profit corporation is not dispositive of the question of whether it is a public body for the purpose of the Open Meetings Law. Moreover, the mere fact that an entity receives public money does not make it a public body for the purpose of the Open Meetings Law. Rather, there are a number of factors that must be considered in determining whether an entity is subject to the Open Meetings Law. Four factors courts have looked at in making this determination are: (1) whether the entity performs a government function or performs a function which, by law, is entrusted to other public bodies; (2) whether the entity is funded by public money; (3) whether the entity exercises policy-making, advisory, and administrative functions; and (4) whether there is a connexity between the functions of the entity and the functions of a particular "public body" identified in La. R.S. 42:13(A)(2).

³ *State v. Smith*, 357 So.2d 505, 507-08 (La.1978).

⁴ *Property Insurance Association of Louisiana v. Theriot*, 09-1152 (La.3/16/10), 31 So.3d 1012, 1015.

Wayne v. Capital Area Legal Servs. Corp., 2011-1988 (La.App. 1 Cir. 9/26/12)(unpublished), 108 So. 3d 103, 114-15 writ denied, 2012-2343 (La.4/5/13), 110 So. 3d 1072.⁵

After the above-cited case was decided by the First Circuit Court of Appeals, the Louisiana Supreme Court decided *Louisiana High School Athletics Ass'n v. State*.⁶ This case considered the nature of the Louisiana High School Athletics Association ("LHSAA") and concluded this entity is not a "quasi-public agency or body" as defined by La. R.S. 24:513(A).⁷ LHSAA is a non-profit corporation, organized by a group of principals to promote and regulate interscholastic athletic competition.

In considering whether LHSAA falls within the definition of "public body" provided by La. R.S. 42:13, the court reconsidered a previous decision regarding LHSAA,⁸ wherein LHSAA was determined to be a public body under La. R.S. 42:13, reasoning that LHSAA constitutes a "committee or subcommittee" of BESE or parish school boards due the "connexity between the regulatory functions of the LHSAA and the regulatory functions of a particular 'public body' found in R.S. 42:4.2(A)(2)."⁹ LHSAA, 107 So.3d at 606, citing *Spain*, 398 So.2d at 1390. Finding that the "connexity" factor is absent from the statutory definition of a "public body," LHSAA overruled the decision in *Spain* and concluded that LHSAA is not a "public body" as defined by La. R.S. 42:13. The decision went on to conclude that LHSAA cannot be considered a "quasi public agency or body" as defined by La. R.S. 24:513(A)(1)(b)(v). *Id.* at 607.

Since LHSAA determined the "connexity" factor is not one which should be considered in whether or not an entity is a "public body" under La. R.S. 42:13, we are left with three remaining factors to consider: (1) whether the entity performs a government function or performs a function which, by law, is entrusted to other public bodies; (2) whether the entity is funded by public money; and (3) whether the entity exercises policy-making, advisory, and administrative functions.

⁵ We note that the First Circuit remanded this case to the district court for an evidentiary hearing on the issue of whether Capital Area Legal Services Corporation ("CALSC") is a public body for the purpose of the Open Meetings Law. This hearing was held on June 27, 2013, and the district court determined that CALSC is not a public body.

⁶ 2012-1471 (La. 1/29/13), 107 So.3d 583.

⁷ The relevance of this case to the instant opinion request is derived from the court's analysis of whether the LHSAA is subject to audit pursuant to La. R.S. 24:513(A)(1)(b)(v) which describes a quasi-public agency or body as "[a]ny organization, either not-for-profit or for profit, which is subject to the open meetings law and derives a portion of its income from payments received from any public agency or body." The Court determined LHSAA was not a quasi-public body after reaching the conclusion that it was not required to comply with the Open Meetings Law.

⁸ *Spain v LHSAA*, 398 So.2d 1386 (La.1981).

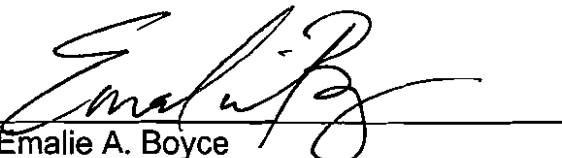
⁹ La. R.S. 42:4.2 was redesignated as La. R.S. 42:13 by Act No. 861 of the 2010 Louisiana Legislative Session.

Your request indicates that Health Care Center provides health care to area residents, particularly those who are economically disadvantaged. While this entity performs services that governmental entities also provide by law, we understand that the Health Care Center performs these services in addition to governmental entities which make such services available to individuals in the same area. There is no evidence that suggests the Health Care Center has been designated or funded as an agency by any local entity to perform services which, by law, are entrusted to a public body. Further, there is no evidence that suggests Health Care Center exercises policy-making, advisory or administrative functions. Thus, it is the opinion of this office that the Health Care Center is not a "public body" for purposes of the Open Meetings Law, and thus, is not required to comply with the Open Meetings Law.

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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