VOLUME NO. 43 OPINION NO. 70

HOSPITALS - Power of hospital district to fund private nonprofit nursing home;
MONTANA CODE ANNOTATED - Sections 7-34-2101, 7-34-2102, 7-34-2122, 7-34-2123, 50-5-101(19) (temporary), 50-5-101(27)(a) (temporary);
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 105 (1978), 37 Op. Att'y Gen. No. 89 (1977).

HELD: A hospital district may fund a private nonprofit nursing home operating for the benefit of county residents, if the home complies with the admission standards and with other

requirements provided by law concerning the operation of a long-term care facility.

August 9, 1990

Victor G. Koch
Richland County Attorney
Richland County Courthouse
Sidney MT 59270

Dear Mr. Koch:

You have requested my opinion on a question I have rephrased as follows:

> May a hospital district fund a private nonprofit nursing home operating for the benefit of county residents?

Your inquiry states that Richland Homes, a long-term nursing home, cares for elderly and disabled county residents. Richland Homes is a private nonprofit corporation. The county seeks to establish a hospital district to fund the home and asks whether or not Title 7, chapter 34, MCA, authorizes such funding.

Hospital districts provide hospital facilities and services to district residents. § 7-34-2101, MCA. To accomplish these purposes, the Legislature provided that a hospital district shall have

> all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of such hospital facilities as its board of trustees shall deem necessary and expedient.

§ 7-34-2122, MCA. The Legislature granted a hospital district broad discretion in fulfilling its purpose. However, a hospital district uses public funds, and thus is subject to limitations.

As a general rule, a government agency such as a hospital district must use its public funds for a public purpose. The 1972 Montana Constitution, Article VIII, section 1, provides: "Taxes shall be levied by general laws for public purposes." The Montana Supreme Court has determined that a private nonprofit organization may employ public funds in serving a public purpose. Grossman v. State Dept. of Natural Resources, 209 Mont. 427, 682 P.2d 1319 (1984) (local government may develop city water systems, water distribution systems, and water supply treatment facilities which the government would lease to private organizations); Douglas v. Judge, 174 Mont. 32, 568 P.2d 530 (1977) (private and industrial organizations may be loaned public money to develop renewable natural resources); Huber v. Groff, 171 Mont. 442, 558

P.2d 1124 (1976) (the State Board of Housing may loan money to private institutions to alleviate the high cost of housing for lower income persons). Although these cases do not involve a hospital district, they demonstrate that a governmental entity may fund private nonprofit organizations to realize a public purpose, and the court will not interfere unless the government has clearly abused its discretion.

Federal law also indicates that the government may fund a private nonprofit hospital. Ellis v. City of Grand Rapids, 257 F. Supp. 564 (N.D. Mich. 1966). In Ellis, the court noted a public need to fund private nonprofit hospitals, stating:

> Promotion and improvement of our people's health is a ... fundamental obligation of governments, national, state and local. ... The Congress of the United States and the state legislatures of the several states have in a multitude of ways established means to provide and care for the health of the people.
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> ....
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> All have recognized that hospital care provided by public, private, and private sectarian nonprofit institutions is a public use clothed with an overriding public interest, and courts have sustained the Executive and Legislative branches of our governments in giving aid to such institutions.

Id., 257 F. Supp. at 573-74. The court reasoned that the government could fund a private nonprofit hospital because the expenditure of funds would promote public health.

In concluding that funding the hospital served a public purpose, the court examined the hospital's admission policy. This criterion merited special significance in Ellis since the case involved a religious hospital and a possible violation of the Establishment Clause of the United States Constitution. Citing Lien v. City of Ketchikan, Alaska, 383 P.2d 721 (Alaska 1963), the court noted that the hospital "provide[d] for the care of the sick without regard to race, color, or creed, and thus accomplish[ed] a valid public purpose." Ellis, 257 F. Supp. at 574-75. This admission policy allowed the hospital to serve a large majority of the public.

Other courts have followed the Ellis rationale in upholding state and local funding for health care facilities. See Kentucky Building Comm'n v. Effron, 310 Ky. 355, 220 S.W.2d 836 (1949); Abernathy v. City of Irvine, Kentucky, 355 S.W.2d 159 (Ky. 1961), cert. denied, 371 U.S. 831 (1962); Lien v. City of Ketchikan, Alaska, 383 P.2d 721 (Alaska 1963); Truitt v. Board of Public Works of Maryland, 221 A.2d 370 (Md. 1966); Tulsa Area Hospital Council v. Oral Roberts, 626 P.2d 318 (Okla. 1981).

Admission standards similar to those stated in the Ellis case govern a hospital district's facilities in Montana. A hospital district must admit persons to its facilities without regard to race, color, or sex. § 7-34-2123, MCA. Under the Ellis rationale a private nonprofit institution providing hospital facilities and services in accordance with these admission standards would serve a public purpose and could receive public funds from a hospital district.

Of course, a hospital district's authority is tempered by the word "necessary" which appears twice in section 7-34-2122, MCA. Ordinarily, "necessary" means that which is "reasonable and appropriate." 37 Op. Att'y Gen. No. 89 at 371, 373 (1977); 37 Op. Att'y Gen. No. 105 at 441, 445 (1978). The word "necessary" modifies both a hospital district's exercise of power and the facilities and services it provides. Thus, in addition to serving a public purpose, a hospital district must: (1) exercise only those powers which are reasonable and appropriate to accomplish its purpose, and (2) provide facilities and services which are reasonable and appropriate for the needs of the district residents.

The statutory definitions of "hospital facilities" serve as a guideline for the types of services and facilities that are reasonable and appropriate for a hospital district to provide. Section 7-34-2102, MCA, defines "hospital facilities" in a general sense, listing many types of health care facilities. However, it does not provide an exact definition. Title 7, chapter 34, MCA, which governs a local government's role in providing health care facilities, must be read in conjunction with other relevant parts of the code. As the Montana Supreme Court noted under section 1-2-207, MCA, whenever a word is defined in the code, that definition will apply to the same word wherever it appears in other parts of the code unless the Legislature has expressed a contrary intention. Mountain View Education Assoc. v. Mountain View School, 227 Mont. 288, 738 P.2d 1288 (1987). Since the Legislature did not define "facilities" in section 7-34-2102, MCA, it has not expressed an intention to exclude the definitions found in related sections of the code.

A precise definition of a "health care facility" is found in Title 50, chapter 5, MCA, which regulates hospitals and related facilities. The relevant portion of section 50-5-101(19) (temporary), MCA, provides:

> "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. ... The term includes but is not limited to ... hospitals ... [and] long-term care facilities[.]

The statute details the kinds of care a facility should provide, evidencing the Legislature's intent as to what constitutes reasonable and appropriate services.

The phrase "to any person or persons" ensures that the services will benefit the public at large, a requirement similar to that advanced in the Ellis analysis, supra. Of particular relevance to your question, the statute provides that a facility may be a private nonprofit hospital or long-term care facility.

Since your inquiry concerns a nursing home which provides long-term care, the definition of "long-term care facility" found in section 50-5-101 (temporary), MCA, is noteworthy. The pertinent part of section 50-5-101(27)(a) (temporary), MCA, defines a long-term care facility as

> a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage.

Section 7-34-2102, MCA, specifically includes long-term care facilities in the list of hospital facilities to be provided by a hospital district. By contrast, adult foster care facilities would not be long-term care facilities a hospital district could fund. § 50-5-101(27)(a) (temporary), MCA.

In summary, section 7-34-2102, MCA, lists the facilities a hospital district may provide. Section 50-5-101 (temporary), MCA, provides a list of the kinds of facilities which are reasonable and appropriate in advancing public health. Section 7-34-2123, MCA, establishes the admission standards a hospital district facility must follow in serving a "public purpose." A hospital district should apply these sections of the code in determining whether or not to fund a facility.

THEREFORE, IT IS MY OPINION:

> A hospital district may fund a private nonprofit nursing home operating for the benefit of county residents, if the home complies with the admission standards and with other requirements provided by law concerning the operation of a long-term care facility.

Sincerely,

MARC RACICOT
Attorney General