

[REDACTED]  
[REDACTED]  
[REDACTED]  
ATTORNEY AT LAW

7A(c)(4)

February 7, 2000

VIA FACSIMILE ONLY

Alice Villavicencio  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

Re: Hart-Scott-Rodino Hypothetical

Dear Ms. Villavicencio:

I have spoken several times with you in the past two weeks regarding a possible exemption from the Hart-Scott-Rodino Act. The proposed transaction involves two parties who intend to consolidate their operating assets. We believe that one of the parties is a political subdivision of a state. Consequently, we believe that the proposed transaction is exempt from the Act under 15 USC § 18a(c)(4).

In any event, we would appreciate your reviewing the attached hypothetical and informing us of your opinion. You should feel free to call either me or [REDACTED] the following numbers:

[REDACTED] [REDACTED]

Please do not hesitate to call me or [REDACTED] if you have require any further information or if you have any questions regarding the hypothetical. Thanks in advance for your attention to this matter.

Very truly yours,

[REDACTED]  
[REDACTED]

Enclosure  
cc: [REDACTED]  
[REDACTED]  
[REDACTED]

FEDERAL TRADE COMMISSION  
PREMERGERS NOTIFICATION OFFICE  
2000 FEB - 7 10 30 AM '00

### HART-SCOTT-RODINO HYPOTHETICAL

#### Fact Pattern

##### Municipal Corporation "A"

"A" operates a hospital facility and certain other medical offices and clinic facilities.

"A" is a "health district" created by state statute. The relevant state statute provides that health districts may be incorporated as municipal corporations for the purpose of supplying their inhabitants with facilities for the care of sick and injured persons. "A" is incorporated under state law as a municipal corporation. The bylaws of "A" provide that "A" is a political subdivision of the state.

The power and authority given to "A" by state statute is vested in a board of directors, each of whom is elected by members of the public who reside within the district. The election process is governed by state law and is administered by county officials.

As provided by state statute, "A" has the power and authority to assess, levy and collect taxes, issue bonds, and exercise the power of eminent domain.

The income derived by "A" is used to operate the district hospital facility. As required by statute, all moneys of a health district must be deposited in a financial institution or may be invested in accordance with state statutes governing the administration of municipal finances. No profits are distributed to any private individual or entity. All of the books and financial records of "A" are open to inspection as public records under the state's public records statute.

##### Proposed Transaction

"A" proposes to consolidate its assets with nonprofit corporation "B."

Because state law does not provide a mechanism for effecting a direct merger between a municipal corporation and a nonprofit corporation, a new nonprofit corporation "N" would be formed. "N" would have two members: "A" and a second new nonprofit corporation "N2" that would be managed by a board of directors made up of members of the community that has been served by "B." "N" would have no assets and no operations prior to the following transactions, both of which would occur simultaneously:

1. "A" would transfer its operating assets to "N."
2. "B" would merge with and into "N" pursuant to a state law statutory merger.

Following the merger, "N" would be the surviving nonprofit corporation and have the same two members: "A" and "N2."

The power and authority of "A" would continue to be vested in a publicly elected board of directors, and "A" would continue to operate as a health district and a municipal corporation in all other respects.

Upon any dissolution of "N," the operating assets that were transferred by "A" to "N" in the above proposed transaction would be distributed to "A."

#### Questions

1. Is "A" a political subdivision of a state under 15 USC § 18a(c)(4)?
2. If so, is the above proposed transaction exempt from the requirements of the HSR Act under 15 USC § 18(c)(4)?

*Called writer. Agree. No filing, Exempt  
(c)(4). Amv*