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OPINION NO. 2016-07

DISTRICT ATTORNEY; COUNTY
HOSPITAL DISTRICT; BOARD OF
COMMISSIONERS; HOSPITALS:
Subject to the approval, ratification
or authorization of the Board of
County Commissioners, the Hospital
District may contract with a privately
owned company or public agency to
provide medical services of the
nature provided in a hospital.

Angela A. Bello
Nye County District Attorney
P.O. Box 39
Pahrump, Nevada 89041

Dear Ms. Bello:

You have requested a formal opinion from the Office of the Attorney General pursuant to NRS 228.150 concerning the powers of a hospital district created by Chapter 450 of the Nevada Revised Statutes (NRS).

Pursuant to NRS 450.550 to 450.760, inclusive, the board of county commissioners of a county may enact a property tax to fund the provision of medical services to the residents of an area within the county that is underserved by medical professionals. Such an area is referred to as a "hospital district." NRS 450.560. Once a tax is enacted, the management of the district must be entrusted to a board of trustees. NRS 450.630—450.720. You have asked whether the board of trustees may,

in lieu of funding the operation of a full-service hospital, contract with a private health care provider to offer medical services of the type that would ordinarily be available at an acute care facility, or offered by medical professionals from a remote site using telephone or internet communications (e.g., telemedicine).

You have posed the question because the Board of County Commissioners of Nye County (the Board) has created a hospital district, the Northern Nye County Hospital District (the District), which levied property taxes for fiscal year 2016. In August 2015, two months into that fiscal year, the hospital in Tonopah closed after the entity operating it filed bankruptcy. Thereafter, Nye County, the owner of the hospital grounds, building and equipment, leased them to Renown Health (Renown), a domestic non-profit entity that operates a private hospital in Reno. It is anticipated that Renown will provide certain medical services in Tonopah that are not otherwise available in the District, including telemedicine and an urgent care facility.

QUESTION PRESENTED

Although Renown will not operate a full-service hospital, may the District contract with Renown, through the District's board of trustees, to provide medical services to residents of the District?

SUMMARY CONCLUSION

When authorized by an ordinance or resolution of the Board, the District's board of trustees may contract with Renown to provide the "services of a hospital" to the residents of the District. The contract need not be contingent upon a commitment by Renown to operate a full-service hospital. Since the provision of medical services within the District is a matter of local concern, the scope of the services to be provided by Renown is a matter committed to the discretion of the Board pursuant to NRS 244.146.

DISCUSSION

Renown owns and operates a full-service hospital in Washoe County. It has leased from Nye County the equipment and real property previously operated as a hospital, but will not continue to operate a "hospital" as defined in NRS 449.012.¹ Notably, it will not provide 24-hour care. While the services it intends to provide to residents of the District are medical services—diagnosis, treatment and care—those services will be offered on an outpatient basis, including through telemedicine.

¹ NRS 449.012 provides a definition of "hospital" for purposes of Chapter 449 of NRS. Chapter 449 provides for the licensing, inspection and regulation of hospitals generally. Although the statutory definition comports with a common understanding of the term "hospital," it has no specific application to the duties and responsibilities of a hospital district created pursuant to Chapter 450 of NRS.

Agency Powers Generally

A hospital district constitutes a local government. *Op. Nev. Att’y Gen. No. 95-23* (Dec. 31, 1995), citing NRS 354.474. Historically, the Nevada Supreme Court has adopted and applied a common-law limitation of local government power known as Dillon’s Rule. *See Ronnow v. City of Las Vegas*, 57 Nev. 332, 342, 65 P.2d 133, 136 (1937). Under that general rule, a local government is authorized to exercise only those powers which are expressly granted, which are necessarily implied to carry out powers expressly granted, or essential to the accomplishment of the declared objects and purposes of the local government. “Any fair [or] reasonable . . . doubt concerning the existence of power” is resolved against a local government entity seeking to exercise it, and it “is denied. . . . All acts beyond the scope of the powers granted are void.” *Id.* at 343, 65 P.2d at 136. Dillon’s Rule is a rule of construction, serving as an aid in determining legislative intent. BLACK’S LAW DICTIONARY 412 (5th ed. 1979).

With the passage of Senate Bill 29 in 2015 (S.B. 29), the Nevada Legislature modified the historical Dillon’s Rule to grant to boards of county commissioners, in the absence of a constitutional or statutory provision requiring a power to be exercised in a specific manner, “[a]ll other powers necessary or proper to address matters of local concern for the effective operation of county government, whether or not the powers are expressly granted to the board.” NRS 244.146(1). In the face of “any fair or reasonable doubt concerning the existence of a power of the board to address a matter of local concern . . . it must be presumed that the board has the power unless it is rebutted by evidence of a contrary intent by the Legislature.” *Id.* S.B. 29 did not modify Dillon’s Rule with regard to “(a) Any local governing body other than a board of county commissioners; or (b) Any powers other than those necessary or proper to address matters of local concern for the effective operation of county government.” NRS 244.137(7).

Therefore, aside from the powers of a board of county commissioners to address matters of local concern for the effective operation of county government, S.B. 29 does not modify Dillon’s Rule.

Hospital District Powers

The board of trustees² of a hospital district is required to “[c]arry out the spirit and intent of NRS 450.550 to 450.750, inclusive, in establishing and maintaining a hospital in each district created pursuant to” those provisions, and “[m]ake and adopt bylaws,

² “‘Board of trustees’ means . . . (a) A board of hospital trustees . . . or (b) A board of county commissioners” NRS 450.550(1).

rules and regulations . . . [f]or its own guidance and the government of any such hospital” NRS 450.630.

A hospital district may be formed in an area where there is no existing hospital district “for the sole purpose of contracting with a public agency or a privately owned hospital to provide services of a hospital to the residents of the district,” provided, *inter alia*, “the district constitutes a geographic area of the county that is not served by adequate medical services.” NRS 450.710.

A hospital district has the express power to:

[C]ontract with a public agency or a privately owned hospital to provide the services of a hospital to the residents of the hospital district if it determines that:

1. There is a need to provide medical services to the residents of the district which are not being provided by the district; or
2. It is less costly or more efficient to provide the services of a hospital to the residents of the district by contracting with a public agency or a privately owned hospital.

NRS 450.715.

A hospital district has the additional express duties or powers, *inter alia*, to (1) prepare a budget (NRS 450.650); (2) levy a tax (NRS 450.660); (3) accept donations (NRS 450.690); (4) determine medical indigency (NRS 450.700); and (5) borrow money and incur or assume indebtedness (NRS 450.665). The power to levy a tax includes a requirement that the taxes thus collected must be “(a) [p]laced in the treasury of the county in which the district hospital is located; (b) [c]redited to the current expense fund of the district; and (c) [u]sed only for the purpose for which it was raised.” NRS 450.660(3).

A hospital district may also “contract with a company which manages hospitals for the rendering of management services in a district hospital.”³ NRS 450.720(1).

ANALYSIS

Under NRS 450.715, in order for the District to contract with Renown for the provision of medical services, those services must be needed services not provided by the hospital district and must be services of a hospital. The question of need is not at

³ “‘District hospital’ means a hospital constructed, maintained and governed pursuant to NRS 450.550 to 450.760.” NRS 450.550(2).

issue, so what remains is whether the services to be provided by Renown are those of a hospital.

As used in NRS 450.710 and 450.715, the word “hospital” is not defined. It is, however, defined at NRS 449.012, which supplements the provisions of Chapter 449 governing the licensure and regulation of hospitals generally. To the extent that Chapters 449 and 450 address related subjects, the term “hospital” as used in Chapter 450 should be harmonized with the statutory definition at NRS 449.012. *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 294, 995 P.2d 482, 485 (2000).

“Hospital” is defined in NRS 449.012 to mean “an establishment for the diagnosis, care and treatment of human illness, including care available 24 hours each day from persons licensed to practice professional nursing who are under the direction of a physician, services of a medical laboratory and medical, radiological, dietary and pharmaceutical services.”

NRS 450.710 and 450.715 do not use the word “hospital” in isolation, but instead refer to the “services of a hospital.” The phrase “services of a hospital” is unaccompanied by any modifier. As such, it fails to address whether any specific quantum of services described in NRS 449.012 must be provided. With that ambiguity, a court will look to the statutory scheme as a whole and its evident purpose to resolve questions concerning the meaning of the specific provisions in question. *Thomas v. State*, 88 Nev. 382, 384, 498 P.2d 1314, 1315 (1972) (“[I]t is always the first great object of the courts in interpreting statutes, to place such construction upon them as will carry out the manifest purpose of the legislature, and this has been done in opposition to the very words of an act. A statute must be construed in the light of its purpose. [A]nd it must be construed as a whole.”) (citations omitted).

The purpose of Chapter 450 may be gleaned, in part, from its authorization to the county to contract for the services of a hospital under either of two conditions:

1. There is a need to provide medical services to the residents of the district which are not being provided by the district; or
2. It is less costly or more efficient to provide the services of a hospital to the residents of the district by contracting with a public agency or a privately owned hospital.

NRS 450.715.

These conditions indicate that the purpose of the statutory scheme is to provide for affordable medical services in areas that are underserved by medical professionals. Although it has been urged that a hospital district must maintain a hospital, and that the

contracts contemplated by NRS 450.710 and 450.715 may only be executed by a hospital district that maintains a hospital, NRS 450.630 speaks to a general duty on the part of the hospital district board of trustees to “[c]arry out the spirit and intent of NRS 450.550 to 450.750, inclusive, in establishing and maintaining a hospital in each district created pursuant to” those provisions. Additionally, NRS 450.660(3)(b) requires that the taxes collected pursuant to a levy of the hospital district be “[p]laced in the treasury of the county in which the district hospital is located.”

Accordingly, the provisions of NRS Chapter 450 manifest an overriding legislative intent to provide for the medical needs of persons who reside in rural areas that are underserved by medical professionals. Moreover, NRS 450.710 states that a hospital district may be formed “for the sole purpose” of contracting with privately owned hospitals or public agencies to provide the services of a hospital, as opposed to the operation or management of a hospital. Since Chapter 450 contains no express limitations upon the authority of a county to define the scope of needed services or the manner in which those services will be rendered, whether through a public agency or a private contractor, its provisions are reasonably construed to encompass a matter of local concern, namely a matter concerning the “[p]ublic health, safety and welfare in the county.” See NRS 244.143(2)(a). As a matter of local concern, the scope of services to be provided under any contract with Renown is committed to the discretion of the Board pursuant to NRS 244.146.⁴ In this context, questions concerning the interpretation and application of NRS 450.710 and 450.715 are likewise committed to the discretion of the Board.

CONCLUSION

Subject to the approval, ratification or authorization of the Board, the District may contract with a privately owned company or public agency to provide medical services of the nature provided in a hospital, as defined in NRS 449.012. Since there are no express statutory limitations upon the county’s authority to define the scope of services to be rendered by Renown, the Board may authorize, approve or ratify a contract for the provision of medical services within the District regardless of any commitment by Renown to operate a full-service hospital. As they relate to the management of the District and the expenditure of tax revenue for medical services, questions concerning

⁴ The District is wholly within Nye County. This opinion does not address whether the provision of medical services contracted for by a district that serves more than one county would be a “matter of local concern” as used in NRS 244.146.

Angela Bello, Nye County District Attorney
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the proper interpretation and application of NRS 450.710 and 450.715 are committed to the discretion of the Board pursuant to NRS 244.146.

Sincerely,

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