

SENT BY [REDACTED]

: 3-23-93 : 2:25PM : [REDACTED]

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801.1(a)(2)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Writer's Direct Number

[REDACTED]

March 23, 1993

FACSIMILE TRANSMISSION (202) 326-2050

Richard B. Smith, Esq.
Premerger Notification Office
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Informal Hart-Scott-Rodino Opinion Letter

Dear Mr. Smith:

As you suggested, I am writing to obtain the Staff's position on the definition of "entity" as set forth in Section 801.1(a)(2) of the Regulations promulgated under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), under the facts outlined below.

FACTS

[REDACTED] which transacts business in the name of the [REDACTED] is contemplating purchasing certain assets comprising an enclosed [REDACTED]. The proposed transaction satisfies the size-of-person and size-of-transaction tests.

ANALYSIS

We have concluded that the transfer of all the assets of the [REDACTED] from the seller to [REDACTED] would be exempt because [REDACTED] is a state agency and not an "entity." The Act only applies to an "entity," which is defined to exclude "the United States, any of the states thereof, or any political subdivision or agency of either other than a corporation engaged in commerce." 16 C.F.R. Section 801.1(a)(2).

[REDACTED]

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[REDACTED] was created by the legislature of the [REDACTED]
and is governed by [REDACTED]

We believe that the following provisions of the [REDACTED] clearly show that [REDACTED] is a state agency:

1. Board of Directors. The Board of Directors of [REDACTED] consists of 15 members, including the Secretary of Education, the State Treasurer, two (2) State Senators, two (2) members of the House of Representatives and two (2) members appointed by the Governor, and reports to the State Insurance Department. The Board of Directors is responsible for preparing annual financial statements which are submitted to the Governor and made available to the public.

2. Contributions. The Commonwealth makes contributions to [REDACTED] on behalf of all active members of the [REDACTED].

3. Budget. The [REDACTED] prepares its administrative budget each year and submits it to the Governor who in turn submits it to the General Assembly for approval. The General Assembly makes an appropriation each year sufficient to provide for the Commonwealth's contribution obligations and to pay the administrative expenses of [REDACTED].

4. Payments of Funds. The State Treasurer is the custodian of the funds deposited in [REDACTED] and makes all payments from [REDACTED] in accordance with requisitions signed by the Secretary of the Board of Directors and ratified by the Board.

5. State Guarantee. Statutory interest charges payable, the maintenance of reserves in [REDACTED] and the payment of all annuities and other benefits granted by the Board are obligations of the Commonwealth.

In addition to these provisions of the [REDACTED] there are two operational matters regarding [REDACTED] which we believe are dispositive in concluding that [REDACTED] is a state agency. First, each of the employees of [REDACTED] is a state employee. Second, any interpretations of the [REDACTED]

[REDACTED]

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[REDACTED] and disputes by beneficiaries of [REDACTED] with respect to the benefits paid to such beneficiaries pursuant to such interpretations are first resolved by an administrative proceeding by [REDACTED]

Based upon the provisions of the [REDACTED] and the operational matters discussed above, we believe [REDACTED] is a state agency and therefore not an "entity" under the Act. If this is the case, the proposed acquisition of the [REDACTED] would not be subject to the Act's reporting requirements.

We would appreciate learning from you as soon as practicable the Staff's position on this matter. If you have any questions please call either [REDACTED]

Yours very truly,

[REDACTED]

[REDACTED]

3/24/93 - called [REDACTED] and advised that [REDACTED] qualifies as a "state agency" and is therefore not an "entity" within the definition set forth in 801.1(a)(2). Therefore, its purchase of the [REDACTED] is exempt from HSR reporting requirements.

RBS