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DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
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OPINION 15-0046

Mr. Clifton Speed
Assistant District Attorney
21st Judicial District
P.O. Drawer 787
Greensburg, LA 70441

50 Hospitals
90 – A Political Subdivisions

La R.S. 12:1-302
La. R.S. 46:1051 *et seq.*

A board of commissioners of a hospital service district does not have the authority to increase the number of commissioners by adding an ex officio board member.

Dear Mr. Speed,

You have requested this opinion on behalf of the Tangipahoa Parish Council to determine if the Board of Commissioners of the Hospital Service District Number One ("Board") may appoint an ex-officio board member with no voting power on its own authority. The Board has proposed adding an ex-officio board member with no voting power. You indicate that the Tangipahoa Parish Council maintains that the Board lacks the authority to add an additional board member.

Hospital service districts are created by local governments pursuant to La. R.S. 46:1051, which states, in pertinent part:

A. The police juries of parishes are authorized and empowered, upon their own initiative, to form and create one or more hospital service districts within the respective parishes, or with agreement among police juries concerned, to combine two or more parishes into a single hospital service district with such names as the police juries may designate, and, in so doing, police juries may create hospital service districts whose boundaries overlap those of other hospital service districts.

The number of commissioners for such a hospital service district is set forth in La. R.S. 46:1053, which provides, in pertinent part:

A. Any hospital service district formed or created under the provisions of this Chapter shall be governed by a *board of five commissioners*, hereafter referred to as commission, who shall be qualified voters and residents of the district. The commission shall be appointed *by the police jury of the parish* (emphasis added).

Based on a review of La. R.S. 46:1053, the number of commissioners is set at five, who are appointed by the police jury. The rules of statutory construction dictate that the use of the word "shall" in La. R.S. 46:1053(A) is mandatory.¹ There is no provision of law that gives the Board the authority to appoint additional commissioners or members, regardless of the Board's intent to call such person an ex officio member.²

Our office has more specifically addressed the appointment of additional commissioners to hospital service districts in La. Atty. Gen. Op. No. 96-105. There, the Ascension Parish Council wanted to change the number of commissioners of the hospital service district from five to seven, considering its status as a Home Rule Charter Parish. Our office concluded that the council lacked the authority to do so, reasoning that such action was denied by general law. *Id.*

This opinion was preceded by La. Atty. Gen. Op. No. 78-1098, wherein our office concluded that the West Feliciana Police Jury could not increase its hospital service district's board of commissioners from five to seven.³

Based on our review of the law, jurisprudence, and past opinions of our office, neither the parish governing authority nor the Board has the authority to appoint an ex officio member to the hospital service district board.

The Board disagrees with this restriction on their authority. The Board, in citing to La. R.S. 46:1060, maintains it has the same authority as any other private corporation in the state. La. R.S. 46:1060 provides:

Any hospital service district thus created and named by any police jury of any parish in the state shall constitute a body corporate in law with all the powers of a corporation, shall have perpetual existence, shall have the power and right to incur debts and contract obligations, to sue and be sued, and to do and perform any and all acts in its corporate capacity and its corporate name necessary and proper for the carrying out of the objects and purposes for which the hospital service district was created.

In citing to this statute, the Board asserts that it has the authority to add ex officio commissioners by adding appropriate governing provisions in the by-laws of the hospital service district.

While La. R.S. 46:1060 places hospital service districts in the category of corporations, it does not give the districts unlimited power. La. R.S. 12:1-302 provides for the powers and duties of corporations. In particular, La. R.S. 12:1-302 (3) states that every corporation has the power to, "[m]ake and amend bylaws, *not inconsistent with its*

¹ La. R.S. 1:3.

² See, for example, La. R.S. 11:1162, La. R.S. 24:202, and La. R.S. 33:123, where the legislature has specifically authorized ex officio members on boards or commissions.

³ La. Atty. Gen. Op. No. 78-1098.

articles of incorporation or with *the laws of this state*, for managing the business and regulating the affairs of the corporation."⁴ (emphasis added).

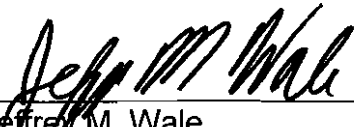
It is clear that corporations are subject to Louisiana law. The Board must also follow state law, which requires the police jury of the parish to appoint the board of commissioners and limits the number of commissioners to five.

It is therefore the opinion of our office that the Board of the hospital service district may not appoint ex officio commissioners on its own authority. Rather, the number of members is established by state law. Further, the appointment of commissioners falls to the local police jury or proper parish governing authority, which is restricted by law as to the number of commissioners which can be appointed.⁵

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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ATTORNEY GENERAL

BY: 
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JDC: JMW

⁴ La. R.S. 12:1-302.

⁵ *Id.*