

From the Desk of Attorney General Bob Cooper



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ATTORNEY GENERAL HAS ROLE IN MANY NONPROFIT, PUBLIC GIFT MATTERS

You might wonder why the Tennessee Attorney General has been involved recently in a number of high-profile cases concerning nonprofits and charities like Sumner Regional Medical Center (SRMC), the Stieglitz Collection at Fisk University, Care Foundation of America and the Maddox Charitable Fund. While it may surprise you, the Attorney General has a duty under the law to represent the interests of those who benefit from charitable gifts as well as the people of Tennessee in these cases. Likewise, nonprofit organizations are subject to broad oversight by my office under Tennessee law.

This is not unique to Tennessee. Rooted in centuries-old English common law, Attorneys General have this responsibility in a majority of states. The rationale is simple. Charitable gifts are not the private property of the recipient but are donations with a larger purpose, often with specific intentions regarding their use. Assets, donated or otherwise, controlled by public benefit nonprofits are considered to be held in public trust, to be used purely for the benefit of the public at large. In addition, nonprofit organizations enjoy a privileged status granted by the state and are not governed by the same rules as for-profit corporations. Therefore, decisions regarding nonprofit assets and governance require oversight. As in other states, Tennessee places responsibility for this oversight with the Attorney General.

An important example of the Attorney General's responsibility is in the area of nonprofit hospitals. In many rural communities, the local hospital is not only the closest emergency room but also among the largest and most stable employers. Many of these are nonprofit or community-owned hospitals, also known as public benefit hospitals. Recent reports by industry analysts and in the national business press predict a trend towards the sale of these public benefit hospitals to for-profit companies. If true, this may impact healthcare facilities in your community. Public officials, attorneys, and executives involved with these hospitals should keep in mind that, under Tennessee law, the Attorney General's Office must review public benefit hospital transactions for fairness before they are consummated.

When my office approved the sale of SRMC, we were acting pursuant to a law passed in 2006 by the legislature. The Public Benefit Hospital Sales and Conveyance Act of 2006 requires a public benefit hospital to provide notice to the Attorney General 45 days before selling or transferring control of its assets. The hospital must certify that each member of its board has been given a copy of the 2006 law and publish notice of the proposed transaction in at least one local, widely read newspaper.

After receipt of the initial notice, my office will request additional information from the parties involved in the sale. We will look at issues such as whether the transaction appears to be

transparent. We will consider the impact of the sale on the availability and cost of healthcare in the community. As with other transactions involving nonprofit organizations, sales of public benefit hospitals must be fair to the nonprofit or governmental entities involved. The nonprofit should receive fair market value for its assets. Furthermore, any restrictions such as 'no sale' provisions in charitable gifts to the nonprofit must be resolved by a court.

As with other nonprofits, members of the public who serve as officers and directors of a public benefit hospital can help ensure they properly fulfill their fiduciary duties by keeping detailed records of board meetings and all business decisions. These and other documents requested by the Attorney General's Office for review of a public benefit hospital transaction must be provided at least 45 days before the scheduled closing date. Otherwise, the transaction may be delayed or even blocked.

Because we are lucky in Tennessee to have a vibrant nonprofit sector and many people interested in providing charitable gifts, the Public Interest Division in my office handles an ever-increasing case load. While my office cannot provide specific legal advice to individuals and organizations, our nonprofit website, which can be accessed at <http://www.tn.gov/attorneygeneral/nonprofit/nonprofit.html> is an excellent resource, and we are happy to answer questions about the exercise of our duties in this area.