

7A(c)(4); 801.1(a)(2)

[REDACTED]

April 8, 1999

Via Hand Delivery

1999 APR - 8
10:00 AM
FEDERAL TRADE COMMISSION
RECEIVED

Federal Trade Commission
Bureau of Competition
Room 303
Washington, DC 20548

20

Dear Dick:

This will confirm our conversation of a few weeks ago and my understanding regarding application of the Hart-Scott-Rodino Act's exemption for a transaction involving an acquisition of a hospital by a health care system that is an agency of the state. Section 7A(c) of title 15, U.S. Code, exempts from the requirements of the Act the acquisition of a political subdivision interest in a health care system (System) that

the following indicia that may be used to determine whether our client is an agency of the state.

1. The language of the statute establishing the System.
2. The expressed intention of the legislature in creating the System.
3. The position of the State Attorney General on the issue.
4. Application to the System of laws generally applied to State agencies.

Mr. Richard Smith
Deputy Assistant Director
Premerger Notification Office

-2-

April 8, 1999

We also discussed that a state constitutional

my conclusion that the System is a state for purposes of the Act.

1. *Authorizing statute.* The System was explicitly established by public law enacted by the State legislature. ✓

consideration of the legislation that evidence clearly the legislature's intent to establish the System as an agency of the State.

3. *State AG's position.* We do not have a specific Attorney General's opinion directly on

4. *Applicability of laws.* Laws applying to State agencies have been applied to the System as a matter of practice or as specified by the authorizing legislation. Specifically:

- employees of the System are deemed to be employees of the State;
- the System is subject to the State's executive budget act;
- the State Public Records act applies to the System; and
- except insofar as the authorizing legislation provides relief, State procurement laws and regulations are applicable to the System.

5. *Board appointments.* In addition to the above, the governing Board of the System is established by the legislation establishing the System, and Board appointments are to be made by designated State officials. ✓

In light of these facts, I believe it is appropriate to conclude, consistent with our discussion, that the System is a state agency exempt from the filing requirement of the Act

Mr. Richard Smith
Deputy Assistant Director
Premier Notification Office

-3-

April 8, 1999

and their interpretation as would potentially be applied to the facts provided above, please let me know without delay. Many thanks, as always.

Sincerely,

4/9/99 Advised writer that System appears to be a state agency and, as such, is not an
organization and there was no acquiring

Shorepoint hospital was a non-regional
R.R. Smith