

801.2(d); 801.10(b); 801.1(b); 801.1(c)(8)

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

MAR 0 4 30 PM '96

March 6, 1996

VIA HAND DELIVERY

Richard Smith, Esq.
Office of Premerger Notification
Federal Trade Commission
Room 303
6th and Pennsylvania Ave., N.W.
Washington, D.C. 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.

Dear Mr. Smith:

_____ conversations on Tuesday, February 20, 1996, and

Corporation A is a nonprofit membership corporation co-sponsored by _____
_____ which serve as the members of Corporation A. No single member has the right to

_____ that is a member of Corporation A is the sole corporate member of _____; or (ii) one of
_____ that is a member of Corporation A is the sole corporate member of a

¹ You asked if the sole corporate member retained any power over _____ I advised
that, under the affiliation agreement, the sole corporate member had limited "reserved powers"
requiring its approval of:

[cont.]

✓

[REDACTED]

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Corporation B is a nonprofit membership corporation sponsored by a single [REDACTED] which serves as its sole member. Corporation B, is the sole corporate member of 13 nonprofit [REDACTED] in seven states.

Corporation C also is a nonprofit corporation sponsored by a single [REDACTED] which serves as its sole corporate member. Corporation C is the sole corporate member of 19 nonprofit [REDACTED] in five states.

As I explained, in accordance with the agreement between the parties, there are three [REDACTED] First, Corporation B will merge into Corporation A

Corporation C to effect a statutory merger into Corporation A in the near future because of issues arising out of Corporation C's present debt structure.)

[REDACTED] which Corporation A controls through the contractual [REDACTED]

In discussing the proposed transaction with you, I requested you to assume that the size of persons and size of transaction tests will be met with respect to each aspect of the proposed merger. As to the first aspect of the merger (the statutory merger of Corporation B into Corporation A), I advised you that I thought this would be considered to be a merger governed by 16 C.F.R. §801.2(d), although, for valuation purposes, the Staff considers such combinations as asset acquisitions pursuant to §801.10(b) rather than as an acquisition of voting securities.

[ftn cont.]

(a) a sale of [REDACTED] assets;

(e) alteration of the Philosophy and Mission.



I further advised you that it is my understanding that a principal reason for the reserved powers was to avoid an "alienation" of the hospital under the [REDACTED] which would require the approval of [REDACTED]

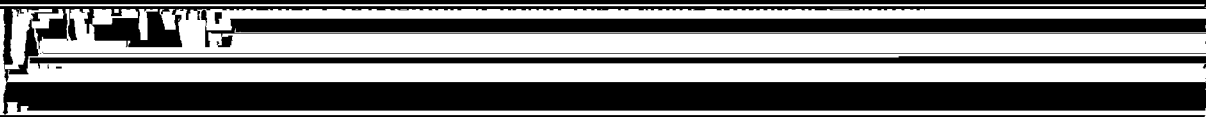
[REDACTED]



Richard Smith, Esq.


Corporation A would be required to file as the acquiring person and the ultimate parent entity of Corporation B would file as the acquired person. You concurred in my analysis.

As to the second aspect of the proposed merger (the substitution of Corporation A as the sole corporate member of Corporation C and its controlled corporations), I stated my belief that it would be treated in the same manner as the first aspect, i.e., it would be considered to be a merger governed by 16 CFR §801.2(d), although valued as an asset acquisition pursuant to §801.10(b) rather than as an acquisition of voting securities. Corporation A would be the acquiring person and the ultimate parent entity of Corporation C would be the acquired person. You also agreed with this analysis.

We also discussed the third aspect of the proposed merger, the substitution of Corporation A as the sole corporate member of each of the 3  to which Corporation A has the contractual power to appoint the board of trustees, particularly as to whether any filings by "acquired persons" would be necessary. Among the considerations we discussed in our legal memo were: (i) Corporation A already controls each of  pursuant to §801.1(b); and (ii) although §802.30 does not apply, the substitutions of Corporation A as sole corporate member appear to be without competitive significance. You advised that no filings were required by the "acquired persons", but that the substitutions should be noted in the


merger would be considered to encompass two acquisitions.

If I have misunderstood our conversations, please advise me at your earliest possible convenience. My direct dial number is . Again, thank you for your advice and


3/8/96 - called writer and advised that I


RBS Smith