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PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION NO. 73-16 (R-56)

REQUESTED BY: THE HONORABLE SCOTT ALEXANDER
Arizona State Senator

- QUESTIONS:
1. Can the term "project" include the construction and operation of a hospital by a corporation organized for that purpose pursuant to the provisions of Title 9, Chapter 11, Arizona Revised Statutes, entitled "Industrial Development Plans for Municipalities and Counties" (the "Act")?
 2. If so, may a corporation which constructs and operates a hospital issue bonds, the income from which is tax exempt under the authority of Title 9, Chapter 11?

- ANSWERS:
1. No.
 2. Not answered.

In answer to Question 1, it is our opinion that the term "project" as defined in the Act does not include either the construction or the operation of a hospital by a corporation organized as an authority pursuant to the provisions of the Act.

The term "project" is defined in A.R.S. § 9-1151.4, as follows:

"Project" means any land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment whether or not now in existence or under construction, which shall be suitable for any or all of the following:

- (a) Any enterprise for the manufacturing, processing or assembling of any agricultural or manufactured products.

(b) Any commercial enterprise for the storing, warehousing, distributing or selling of products of agriculture, mining or industry, but not including enterprises designed for the sale or distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities, nor public service corporations.

If a hospital comes within this definition, it would have to come within the language of subparagraph (b). However, under subparagraph (b), the project has to be for the warehousing, distributing or selling of products of agriculture, mining or industry. Thus, the emphasis is on sale, distribution, storage and warehousing of commodities.

A hospital operation is primarily a service industry. Any selling of commodities is clearly wholly incidental to the service aspects of the hospital's operation. Thus, it does not seem to us that the construction of hospital facilities can reasonably be deemed to be included within the enumerated projects which may be undertaken pursuant to the Act. This conclusion is reinforced by the expression of legislative intent reflected in Section 1, Chapter 204, Laws of 1968:

It is the intent of the legislature by the passage of this act to authorize the incorporation in the several municipalities and in the counties in this state of public corporations to acquire, own, construct, lease and dispose of properties and to the end that such corporations may be able to promote industry and develop trade by inducing manufacturing, industrial and commercial enterprises to locate in this state, and to further the use of this state's agricultural products and natural resources; and to vest such corporations with all powers that may be necessary to enable them to accomplish such purposes; and to further assure adequate job opportunities and an improved standard of living for the growing population of this state and for the increase of prosperity; and it is declared that such actions, efforts and public corporations be for a public purpose and are an essential governmental function. . . .

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The first question posed is really multiple. You have asked whether hospital facilities may be constructed and operated by a corporation organized as an authority pursuant to the provisions of the Act. The foregoing indicates our opinion that neither construction nor operation of hospital facilities may be undertaken by an authority under the Act. However, even if it is later held by a court that hospital facilities in fact may be constructed under the Act (that is, that hospital facilities do come within the definition of "project"), in no case might the authority operate a hospital once it is built. This is shown clearly by the legislative intent and by A.R.S. § 9-1156.B:

. . . It is not intended hereby that any such corporation shall itself be authorized to operate any such manufacturing, industrial or commercial enterprise. This chapter shall be liberally construed in conformity with intention herein expressed.

Laws 1968, Ch. 204, § 1.

The corporation shall not have the power to operate any project as a business other than as lessor or seller. . . .

A.R.S. § 9-1156.B.

Since Question 1 is answered in the negative, it follows that your second question must also be answered in the negative. As you can see from the above, the solution to the problems posed by the questions must be resolved legislatively.

Respectfully submitted,

Gary K. Nelson
by FS

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The Attorney General