

{ 6802.40 ; 801.40 ; 801.10 } (b)



May 3, 1996

VIA FACSIMILE

Mr. Richard Smith
Premerger Notification Office
Federal Trade Commission
Washington, D.C.

MAY 3 3 35 PM '96
PREMERGER NOTIFICATION OFFICE
FEDERAL TRADE COMMISSION

Re: Application of Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act")

Dear Dick:

The purpose of this letter is to clarify certain facts in my letter to you of April 22, a copy of which is attached hereto, and to state, for your concurrence, the conclusions that we reached regarding the fact situation presented in the April 22 letter.

First, as a clarification of facts, New Hospital A will be controlled by Parent at the time of the transfer of assets between Hospital A and New Hospital A. Likewise, the Mayor and City will control New Hospital B at the time of the transfer of assets between Hospital B and New Hospital B. In addition, Newco will be a §501(c)(3) not-for-profit corporation, which will be created by a Home Rule Petition and which will not issue voting securities.

In our telephone conversations, you agreed with me that this transaction is exempt from the pre-merger filing requirements of the Act. However, in our discussions, you stated the bases of the exemption slightly differently than I had stated them in my April 22 letter. On behalf of the Premerger Notification Office, you stated that the initial transfers of assets between Hospital A and New Hospital A, on the one hand, and Hospital B and New Hospital B, on the other hand, were exempt under the general position taken by the Premerger Notification Office regarding transfers of assets between not-for-profit corporations that do not have voting securities but that are controlled by the same ultimate parent entity (as contrasted with the exemption under 16 C.F.R. §802.30 for intra-person transactions where the acquiring person and the acquired person are the same person by reason of the holding of voting securities). The subsequent formation of Newco is also exempt under the Premerger Notification Office's position that the formation of a not-for-profit corporation that has no voting securities is not reportable under 16 C.F.R. §801.40 because there are no voting securities being acquired. This position is different from the exemption under 16 C.F.R. §802.40 for the formation of a not-for-profit corporation that has voting securities, which exemption I cited in my April 22 letter.

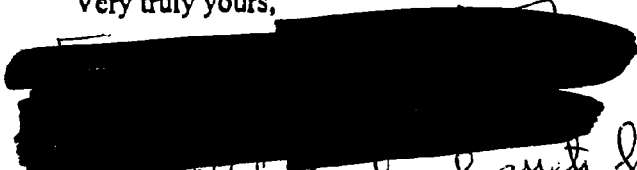




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I believe that you will be in agreement with the foregoing restatement of the conclusions that we reached in our telephone conversations. However, please contact me at [redacted] soon as possible if you have any disagreement with my restatement of our conclusions. Thank you in advance for your attention and cooperation.

Very truly yours,



[redacted] 5/13/96. Advised writer that transfer of assets from Hospital [redacted] to New-Hospital A by System, which is a health care system with other hospitals and activities, and assets from Hospital B to New-Hospital B by City, a political subdivision of state, are viewed by the PMN Office under 501.1(c)(3) as involving no acquisition since System's Parent will ~~become~~ become the sole member of New-Hospital A (as it was the sole member of Hospital A) and City will become the sole member of New-Hospital B (as it was the sole member of Hospital B, also a non-profit). The contributions of New-Hospital A by System through Parent, to Newco, a 501(c)(3) non-profit, as part of ~~the~~ Newco formation, and of New-Hospital B by City to Newco as part of the formation process, are exempt from reporting since Newco is not issuing voting stock to System or to City, which is not a person.

RBSmith