

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 6 May 2013

SUBJECT: Approval of Hospital Corporation action regarding Premier, Inc.

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Letter from counsel for Henderson County Hospital Corporation; Opinion of bond counsel regarding 2001 Revenue bonds

SUMMARY OF REQUEST:

Since prior to its incorporation the Henderson County Hospital Corporation has been a member/owner of Premier, Inc., a group purchasing organization operating under the “safe harbor” provisions of the Federal medical “anti-kickback” laws. As a member/owner, the hospital corporation realizes significant savings from group purchasing power.

Premier, Inc., has notified the hospital corporation of a corporate reorganization. Under the terms of the reorganization, the hospital corporation’s interest would change from owning a limited partnership interest plus stock in a privately-held corporation to holding restricted voting stock in a publicly held corporation (where the publicly held stock has limited or no voting rights).

The hospital corporation has determined that, subject to your agreement with this transaction, it would be in its best interest to retain ownership of the newly issued stock, as to not do so would impair the hospital corporation’s ability to enjoy the benefits of the purchasing alliance. This action was expressly conditioned by the Board of Trustees of the hospital corporation upon obtaining your approval of the transaction and agreeing that the ownership of this restricted stock would not constitute a “joint venture” under the lease agreement between the County and the hospital corporation and it not an unlawful investment for the corporation.

It is the opinion of your County Attorney’s office that this is not a joint venue as that term is used in the lease (Lease Section 2.11). It does not appear that this arrangement is one “for health care services or related endeavors”.

The hospital corporation is allowed only under its charter to invest its investable funds in those items permitted for county governments. However, this does not appear to be an “investment” – investing funds with the motive of returning a profit – in any traditional sense. And as such would be outside the scope of any prohibition in the corporate charter.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the action.

If the Board is so inclined, the following motion is suggested:

I move that the board approve and ratify in all respects the proposed actions of the Board of Trustees of Henderson County Hospital Corporation with regard to the corporate reorganization of Premier, Inc., and with regard to Henderson County Hospital Corporation continuing to hold an interest in the newly reorganized Premier, Inc.

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Re: Henderson County Hospital Corporation

Dear Russ:

As we have discussed previously, Henderson County Hospital Corporation (HCHC) is a member of the Premier group purchasing organization. As a result of the reorganization of Premier, the interest owned by HCHC will be converted into stock in a publicly traded corporation and membership interest in a limited liability company. I have previously forwarded the transaction documents to you.

The financial benefit to HCHC of retaining its current interest and participating in this conversion is substantial. You and I have discussed the various issues related to HCHC's ownership of stock in a publicly traded company and a membership interest in a limited liability company. HCHC has explored other options to enable it to enjoy the financial benefits without actually becoming the owner of the stock or the LLC interest. Due to compliance issues, this is not possible. The HCHC Board of Directors voted yesterday to authorize the CEO to execute the necessary documents for HCHC to retain its interest and proceed with this transaction. As a condition, the Board asked that I obtain verification from Henderson County that such participation is not a violation of the Amended and Restated Lease Agreement dated September 1, 2001, by and between Henderson County and HCHC, that this arrangement would not be a Joint Venture within the intent and meaning of the said Lease Agreement, and that this arrangement would not be an investment in excess of the authority of HCHC pursuant to the Articles of Incorporation, as amended.

I remind you that the interest currently owned by HCHC consists of a limited partnership interest and stock in a privately held corporation. These interests were acquired in 1996, prior to the incorporation of HCHC. No additional monies will be paid or payable by HCHC as a result of this transaction. This does not appear to be an "investment" or to involve "idle funds" within the

C. Russell Burrell, Esq.
Henderson County Attorney
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intent and meaning of N.C.G.S. §159-39 although I find no definitive interpretation of this statute to give certainty in this regard.

I understand that you will, likely, request an opinion from the county's bond counsel in regard to these issues, and I ask that you do so at your earliest convenience. I also ask that this matter be placed on the agenda, hopefully the consent agenda, for action by the commissioners at their May 6th meeting.

Should you need any other information or would like for me to provide any other documents, please let me know.

Sincerely



Sharon B. Alexander

SBA

LEASE extract

2.11 Joint Ventures. The Hospital Corporation may enter into a contract, lease, sublease, arrangement or other venture, by itself or through a corporation permitted under Section 2.9, with any unrelated party for health care services or related endeavors (a "Joint Venture"), provided:

- (a) Prior to entry into the Joint Venture, the Hospital Corporation must (as evidenced in the minutes of a board meeting):
 - (1) Receive a written opinion of counsel to the Hospital Corporation that the Joint Venture is for a Public Purpose and not prohibited by this Lease.
 - (2) Make specific findings to support a general finding, which also must be made, that the undertaking of such Public Purpose through the Joint Venture is in the best interests of community health care for the County.
 - (3) Make an analysis of the risks of the Joint Venture upon the assets of the Hospital System with the identification of the initial "JV Risk" associated with such joint venture.
 - (4) Receive a written opinion of bond counsel to the County to the effect that such Joint Venture will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.
- (b) The JV Risk to the Hospital Corporation in such Joint Venture may not cause a violation of the covenant in Section 2.12.
- (c) The Hospital Corporation must have an investment and equity interest in the Joint Venture, and upon its dissolution ownership of its assets, which bears a proportionate relationship to the amount invested considering the terms and conditions of the Joint Venture as well as the risks thereof.
- (d) Except as otherwise required by law, information with respect to the Joint Venture shall be made publicly available.

Neither a traditional managed care contract with the Hospital Corporation as the health care provider nor membership in an association with other nonprofit corporations where the association does not undertake direct health care services shall be deemed a Joint Venture.