

801.1(a)(2)

August 24, 1998

This material may be subject to the
confidentiality provisions of section
7A(1) of the Clayton Act which restricts
release under the Freedom of Information
Act.

Richard B. Smith, Esq.
Senior Attorney
Premerger Notification Office
Bureau of Competition
Federal Trade Commission, Room 303
Sixth Street and Pennsylvania Avenue, N.W.

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

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

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

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

B. Legal Analysis

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 § 25-3-2-12. See also *Health and Home Care of Madison County*

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

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cause you to change your previous opinion.

Sincerely,

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9/1/98 - Advised water that, in formation of
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R.B. Smith