

COUNTIES & THE LAW SPECIAL EDITION

This special edition of *Counties & the Law* includes an important decision of interest to county attorneys which will be covered in a subsequent regular edition. Special thanks to Don Oliver for posting this case on the listserv.

We welcome your suggestions and opinions regarding Counties & the Law. Please contact Kelly Pridgen at kpridgen@accg.org or Joe Scheuer at jscheuer@accg.org with your comments.

OPEN MEETINGS OPEN RECORDS

Smith v. Northside Hospital, Inc., et al.

Georgia Court of Appeals
March 30, 2016; A15A2303; A15A2304

This case involves the question of whether documents of a private hospital corporation constitute public records within the meaning O.C.G.A. 50-18-70 *et seq.*, the Open Records Act (ORA). The Fulton County board of commissioners passed a resolution activating the Fulton County Hospital Authority (FCHA) under O.C.G.A. 31-7-70 *et seq.* The FCHA opened Northside Hospital. Several decades later, the FCHA created Northside Hospital, Inc., a private, nonprofit corporation, and executed a lease transferring all of its operating assets and existing operations to the nonprofit. Later, the nonprofit entered into transactions to acquire 4 privately owned physician groups. Smith, a partner in a law firm, made a request under the ORA to the nonprofit and to FCHA for statements and documents relating to the acquisitions. The FCHA responded that it had no such records. The nonprofit asserted that as a private, nonprofit hospital, it was not subject to the ORA, and, even if it was, the material was exempt from disclosure for numerous reasons including trade secret status. Smith filed a complaint seeking the trial court to compel ORA compliance. The nonprofit answered that Smith was acting in bad faith on behalf of his undisclosed corporate clients who were competitors of the nonprofit. The trial court granted the nonprofit's motion for involuntary dismissal and granted Smith's motion for a protective order precluding the disclosure of the identity of his clients and their motives. The Court of Appeals affirmed the motion for involuntary dismissal. Smith had argued that the trial court dismissed the case on a general determination that the nonprofit was not subject to the ORA. The Court of Appeals noted that the trial court merely found that Smith had presented no evidence that the nonprofit had entered into or performed any of the 4 transactions on behalf of the FCHA or exercised any of the FCHA's powers when doing so. The pertinent question is whether the specific requested documents were prepared and maintained or received by the nonprofit in the performance of a specific service or function on behalf of the FCHA. The Court distinguished the *Northwest Georgia Health Systems* case in which a private entity's subsidiary hospital corporation contractually agreed to operate public hospital authority assets for the public good. There, a private nonprofit became the vehicle through which the public hospital authorities carried out their official duties and responsibilities. Here, however, nothing in the bylaws or the lease suggested that the nonprofit was

acting for the public good or as a vehicle to carry out the official duties of the FCHA. In fact, the lease stated that the nonprofit was operating the leased facilities for its own purposes. The FCHA retained only limited powers, none of which involved acquiring physician practices. The Court distinguished the *Webb* case where the requested documents of the private entity remained in the possession and control of the hospital authority. Here, however, the FCHA did not possess or control the documents and the nonprofit did not function under the direction and control of the FCHA. Further, the Court noted that no public funds were used to finance the transactions and there was no involvement of any public officials. Finally, the Court noted that simply performing some task or function that has an indirect public benefit or which aids the public as a whole does not transform a private entity's records into public records. Smith was seeking documents related to commercial transactions between private entities, which a public entity had no knowledge, interest, or involvement in any degree. The acquisitions were negotiated and executed solely for the nonprofits' private purposes and no evidence was presented that any public officials participated in the negotiations or that any public funds were used. The Court also held that its holding rendered moot the question of protecting the identity of the corporate clients and their motives.