

[REDACTED]

PS

January 16, 1992

has national law to enforce  
the constitutional provision of  
Section 24 (b) of the Charter of  
which restricts police power to  
system of implementation for

VIA FACSIMILE AND FEDERAL EXPRESS

Mr. Patrick Sharpe  
Compliance Specialist  
Premerger Notification Office  
Bureau of Competition  
Room 301  
Federal Trade Commission  
Washington, D.C. 20580

Re: Disclosure of [REDACTED]

Dear Mr. Sharpe:

This will respond to your request for a written confirmation of the relevant facts which we discussed yesterday by telephone with my partner, [REDACTED] concerning a proposed transaction between two [REDACTED] located in the State of [REDACTED]. We believe that the transaction is exempt from premerger notification because of the definition of "entity" under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") and the regulations promulgated thereunder. This letter is to give you the facts upon which our conclusion is based and to advise you further of this potential transaction.

We are retained by a Joint Task Force consisting of equal numbers of trustees of a [REDACTED] and a [REDACTED] nonprofit corporation which owns and operates a separate [REDACTED]. One of the three county commissioners of the county in question is also a non-voting observer at the Joint Task Force meetings. The county commissioners and the board of trustees of the [REDACTED] have both approved a Memorandum of Understanding, as have the second [REDACTED] and its [REDACTED], calling for the study of

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some form of consolidation of the two [REDACTED] both of which have declining occupancy percentages below 50%.

Since under the laws of [REDACTED] (like most states) a governmental unit cannot legally merge with a nonprofit corporation and since under the bond indenture of the [REDACTED] its net assets may only be transferred to a nonprofit corporation which has a history of a positive operating margin, the only feasible form of transaction would be the acquisition by one of the assets (and liabilities) of the other. We believe that both of these potential transactions are exempt from HSR reporting in that the [REDACTED] does not meet the definition of "entity" under §801.1 of the HSR Act Regulations because it expressly excludes political subdivisions and agencies of the State pursuant to 15 U.S.C. §18a(c)(4).

You asked for a review of the factors on which we base our belief that the [REDACTED] is a political subdivision or agency of the State of [REDACTED]. I set forth those factors below:

1. A [REDACTED] in [REDACTED] is a statutorily-established organization, by which each county may establish its own [REDACTED]. [REDACTED] are not "incorporated" under the [REDACTED] Business Corporation Act, the [REDACTED] Nonprofit Corporation Act, or any other corporate enabling statute.

2. By statute, the applicable county commissioners must hold either legal title or a 99-year lease to the real estate on which any [REDACTED] is located.

3. The trustees of all [REDACTED] are appointed by the county commissioners for that county.

4. The annual budget of the [REDACTED] is part of the regular county budget, is governed by the [REDACTED] Municipal Budget Procedures Act, and is published and adopted annually pursuant to the statutory notice requirements for county budgets.

5. [REDACTED] receive taxes through the county's taxing procedure.

6. By statute, [REDACTED] discharge the applicable county's [REDACTED] for residents of that county.

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7. The sale of the owned land of any [redacted] is subject to the same procedure statutorily applicable to other real property of the county.
8. Meetings of the board of trustees of [redacted] are subject to the [redacted] Public Meetings Act.
9. Documents of [redacted] are subject to the [redacted] Freedom of Information Act.
10. The tax-exempt revenue bonds for [redacted] are issued by the applicable county pursuant to [redacted] statutes.
11. Except for an express statutory waiver enacted by the [redacted] Legislature applicable to political subdivisions of the State of [redacted] would be immune from common law negligence lawsuits under the doctrine of sovereign immunity.
12. [redacted] Constitution (copy attached), relating incidentally to the giving of credit and donations, gives us direction concerning the broad scope of political subdivisions and agencies in that state.

Based upon the foregoing, we believe that a [redacted] is a political subdivision or agency of the State of [redacted] and, therefore, any transfer to or from the hospital is exempt from the HSR Act's filing requirements under §(c)(4) of the HSR Act and §801.1(a)(2) of the Regulations. If you would prefer, we would be happy to obtain and provide you with affidavits of appropriate County officials attesting to the foregoing statements of fact.

Incidentally, we attach copies of two of our previous letters to you dated August 3, 1988 and April 26, 1989, on similar matters, which we referred to in our conference call. We would respectfully request that you advise us within 5 days following your receipt of this letter if you have any additional questions concerning our conclusions or if you are not in agreement with our conclusion. Please telephone me at [redacted] or [redacted] at [redacted] with any questions or comments. Thanks once again for your advice and counsel.

Very sincerely  
[redacted]

*I concur with this letter - exempt under c-4.*  
(RS)

(TH) concur  
(RS) " "

called [redacted]

1-21-92