

801.1(a)(2)

August 24, 1998

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Premerger Notification Office
Bureau of Competition
Federal Trade Commission, Room 303
Sixth Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Applicability of Hart-Scott-Rodino Antitrust Improvements Act to
Transaction Involving an Indiana County Hospital

Dear Mr. Smith:

This confirms our telephone conversation on August 12, 1998 during which I inquired whether the Premerger Notification Office concurred with our conclusion that an Indiana county hospital is a political subdivision for purposes of 15 U.S.C. § 18a(c)(4). Based upon our representations of the facts and the scope of the Indiana County Hospital Law, you concurred that the proposed transaction would be exempt from the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a (the "Act").

A. The Transaction

The transaction we discussed involves the consolidation of an Indiana county hospital ("County Hospital"), whose sole corporate members are the Board of County Commissioners and the County Council (collectively, "County"), and a private, nonprofit acute care hospital ("Medical Center"), whose sole corporate member is an Indiana public benefit corporation organized and operated exclusively for the promotion of social welfare as described in Section 501(c)(4) of the Internal Revenue Code ("Parent"). The parties intend to form a new Indiana nonprofit corporation ("Newco") whose sole corporate members will be Parent and County. The parties intend to develop an integrated approach to the delivery of health care by transferring to Newco all the tangible and intangible assets of County Hospital and Medical Center and such other assets that comprise or relate to the hospital facilities and other entities of or that are directly or indirectly owned by County Hospital or Medical Center. Newco shall also assume, perform and discharge all unexpired contracts and leases of the parties that were entered into in the ordinary course of business and which relate to the day-to-day operations of County

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Hospital or Medical Center. Newco shall operate the former facilities of County Hospital and Medical Center as a single hospital and integrated health care delivery system. It is anticipated that Medical Center and County Hospital will be dissolved following the transfer of assets to Newco.

Newco shall be governed by a Board of 13 Directors, 2 of whom will be appointed by Parent, 2 of whom will be appointed by County and 9 additional will be selected by Parent and County jointly. It is anticipated that the following activities will require the approval of County: (a) incurrence of debt; (b) sale or lease of assets in excess of prescribed amounts; (c) affiliations, mergers, consolidations or joint ventures; (d) amendments to the Articles of Incorporation or Corporate Bylaws; (e) approval of the Chief Executive Officer; (f) review of annual budgets; (g) removal of Directors appointed by County; and (h) any extraordinary corporate transaction as determined by a majority vote of the total membership. In the event of a sale, assignment, transfer of assets, or dissolution of Newco, all assets remaining after payments of debts and obligations shall revert to Parent and County in proportion to their percentage contribution of assets upon the formation of Newco.

B. Legal Analysis

County Hospital is a county hospital under Indiana law. As such, County Hospital's organization, powers, duties and responsibilities are governed by the Indiana County Hospital Law, Ind. Code §§ 16-22-1 *et seq.*

County Hospital is governed by a Board of Trustees, Ind. Code § 16-22-3-1, whose members are appointed by the county executive, Ind. Code § 16-22-2. The County Hospital's Board of Trustees possesses the legal status of a "body corporate and politic," Ind. Code § 16-22-3-24, has available to it the power of eminent domain, Ind. Code § 16-22-3-25, and may sue and be sued in its own name and capacity, Ind. Code § 16-22-3-24(1). Moreover, since the Board of Trustees may sue and be sued in its own name and capacity, it is expressly defined under Indiana law as both a "municipal corporation," Ind. Code § 36-1-2-10, and a "political subdivision," Ind. Code § 36-1-2-13. *See also, Health and Hosp. Corp. of Marion County v. Marion County*, 470 N.E.2d 1348, 1358 (Ind.App 2 Dist. 1984) (municipal corporation is a political subdivision that, for purposes of the home rule provisions, may include a local hospital authority or corporation).

Given the foregoing statutory definitions and the powers and duties of County Hospital's Board of Trustees under the Indiana County Hospital Law, you concurred that County Hospital is a political subdivision for purposes of 15 U.S.C. § 18a(c)(4). Notwithstanding your concurrence that the proposed transaction is exempt from the reporting requirements under the Act, you specifically noted that the transaction may nevertheless be subject to antitrust scrutiny.

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Thank you for your assistance in this matter. Please call me immediately if I have misrepresented your concurrence in our conclusions or if this letter presents facts that would cause you to change your previous opinion.

Sincerely,

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9/1/98 - Adminal writes that, in formation of Nevada, Parat is only participant that qualify as a Person. County Hospital is a political subdivision as are the Board of Trustees, the Board of County Commissioners and the County Council. Therefore, formation of Nevada has only one family person and is therefore equitable.

R.B. Smith