

801.1(a)
7A(c)(4)
7A(a)(2)(B)

[REDACTED]

[REDACTED]

[REDACTED]

January 14, 1993

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Federal Trade Commission
Pre-Merger Office
Bureau of Competition
Sixth & Pennsylvania Avenue
Room 301, Northwest
Washington, D.C. 20580

Attention: Ms. Nancy Ovuka

Re: Exemption of [REDACTED] District
Hospitals from the Hart-Scott-Rodino
Pre-Merger Notification Requirements

Dear Ms. Ovuka:

In our recent conversation, you inquired concerning a citation in [REDACTED] referring to [REDACTED] such as our client [REDACTED] as "political subdivisions" of the state. Enclosed please find a copy of Health and Safety Code § 32002, previously furnished to you under cover of our letter of January 5, 1993, together with a copy of Section 23300 of the Elections Code which is incorporated by reference within the [REDACTED] Law. Section 23300 refers to "public districts" and includes such public districts together with legislative districts, congressional districts, cities, and counties under the common rubric of "political subdivision." Because this section is incorporated by reference into the [REDACTED] such as our client created pursuant to that law must necessarily be classed as "public districts" under the Election Code since a [REDACTED] is clearly neither a city, county or congressional or legislative district. This is a conclusive legislative declaration that a [REDACTED] created under the [REDACTED]

[REDACTED]

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[REDACTED] such as [REDACTED] is a "political subdivision" of the [REDACTED]. Enclosed for your reference are copies of the [REDACTED] organizational documents which reflect this "political entity" status.

We also discussed by telephone the possible effect on the pre-merger notification "political subdivision" exemption of 15 U.S.C. § 18a(c)4 of the lease or acquisition of a competing [REDACTED] by a nonprofit corporation which is a controlled subsidiary of [REDACTED] pursuant to Health and Safety Code § 32121.4, a copy of which is enclosed.

It is our opinion that the acquisition or lease by a nonprofit corporate affiliate legally controlled by our client [REDACTED] of a [REDACTED] owned by another [REDACTED] pursuant to Section 32121.4 would also fall within the pre-merger notification exemption of 15 U.S.C. § 18a(c)4. Section 7 of the Clayton Act (15 U.S.C. § 18) prohibits acquisitions whether "directly or indirectly." The pre-merger notification statute, 15 U.S.C. § 18a(a), also applies to acquisitions whether accomplished "directly or indirectly." Because an entity (i.e. [REDACTED] and its controlled subsidiary would be treated as one for purposes of determining the existence of an antitrust violation and for purposes of determining the need for pre-merger notification, an entity and its subsidiary should also be considered as one for purposes of the pre-merger notification exemption of Section 18a(c)4.

This view is reinforced by the fact that the indirect acquisition of a [REDACTED] by a [REDACTED] through a controlled affiliated nonprofit subsidiary is specifically authorized by Section 32121.4. This section expresses the sanction of the [REDACTED] for a specific type of transfer to "a state or political subdivision thereof." Moreover, the transaction, even if it were not deemed a transfer to a political subdivision of a state, but rather a non-exempt transfer to its affiliate, would be a transfer from a political subdivision of a state which is also an exempt transaction under Section 18a(c)4 which exempts "transfers to or from a federal agency or a state or political subdivision thereof." (Emphasis added.) Please also advise us if you concur with our opinion on this controlled nonprofit subsidiary issue.

If you do not concur with our opinion and opine that the acquisition or lease of the competing [REDACTED] by a controlled nonprofit affiliate of [REDACTED] under Section 32121.4 would remove the transaction from the pre-merger notification "political subdivision" exemption of 15 U.S.C. § 18a(c)4, please advise us if the transaction under Section 32121.4 described above would nonetheless be exempt from pre-merger notification assuming that:

[REDACTED]

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1. [REDACTED] ^{not a sub} fell below the minimum \$100,000,000 income and asset threshold of 15 U.S.C. § 18a(a)2B; ^{sales}

2. The [REDACTED] to be leased fell below the minimum \$100,000,000 asset and income threshold of 15 U.S.C. § 18a(a)2B;

3. The [REDACTED] nonprofit affiliate ^{- a "corp. engaged in"} fell below the \$100,000,000 asset and income threshold of 15 U.S.C. § 18a(a)2B; and

4. The combined assets and/or income of [REDACTED] and its controlled affiliated nonprofit subsidiary exceeded the \$100,000,000 minimum threshold of 15 U.S.C. § 18a(a)2B.

We would argue that the transaction would be exempt under § 18a(a)2B because if [REDACTED] and its controlled nonprofit affiliate are to be treated as separate entities for purposes of the "political subdivision" exemption of § 18a(c)4, then they should also be treated as separate entities under the income and assets threshold of § 18a(a)2B. } ^{yes}

Very truly yours,

[REDACTED]

1/25/93

[REDACTED]

Enclosures
cc: [REDACTED]

^{called}

It appears that [REDACTED] is a "political subdivision, and, therefore, exempt.

Nonprofit corporate affiliate is an entity, and would be required to file if it meets the size test. [REDACTED] is not an entity, and its sales ^{asset} would not be included in determining size.