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The really good planning behind Ascension's grab the money and run strategy

The biggest issue for Ascension's "grab the money and run" attack on the Idaho AG is the accounting and character of gifts over the more than 100 years of the non-profit hospital.

I believe this is the first time the AG's office has dealt with this issue. While the AG is personally a great attorney, his office handles a huge amount of legal issues daily in the state. There is only, as far as I can tell, one Deputy AG assigned to this investigation. That is one lawyer against a large collection of very knowledgeable, experienced and expensive planning and litigation attorneys. They were prepared for the grab and run before anyone even know this sale was coming. Heck, their planning was there in 2002 when Ascension purchased the hospital. What tells me all this is seeing Phillip Oberrecht's name as a cc on the letter. He is just local council, and he is a damned good Idaho attorney with extensive experience in this area. If he is the local guy, just think about the skill level of the rest of these planning and implementation folks nationally.

To make it real clear, in my opinion Ascension is being very aggressive. They have very good attorneys and accountants who have done excellent planning. If Ascension's lawyers convince the AG to follow their suggested restricted gift approach to the accounting and character of gifts, nothing stays in Idaho (don't let the $20 million added to the foundation at sale fool you, it stays under Ascension's control and it is really locked up).

The alternative approach for the AG, that the gifts considered need not be restrictive gifts, means that anything more than fair market value paid by Ascension for the hospital in 2002 would be subject to the accounting for all charitable support for over 100 years. Guessing at about $50 million.

Nothing else the AG is looking at for this transation has the greatest future dollar effect on charitable support of the region served by the non-profit hospital over years.

Ascension wants the AG to believe that only gifts which had a written restriction matter at all in the AG's investigation. This would basically mean no gifts matter so it all goes to Ascension. However, the code the AG is using for its investigation doesn't talk about restricted gifts, only charitable contributions made to the non-profit hospital, without regard to any writing or restrictions. If a gift was made to support the non-profit hospital in any manner, then, the statute and history would state the money in excess of fair market value paid by Ascension for the hospital (2002 sale was for about $30 to $33 million as far as I can estimate, subtracting from a round estimated value of $80 million of the hospital in 2002 suggests $47-50 million in funds which could stay in Idaho under a control of an Idaho non-profit to be used, post-sale, pursuant to the terms of the prior non-profit purposes stated in the article of incorporation, as amended, in the non-profit hospital over the years.

I picked up this story from Ascension's lawyers statement in his February 2, 2016 letter to Idaho's Attorney General, plus my phone call with the deputy AG assigned to this task, and assumptions I am making as Ascension, in a very well planned attach, is keeping the lid on any public disclosure of relevant information. This is also why I believe Idaho is currently way outclassed and outgunned by Ascension in the "grab the money and run" department.

This quote from Ascension's letter is what tells me the details of Ascension's aggressive attack (the bold and italic emphasis is mine and not part of the quote):

> We believe the above proposal not only satisfies the Idaho Conversion Law but also the ***"Charitable Trust Doctrine." The charitable trust doctrine is commonly recognized as applying to gifts explicitly restricted to certain uses by a donee (i.e., restricted gifts). The doctrine provides that such gifts, if accepted, would be subject to any valid legal restrictions imposed by the donor at the time of the donation. The assets being sold in the Proposed Transaction were not assets given to SJRMC but rather were assets primarily constructed and/or acquired with debt and/or operating revenue.*** Nonetheless, as noted above, we intend that *all* the proceeds received by SJRMC be used consistent with its Catholic mission and charitable purposes. In addition, any funds that have been raised by SJRMC Foundation will be used in the communities where such funds were raised as directed by the Board of Trustees of the SJRMC Foundation.
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> As an aside, ***we do not understand the Idaho Conversion Law or, for that matter, the Charitable Trust Doctrine, to impose any geographical restrictions on SJRMC following the completion of the sale.*** A review of SJRMC's Articles of Incorporation shows that the corporation's charitable purposes have never been limited to the Lewiston community, nor for that matter, the State of Idaho. In fact, since 1986, SJRMC's articles have provided that upon dissolution, the corporation's assets would be distributed to an out of state charity (i.e., the Los Angeles Province of the Sisters of St. Joseph of Carondelet and then later to Ascension Health). Certainly there are many Idaho nonprofit corporations, including churches, hospitals and universities, that have used their assets and other resources to expand their operations and fund programs outside their place of origin, including in some cases, programs in other states and countries. We assume Idaho law is not violated when a charity, such as the Peregrine Fund or the American Red Cross, raises funds for programs outside the state or for use in other countries or when major health systems, such as St. Luke's Health System or St. Alphonsus Health System, expand their operations into other geographies, including outside the state. Therefore, we simply ask that SJRMC be treated in the same manner as other Idaho nonprofit corporations in your state. ***As an Idaho nonprofit corporation, SJRMC is not currently subject to any geographical restrictions; nor should it be subject to any such restrictions as a result of completing the Proposed Transaction.*** After all, over 25% of SJRMC's patients are from the State of Washington.

Finally, we note that SJRMC was founded by the Sisters of St. Joseph of Carondelet in 1918. By way of background, the Sisters of St. Joseph of Carondelet is a congregation of women religious which traces its origin to and follows the spirit of the foundation made in LePuy-Velay, France dating back to 1650 by Jean Pierre Medaille, S.J. The first Sisters of St. Joseph came to America from Lyon, France in 1836 when a request came from Bishop Joseph Rosati in St. Louis for Sisters to teach the deaf. Eight women were chosen to travel across the ocean and establish a foundation for the Sisters in the United States. Once in St. Louis, these Sisters opened two houses: one for orphans and the deaf in Carondelet, Missouri; and a school across the Mississippi River in Cahokia, Illinois.

In 1860, the congregation separated from its French roots and became known as the Sisters of St. Joseph of Carondelet. In 2002, the Sisters of St. Joseph of Carondelet joined Ascension and later became one of the three "founding participating entities" of the Ascension Sponsor which, as noted above, has the responsibility to ensure Ascension and the System Entities — which includes SJRMC both before and after the sale - remain a healing ministry carrying out the apostolic works of the Roman Catholic Church. ***Given this heritage, we believe having the Ascension Sponsor direct the use of the sale proceeds is not only consistent with Idaho law but also continues the healing influence of the Sisters of St. Joseph of Carondelet in the Lewiston, Idaho area.***

Damn, their good! Scares me.

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