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Hospitals – Health Care Authorities – Open Meetings Act of 2005 – Exemptions – Calhoun County

The “power and authority” granted to public hospital corporations by section 22-21-5 of the Code of Alabama does not include the privilege to meet without compliance with the Open Meetings Act. The Regional Medical Center Board is not exempt from the Open Meetings Act.

Dear Mr. Downey:

This opinion of the Attorney General is issued in response to your request on behalf of the Anniston City Council.

QUESTION

Is the Regional Medical Center Board a governmental body that must comply with the provisions of the Alabama Open Meetings Act?

FACTS AND ANALYSIS

On May 7, 1974, the City of Anniston (“City”) enacted Ordinance 74-O-13, which created the Regional Medical Center Board (“RMCB”). In accordance with the ordinance, the RMCB consists of fifteen members comprised as follows: seven members appointed by the City, two members appointed by the governing body of Calhoun County, two members appointed by the City of

Oxford, two members appointed by the City of Jacksonville, a physician elected annually by the medical staff of the Regional Medical Center, and the chief of the medical staff of Regional Medical Center.

A disagreement has arisen between the City and RMCB over the obligation, if any, of the RMCB to comply with the Alabama Open Meetings Act (“OMA”), which is codified in sections 36-25A-1 through 36-25A-11 of the Code of Alabama. The City and RMCB agree that RMCB is a public corporation pursuant to section 22-21-5 of the Code, but disagree as to whether such an entity must comply with the OMA.

Section 36-25A-2 of the Code defines a “governmental body,” for purposes of the OMA, as follows:

All boards, bodies, and commissions of the executive and legislative departments of the state or its political subdivisions or municipalities which expend or appropriate public funds; all multimember governing bodies of departments, agencies, institutions, and instrumentalities of the executive and legislative departments of the state or its political subdivisions or municipalities, including, without limitation, all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by the state or its political subdivisions, counties, or municipalities; and all quasi-judicial bodies of the executive and legislative departments of the state and all standing, special, or advisory committees or subcommittees of, or appointed by, the body.

ALA. CODE § 36-25A-2(4) (2013) (emphasis added). “Except for executive sessions, . . . or as otherwise *expressly provided by other federal or state statutes*, all meetings of a governmental body shall be open to the public” ALA. CODE § 36-25A-1(a) (2013) (emphasis added). Provisions of the OMA must be liberally construed to accomplish its purpose. *Slagle v. Ross*, 125 So. 3d 117, 123 (Ala. 2012).

Because RMCB is comprised of a majority of members that are appointed by a county and municipalities, RMCB is a governmental body as defined by the OMA. Accordingly, unless RMCB is expressly covered by an exception from the OMA, the RMCB must comply with the OMA.

Section 22-21-5 of the Code contains no express exemption from the OMA. RMCB, however, contends that section 22-21-5 of the Code confers upon the RMCB all of the “power and authority of health care authorities,” and that because section 22-21-316(c) of the Code specifically exempts a health care authority from the OMA, then RMCB also enjoys the same exemption.

RMCB is correct that health care authorities incorporated under the provisions of sections 22-21-310 through 22-21-344 are exempt from the OMA. *See Tennessee Valley Printing Co., v. Health Care Auth. of Lauderdale Cnty.*, 61 So. 3d 1027 (Ala. 2010) (health care authorities are exempt from the Open Meetings Act, but not from the Open Records Act). Whether RMCB, a section 22-21-5 entity, also enjoys this exemption requires further analysis.

Section 22-21-5(b) of the Code states the following:

(b) The corporations provided for by this section shall have all the ***power and authority*** of health care authorities as provided for by Article 11 of this chapter; except, that such corporations shall not have or exercise any power which is inconsistent with or repugnant to the provisions of the ordinance or resolution under which it came into existence.

ALA. CODE § 22-21-5(b) (2006) (emphasis added).

Article 11 of Chapter 22 of the Code governs health care authorities. Thus, a public body organized pursuant to section 22-21-5 of the Code has the “power and authority of a health care authority” as set forth in sections 22-21-310 through 22-21-344 of the Code. As discussed below, however, this Office concludes that “power and authority,” as used in section 22-21-5, does not include the privilege to be exempt from OMA.

The term “power and authority” is not defined in section 22-21-5. When not otherwise defined, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000).

Black’s Law Dictionary offers the following definitions relating to “power”:

1. The ability to act or not act; esp., a person's capacity for acting in such a manner as to control someone else's

responses. 2. Dominance, control, or influence over another; control over one's subordinates. 3. The legal right or authorization to act or not act; a person's or organization's ability to alter, by an act of will, the rights, duties, liabilities, or other legal relations either of that person or of another.

BLACK'S LAW DICTIONARY 1358 (10th ed. 2014).

Similarly, "authority" is defined as follows:

1. The official right or permission to act, esp. to act legally on another's behalf; esp., the power of one person to affect another's legal relations by acts done in accordance with the other's manifestations of assent; the power delegated by a principal to an agent <authority to sign the contract. 2. The power a person has through an official position; governmental power or jurisdiction <within the court's authority.

Id. at 158.

"Privilege," on the other hand, is defined as follows:

1. A special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty. 2. A privilege grants someone the legal freedom to do or not to do a given act. 3. It immunizes conduct that, under ordinary circumstances, would subject the actor to liability.

Id. at 1390-91.

Section 22-21-341 of the Code sets forth the procedure for a public hospital corporation, such as the RMCB, to be reincorporated and thus avail itself of "all rights, powers and *privileges* . . ." of a health care authority. ALA. CODE § 22-21-341 (2006) (emphasis added). In doing so, this section recognizes that there is a distinction between "rights, powers and privileges." Thus, although RMCB has the power and authority of a health care authority, it does not have the privileges of a health care authority unless it reincorporates as a health care authority pursuant to section 22-21-341 of the Code. To conclude otherwise would deprive section 22-21-341 of any field of operation. Opinion

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to Honorable Allen C. Jones, Attorney, Edge Regional Medical Center, dated July 31, 1991, A.G. No. 91-00344 at 3.

We also note that the "powers" of a health care authority are set forth in section 22-21-318 of the Code. ALA. CODE § 22-21-318 (2006). This section does not include an exemption from OMA. Rather, the exemption of a health care authority from the obligation to comply with OMA appears in section 22-21-316 of the Code, which relates to the organization, composition, and meetings of the board of directors. ALA. CODE § 22-21-316 (2006).

CONCLUSION

The "power and authority" granted to public hospital corporations by section 22-21-5 of the Code of Alabama does not include the privilege to meet without compliance with the Open Meetings Act. The Regional Medical Center Board is not exempt from the Open Meetings Act.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:



BRENDA F. SMITH

Chief, Opinions Division

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