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April 4, 1979

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ARIZONA ATTORNEY GENERAL**

The Honorable Diane B. McCarthy
Arizona State Representative
House Wing, State Capitol
Phoenix, Arizona 85007

Re: I79-095 (R79-048)

Dear Representative McCarthy:

This is in response to your letter of February 15, 1979, concerning applications for a certificate of need to construct a new health care institution. We have restated your question as follows:

May an applicant for a certificate of need to construct a new health care institution be required by the authorized local agency to designate the specific location at which the proposed institution will be constructed?

The statutory provision applicable to this issue is A.R.S. § 36-433.C which, in pertinent part, provides:

C. The department of health services shall issue regulations defining the form and content of the application and any supporting information to be required. Such regulations shall cover at least the following information to be included in the application pertaining to the proposed services or facilities:

* * *

3. What geographical areas and population groups will be served by the proposed services or facilities.

In accordance with this authority, the Department of Health Services has adopted A.C.R.R. R9-9-30 which, in pertinent part, provides:

The application for a certificate of need shall consist of a program narrative and a project resource report.

1. The program narrative shall include:

* * *

- c. The geographical areas and the population groups to be served by the proposed services or facilities, including designation of the planned location of the proposed services or facilities.

Although it is evident that the applicant is required by this regulation to designate the planned location of its proposed facility, it is open to question how specific such designation must be. We are informed that the Department of Health Services has recently interpreted this regulation by letter dated February 9, 1979, in which the Assistant Director, Division of Health Resources, administrator of the health planning, health care institution licensing and certificate of need programs, quoted R9-9-30.1.c, and said:

The Department intended, through the adoption of this regulation, that an applicant state the location of its proposed facility. If an application were evaluated without a designation of the planned location, we believe that the effectiveness of the health planning function would be weakened.

We do not believe, however, that each hospital applicant must state a specific street address. Other geographic designation may be used. For example, the applicant may designate the boundaries of a proposed tract of land by highway, legal description, radius to a certain point, or otherwise.

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Further, we believe the designation of a location should be based on the class of the proposed health care institution. For example, the geographic service area of a specialty hospital is broader than the service area of a general hospital; consequently, the specialty hospital applicant may be permitted to designate a more generalized location.

This interpretation is entirely consistent with the general dictionary meaning of the words found in the regulation and within the statutory power granted to the Department to determine the information to be included in the application. It is a basic tenet of administrative law that an administrative interpretation by the agency which adopted and administers a regulation should be given weight and, if the interpretation is reasonable and not inconsistent with the customary meaning of the words used, it should be followed. See City of Mesa v. Killingsworth, 96 Ariz. 290, 394 P.2d 410 (1964); Jenny Freight Lines v. Arizona Express, Inc., 89 Ariz. 343, 362 P.2d 664 (1961). Although this interpretation is of recent vintage, we see no reason to take exception to it.

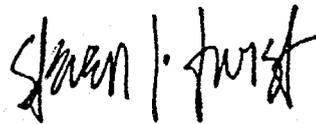
The principal certificate of need related functions of the health systems agencies are to adopt a local health plan, conduct public hearings and render findings thereon to the Director. In so doing, the agencies administer applicable provisions of the state and federal laws and regulations. They may organize the manner in which they conduct their affairs, just as any other corporate entity, provided the result is not inconsistent with applicable state and federal laws or regulations. See American Medical International v. State Health Planning Advisory Council and Health Systems Agency of Southeastern Arizona, Inc., No. 165724, Slip opinion at 17, Pima County Superior Court (Feb. 1, 1979).

Thus the authorized local agencies (health systems agencies) cannot require an applicant for a certificate of need to designate the location of the proposed facility with any greater specificity than required by the State. There may be situations, however, in which the authorized local agency might require an applicant to clarify its application by being more specific in its designation of the location of its proposed facility. For example, if the designation given in the application would enable the applicant to locate in either of one or more planning regions, as reflected in the applicable local health plan and the need for the services or facilities proposed by the applicant differed in those regions, the health systems agency could require the applicant to further designate the region in which it planned to locate its proposed services or facilities.

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Accordingly, it is our opinion that an applicant for a certificate of need to establish a new health care institution may not be required by a health systems agency to designate the planned location of the proposed service or with any greater specificity than that required by A.R.S. § 36-433.C.3, A.C.R.R. R9-9-30 adopted pursuant thereto and as interpreted by the Department of Health Services facility. A designation is sufficient if it is precise enough to allow the health systems agency to determine that the proposed service or facility will be conveniently located for the population proposed to be served and otherwise to fully perform its functions and can be described in the various ways set forth in the Assistant Director of the Division of Health Resource's letter.

Sincerely,



STEVEN J. TWIST
Chief Assistant
Attorney General

BC/mm