Hospital authority, organized as political subdivision, may sell its assets to for-profit corporation upon approval by circuit court of authority’s dissolution.

The Honorable Fenton L. Bland, Jr.
Member, House of Delegates
August 22, 2002

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issues Presented

You inquire whether a hospital authority may sell its assets to a for-profit corporation. You also ask whether the declaratory language in § 15.2-5300 prevents such a transfer.

Response

It is my opinion that a hospital authority organized as a political subdivision under Chapter 53 of Title 15.2 may sell its assets to a for-profit corporation; however, before dissolving it must seek court approval. Further, it is my opinion that the declaratory language in § 15.2-5300 does not prevent such a sale or dissolution.

Applicable Law and Discussion

Chapter 53 of Title 15.2, §§ 15.2-5300 through 15.2-5367 comprises the statutory scheme governing hospital authorities and provides for the establishment of such authorities.

Chapter 53 provides the framework for determining the need for such an authority, its subsequent powers, its bonding authority, and the method for its dissolution. Pursuant to § 15.2-5302, hospital authorities are organized "with such public and corporate powers as set forth in [Chapter 53]." Section 15.2-5303 provides that the city council must declare a need for such an authority; § 15.2-5307 provides that the city mayor must appoint the authority’s commissioners; § 15.2-5319 provides that "[t]he governing body of any city in which the authority is located may make appropriations" to aid the authority; and § 15.2-5349 provides that "[t]he bonds and other obligations of the authority … shall not be a debt … of the Commonwealth." Section 15.2-5337 provides that a hospital authority "shall have power to sell, exchange, transfer, or assign any of its property real or personal or any interest therein to any person, locality or government." A hospital authority is also given all the powers granted to a nonstock corporation. One of the powers granted nonstock corporations is the power to "[s]ell, … exchange, and otherwise dispose of all or any part of its property." The power given to an authority to dispose of its assets is broad. As a result, a hospital authority has the power to sell all of its assets.
Section 15.2-5365 provides:

Whenever it appears to the commissioners of an authority that the need, as provided in § 15.2-5305, for such authority in the city in which it was created no longer exists, upon petition by the commissioners to the circuit court for such city, after giving to the city ten days’ notice and upon the production of satisfactory evidence in support of such petition, the court may, in its discretion, enter an order declaring that the need for such authority in the city no longer exits and approving a plan for completing the business of the authority, the payment or assumption of its obligations, and the transfer of its assets.

If the court enters such an order, the hospital authority’s “powers and duties to transact business or to function shall cease to exist as of the date set forth in the order of the court.” Either the hospital authority or the city may appeal the judgment of the court.

Section 15.2-5300 sets forth a declaration by the General Assembly concerning the necessity for hospital authorities in cities of the Commonwealth. Section 15.2-5300 also delineates the conditions that gave rise to the need to enact the statutory scheme. Further, § 15.2-5300 provides that these “conditions also exist in certain areas surrounding such cities, and these conditions cannot be remedied by the ordinary operations of private enterprises.”

You inquire whether a hospital authority may sell its assets to a for-profit corporation. You also ask whether the declaratory language in § 15.2-5300 prevents such a transfer. The statutory scheme for hospital authorities contemplates a time when such authorities are no longer needed. By explicitly providing a procedure to dissolve an authority, the General Assembly contemplates a time when the authority may no longer be needed.

In order to dissolve a hospital authority, the commissioners of the authority must make a finding that the need for the “authority in the city in which it was created no longer exists.” Moreover, there is an additional safeguard by making the commissioners petition the circuit court for approval to dissolve the authority. The commissioners must produce "satisfactory evidence in support of such petition." Upon the consideration of such evidence, "the court may, in its discretion, enter an order declaring that the need for such authority in the city no longer exists." This procedure ensures that there is some review of a decision by the commissioners to dissolve the authority. In making the determination whether to approve such dissolution, the court will consider whether the evidence produced by the commissioners of the authority is sufficient. In addition, the court must approve the proposed plan of dissolution that provides for the transfer of the authority’s assets.

The language contained in § 15.2-5300 concerning the legislature’s determination that private enterprise may not be equipped to correct certain conditions does not, in and of itself, prevent a sale of a hospital authority’s assets. Section 15.2-5300 sets forth the General Assembly’s reasons for enacting the legislation. Such statutory provisions are akin to the preamble in certain legislation. A court may look at the preamble if the issue before the court is ambiguous. Likewise, the court may use a statute that sets forth the policy considerations for the enactment of a statutory scheme in its consideration of a case if such review is merited. Nevertheless, this particular language, in and of
itself, does not prevent the sale of a hospital authority’s assets to a for-profit corporation. Moreover, if private enterprise were never able to provide such medical services, there would be no need for the dissolution provisions in Chapter 53.

Conclusion

Accordingly, it is my opinion that a hospital authority organized as a political subdivision under Chapter 53 of Title 15.2 may sell its assets to a for-profit corporation; however, before dissolving it must seek court approval. Further, it is my opinion that the declaratory language in § 15.2-5300 does not prevent such a sale or dissolution.

2 Section 13.1-826(A)(4).
3 Section 15.2-5366 (Michie Repl. Vol. 1997).
5 See tit. 15.2, ch. 53, art. 4, §§ 15.2-5365 to 15.2-5367 (Michie Repl. Vol. 1997).
6 Section 15.2-5365.
7 See id.
8 Id.
9 Id
10 Id.