

Section 7A a
801, 1(a)2

May 27, 1998

By Federal Express

Mr. Patrick Sharpe
Federal Trade Commission
Premerger Notification Office
Bureau of Competition
Room 303
6th Street & Penn. Ave. N.W.
Washington, DC 20580

This material may be subject to the
confidentiality provisions of section
7A(H) of The Clayton Act which restricts
release under The Freedom of Information
Act.

Re: Exemption from Premerger Notification and Waiting Period Requirements of the
Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act")

Dear Mr. Sharpe:

This firm represents a health care authority (the "Authority") organized pursuant to Alabama's Health Care Authority Act of 1982 (the "Health Care Act").^{1/} The Authority is currently negotiating with a third-party to purchase several hospitals owned and operated by that entity (the "Proposed Transaction").

The HSR Act expressly exempts several classes of transactions from its requirements, including "transfers to or from a Federal agency or a State or political subdivision thereof."^{2/}

The Health Care Act provides, in relevant part, as follows:

(c) ... [The Alabama] Legislature hereby:

^{1/} Alabama Code § 22-21-310, et seq.

^{2/} 15 USCA § 18a(c)(4).

Mr. Patrick Sharpe
May 27, 1998
Page 2

(2) Determines, as an expression of the public policy of the state with respect to displacement of competition in the field of health care, that each authority, when exercising its powers hereunder with respect to the operation and management of health care facilities, acts as an agency or instrumentality of its authorizing subdivisions and as a political subdivision of the state.^{3/}

In Askew v. DCH Regional Health Care Authority,^{4/} several plaintiffs brought an antitrust action to prevent a health care authority incorporated pursuant to the Health Care Act from completing its proposed acquisition of a health care facility. After a thorough analysis of the Health Care Act, the United States Court of Appeals for the Eleventh Circuit concluded that the health care authority was a "political subdivision for purposes of antitrust immunity."^{5/}

Based on the Health Care Act and the Askew case, we have concluded that the Authority is a political subdivision of the State of Alabama and that the Proposed Transaction is, therefore, exempt from the requirements of the HSR Act. As you and I discussed on April 28, 1998, this letter confirms that the Federal Trade Commission agrees that political subdivisions such as the Authority are exempt from the requirements of the HSR Act.

If I have misunderstood your office's position on this issue, please contact me at your earliest convenience. We certainly appreciate your assistance with this matter.

Sincerely,

[Redacted signature]

cc: [Redacted]

The Alabama State Authority is not an entity in accordance with section 801.1(a)(2) since it is a state agency. Had it been deemed an entity it would be exempt under section 7A(c)(4) since it is a political subdivision of a state called [Redacted] 5/28/98 and informed him of the above.

^{3/} Ala. Code § 22-21-319(c)(2) (emphasis added).

^{4/} 995 F.2d 1033 (11th Cir. (Ala.) 1993), cert. denied, 510 U.S. 1012.

^{5/} Id. at 1039.

[Redacted]