



OFFICE OF THE ATTORNEY GENERAL

HARRY R. ROY
Attorney General

ALBERT J. LAMA
Deputy Attorney General

September 24, 2008

The Honorable Thomas A. García
New Mexico State Representative
P.O. Box 56
Ocate, NM 87734

Re: Opinion Request – Hospital District Status

Dear Representative García:

You have requested our opinion about the legal status of the South Central Colfax County Special Hospital District (“SCCCSHD”). Specifically, you would like to know whether the district would qualify as a “local public body” for the purposes of the Tort Claims Act and the Procurement Code, and whether the district is a “public employer” for purposes of the Public Employees Retirement Act (“PERA”). Based upon our examination of the relevant New Mexico statutes, opinions and case law authorities, and on the information available to us at this time, we conclude that: (1) the SCCCSHD is a “local public body” under the Tort Claims Act; (2) the SCCCSHD is a “local public body” under the Procurement Code, and; (3) the SCCCSHD is not a public employer for purposes of the PERA.

As a preliminary matter, there are several rules of statutory construction that guide our analysis. First, in construing a statute, the goal is to give primary effect to legislative intent. Draper v. Mountain States Mut. Cas. Co., 116 N.M. 775, 777, 867 P.2d 1157, 1159 (1994). Second, under the plain meaning rule, statutory language is given its ordinary and plain meaning unless the Legislature indicates a different interpretation is necessary. Cooper v. Chevron, 2002-NMSC-020, ¶ 16, 132 N.M. 382, 388, 49 P.3d 61, 67. Third, although the requirements of one portion of a statute may be read into requirements of another portion in order to avoid an irrational construction, such statutory construction is unnecessary when there is plausible reason for difference in requirements under two statutory provisions. Bierner v. State, Taxation and Revenue Dept., Motor Vehicle Div., 113 N.M. 696, 698, 831 P.2d 995, 997 (Ct. App. 1992).

Tort Claims Act

The Tort Claims Act, NMSA 1978, §§ 41-4-1 to -27, defines “local public body” as “all political subdivisions of the state and their agencies, instrumentalities and institutions and all water and natural gas associations organized pursuant to Chapter 3, Article 28 NMSA 1978.” NMSA 1978, § 41-4-3(C) (1976) (amended 2007). The SCCCSHD will constitute a “local public body” if it is a political subdivision. The Court of Appeals defines a political subdivision as “formed or maintained for the more effectual or convenient exercise of political power within certain boundaries or localities, to whom the electors residing therein are, to some extent, granted power to locally self-govern themselves.” Tompkins v. Carlsbad Irrigation Dist., 96 N.M. 368, 370, 630 P.2d 767, 769 (Ct. App. 1981). In Tompkins, the court found an irrigation district to be a local public body for purposes of the Tort Claims Act. The court stressed that “irrigation districts are organized for the purpose of exercising a public function.” Id. In addition, the court in El Dorado Utilities, Inc. v. Eldorado Area Water and Sanitation Dist., 2005 NMCA-036, ¶ 25, 137 N.M. 217, 223, 109 P.3d 305, 311, determined that Water and Sanitation District Act districts are a quasi-municipal governmental entities and fall within the definition of “governmental entity” under the Tort Claims Act.

Special hospital districts, like irrigation districts and sanitation districts, are organized to exercise a public function. They are organized for the purpose of constructing or acquiring funding for a public hospital. See NMSA 1978, § 4-48A-3(A) (1978) (amended 1983). The District facilitates a more efficient and effectual operation of a public hospital by being able to raise money for its operation and enter into contracts with the federal or state governments for the treatment or hospitalization of patients. See NMSA 1978, § 4-48A-9 (1978) (amended 2005). This function fits within the definition of “political subdivision” provided in Tompkins.

Therefore, the SCCCSHD is a political subdivision under the Tort Claims Act. Accordingly, it is likely that a New Mexico court would find that the SCCCSHD is a “local public body” under the Tort Claims Act.

Procurement Code

The Procurement Code, NMSA 1978, §§ 13-1-28 to -199, defines a “local public body” as “every political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code.” NMSA 1978, § 13-1-67 (1984) (amended 2003). In construing this definition, the Procurement Code provides guidance by stating: “The Procurement Code shall be liberally construed and applied to promote its purpose and policies.” NMSA 1978, § 13-1-29(A) (1984). According to the statute and the case law, the purpose of the Procurement Code is to insure fairness when a public entity makes a purchase from private entity. NMSA 1978, § 13-1-29(C) (1984); Morningstar Water Users Ass’n, Inc. v. Farmington Mun. School Dist. No. 5, 120 N.M. 307, 316, 901 P.2d 725, 734 (1995).

The SCCCSHD will constitute a “local public body” under the Procurement Code if it is a political subdivision. As discussed above, a special hospital district, such as SCCCSHD, is a political subdivision. In addition, the statute governing special hospital districts indicates that the legislature intended the Procurement Code to apply to special hospital districts. A special hospital district is run by an elected group of “board of trustees.” See NMSA 1978, § 4-48A-6 (1978) (amended 1993). The board of trustees is granted certain powers that expressly involve the Procurement Code. For example, they can enter into agreements with other parties and entities while complying with the provisions of the Procurement Code. See NMSA 1978, § 4-48A-9(N) (1978) (amended 2005). In addition, the board of trustees can enter into an agreement to own certain items “subject to the provisions of or exemptions from the Procurement Code.” NMSA 1978, § 4-48A-9(P) (1978) (amended 2005).

Based upon the aforementioned considerations, we conclude that the SCCCSHD is a “local public body” for purposes of the Procurement Code.

Public Employees Retirement Act

The Public Employees Retirement Act, NMSA 1978, §§ 10-11-1 to -141 (“PERA”), defines a “public employer” as “the state, any municipality, city, county, metropolitan arroyo flood control authority, economic development district, regional housing authority, soil and water conservation district, entity created pursuant to a joint powers agreement, council of government, conservancy district, irrigation district, water and sanitation district, water district and metropolitan water board, including the boards, departments, bureaus and agencies of a public employer...” NMSA 1978, § 10-11-2(P) (1987) (amended 2005).

Unlike the definitions of local public body under the Procurement Code and Tort Claims Act, the definition of “public employer” under the PERA is quite specific. It enumerates entities considered to be public employers, including some special districts such as conservancy districts. Special hospital districts are conspicuously absent. This absence suggests a lack of legislative intent for the term “public employer” to apply to special hospital districts under the PERA.

In addition, the New Mexico Legislature recently added irrigation districts to the list, but did not add hospital districts. See NMSA 1978, § 10-11-2(P) (1987) (amended 2005). A canon of statutory construction is that when the legislature expressly authorizes a certain thing to be done in a prescribed manner, it is limited to be done in that manner and all other manners are excluded. See *Bettini v. City of Las Cruces*, 82 N.M. 633, 635, 485 P.2d 967, 969 (1971). Therefore, due to the absence of special hospital districts in the definition of “public employer,” it is our conclusion that the South Central Colfax County Special Hospital District is not a “public employer” for purposes of the PERA.

Conclusion

In sum, we believe that under New Mexico law, the South Central Colfax County Special Hospital District is: (1) a “local public body” under the Procurement Code; (2) a “local public

The Honorable Thomas García
September 24, 2008
Page 4

body” under the Tort Claims Act, but not; (3) a “public employer” under the Public Employees Retirement Act.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public

Very truly yours,



STEPHEN A. VIGIL
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General