

**LEASE OF WORKS**  
**(IS POSSIBLE IN THE CASE OF ALLOWANCE ORGANIZATION**  
**ESTABLISHED BY SELF-GOVERNING TERRITORIAL UNITS?)**

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The Czech state decided to transfer some of his health services to self-governing regions under the rule of law no. 290/2000 Coll. The legal form of the transferred health services, as provided by law, was allowance organization. The key question of present for the self-governing regions and the municipalities is whether the allowance organization is the best legal form to provide public services assigned to them by law. There are discussed alternatives of another legal forms applicable for health services as business company and also is discussed the possibility of lease or sale of works.

A new legal form of “public non-profit institutional health service“ established by the law no. 245/2006 Coll. has not been available for real conditions of health services. Even Constitutional Court canceled some parts of the law as unconstitutional. That is why there does not exist any health service in a legal form of “public non-profit institutional health service“ in Czech republic.

The proposed contribution deals with a lease of works with the purpose to briefly outline some problems of legal regulation in force related to the basic question of possibility and legality of lease of a health service in a legal form of an allowance organization of self-

governing territorial units. The main starting points of presented ideas are the current legal regulation of Czech administrative law defining the relation of regions and municipalities to their allowance organizations and also the current legal regulation of Czech business law defining the legal concept of works, undertaker, business activities and legal essentials of the contract on the lease of works.

Allowance organizations are legal entities established by the municipalities or the self-governing regions to perform some of their duties. The self-governing territorial units and allowance organizations relations law regulation is included in law no. 128/2000 Coll., law no. 129/2000 Coll. and law no. 250/2000 Coll. The allowance organizations established by the self-governing regions (municipalities) are usually founded as non-profit organisations to provide services of public interest in various fields including public health. Law no. 20/1966 Coll. defines that regions (municipalities) can establish and control legal entities providing health services.

The current legal regulation of allowance organizations does not presume the possibility of lease of works; on the other side it is not illegitimate. In my opinion self-governing territorial units as an integral part of public administration are strictly limited in relations to allowance organizations and cannot do anything what is not provided by law.

One of the key questions for that one who would like to make a lease of works is whether an allowance organization is (has) a works. The contract of lease of works is defined by law no. 513/1991 Coll. There is also defined a principal legal concept of works in the Czech Commercial Code. Works is a set of material, personal and immaterial assets of business activities. At the same time business activities as a hallmark of works are defined as a systematic and independent activities performed by an undertaker with a purpose of profit.

Hospitals and another health services established in a legal form of allowance organization of self-governing territorial units do not meet constituent elements of business activities. Substance of main activities of allowance organizations rests in provision of non-profit public health services to citizens of municipality or region. Profit is not the purpose of activities of allowance organizations providing health services. That is why there is no works in the case of allowance organization providing health services established by self-governing

territorial units. Strictly said there is no subject of the contract of lease of works in the case of such allowance organization.

Business activities can be provided as collateral economic activities of an allowance organization. These collateral economic activities are usually performed on the basis of trade (or similar) licence. While providing these collateral economic activities, allowance organization is in position of an undertaker. In my opinion it is possible to make a contract of lease of works only in the case of collateral economic activities of allowance organization established by self-governing territorial units.

**On the basis of exercised anylysis I come to the conclusion that it is not legal (by Czech law) to make a contract of lease of works in the case of allowance organization providing health services established by self-governing territorial units (with reservations as to collateral economic activities of allowance organization).**

I am aware of different legal opinion in presented matters. Some municipalities have even made a contract of lease of works relating to an allowance organization (hospital) as a whole (including health services).

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