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Robert Thackery, Chairman
Gooding County Board of County Commissioners
Post Office Box 417
Gooding, ID 83330

Dear Commissioner Thackery:

Ten questions have been presented for our response. These fall into essentially three groups:

1. May the real and personal property (including accounts receivable) of a county hospital be sold, leased, or otherwise transferred to a newly-formed hospital district?
2. What consideration, if any, must the county receive in exchange for said property?
3. What effect would transfers of hospital property have on certain existing legal and contractual obligations of the county hospital?

CONCLUSIONS:

The questions posed are complicated by the fact that the real property on which the county hospital is located is state general fund land, leased pursuant to an uncodified act of the Idaho legislature, 1967 Idaho Sess. Laws 121 (ch. 58). Nonetheless, we conclude that the real property of the county hospital can be assigned or sublet to the district, with the state's consent. Also, the personal property of the hospital can be sold or leased. Such sales or leases can be for any consideration, or none at all, with the possible exception of accounts receivable. Finally, the hospital's license can be transferred, but the hospital's obligations under the

Hill-Burton Act will continue after the property is transferred. The effect that transfer of hospital property to the district has on contractual relations depends on the terms of the contracts involved. No generalization as to this is possible at this time.

FACTUAL BACKGROUND:

In 1967, the Idaho Legislature reserved certain land in Gooding County from sale so long as that land was "used for a hospital or other public purposes and maintained by a public authority." 1967 Idaho Sess. Laws 121 (ch. 58, § 1). Section 2 of that act states that:

The State Board of Land Commissioners is hereby authorized to lease the land described in Section 1 hereof for a hospital or other public purposes, upon such terms and conditions as the Board may determine best in the interests of the State or to exchange said lands for other lands of a tax-supported agency or unit of the State of Idaho or the United States, in accordance with law.

Pursuant to this Act, on January 1, 1968, the Board of Land Commissioners leased the land to Gooding County for a term of 99 years with an annual rent of \$175. The lease allows the land to be used only as a county hospital, and states that "This lease is not assignable by the lessee, nor may it be sublet."

In 1984, Gooding County and the Gooding County Memorial Hospital board sublet a portion of the property to St. Benedict's Hospital for the purpose of establishing an alcohol treatment center. The term of the St. Benedict's lease is 25 years. Prior to entering into this sublease, the county obtained the written consent of the Idaho State Board of Land Commissioners to the sublease.

On May 27, 1986, the voters of Gooding County approved the creation of a county-wide hospital district under Idaho Code §§ 39-1319 et seq.

ANALYSIS:

You first ask whether the hospital property can be sold, leased, or otherwise transferred to the hospital district.

Since the county is leasing the hospital land from the state, it would be impossible for the county to transfer title in fee. However, Idaho Code § 31-836 allows counties to lease property, and Idaho Code § 31-3515 specifically allows leases of county hospital property to hospital districts. The county's lease from the state is "property" under Idaho Code § 55-101, which defines real property as including possessory rights to land, and thus it can be leased.

Since a leasehold is "property," it could also be sold under Idaho Code § 31-808. (A "sale" of a lease would be more properly called an assignment.) Also, Idaho Code § 67-2322 allows transfers of property between governmental units. That section states that:

In addition to any other general or special powers vested in counties . . . [and] . . . hospital districts . . . said units of government shall have the power to convey or transfer real or personal property to another such unit . . . with or without consideration.

Thus, the lease from the state could be assigned, either with or without consideration.

If the lease is assigned, the county would transfer all of its rights under the lease from the state to the hospital district, for the remainder of the 99-year lease from the state. If the hospital land is sublet, the sublease would either be for the remainder of the 99-year lease, or the county would reserve some reversionary interest. See Fahrenwald v. LaBonte, 103 Idaho 751, 653 P.2d 806 (App. 1982) (distinguishing between assignment and sublease).

A sublease could be for any term up to the remainder of the original lease, under Idaho Code § 31-836, which states that:

The board of county commissioners may lease any property belonging to the county and not necessary for its use . . . to any hospital district organized under title 39, chapter 13, Idaho Code, for use in furthering the purposes of said district. Such lease may be for any term not to exceed ninety-nine (99) years. . . .

The lease from the state forbids the county from assigning or subletting. Before proceeding, the county must therefore obtain an agreement from the Idaho State Board of Land

Commissioners allowing an assignment or sublease, as was done with the St. Benedict's sublease.

An assignment or sublease to the hospital district would not violate the original statute establishing the tract as hospital land. That statute only requires that land be "used for a hospital or other public purposes and maintained by a public authority." 1967 Idaho Sess. Laws 121.

An assignment or sublease might create unwanted liability for the county. In either an assignment or a sublease, the assignor or original tenant remains liable to the landlord (the state) and to its subtenant (St. Benedict's), absent an agreement among the parties to the contrary. 51C C.J.S. Landlord and Tenant, §§ 45(2), 47. It may be desirable for the county to enter into such agreements (known as novations) with the state, St. Benedict's, and the district.

In summary, if the state agrees, nothing prevents the county from assigning or subleasing the hospital land to the hospital district.

You next ask whether the personal property of the county hospital may be sold, leased, or otherwise transferred to the hospital district.

You have informed us that unlike the hospital real property, the hospital personal property is owned by the county, and thus the county would be free to sell, give, or lease the property to the district, assuming it has the statutory authority to do so.

Under Idaho Code § 31-808, counties are empowered to sell personal property. Under that section, sales of property worth more than \$50 must be by public auction. Idaho Code § 31-3616A deals specifically with sales of hospital personal property. That section provides that hospital property worth \$5,000 or less need not be sold at auction. That section also provides that hospital personal property need not be sold at auction if the hospital board determines that selling particular items at auction would pose a danger to public health and safety.

As previously noted, Idaho Code § 67-2322 allows transfers of property between governmental entities. Such transfers can be for no consideration, and thus the county could, under Idaho Code § 67-2322, transfer the hospital personal property to the district.

Finally, Idaho Code § 31-836 allows leases of hospital property and equipment to hospital districts for terms of up to 99 years. That this section allows leases of personal as well

as real property is made clear by the fact that the section refers to leases of hospital "equipment," and by the fact that Idaho Code § 73-114(1) states that the term "property" in the code refers to both real and personal property.

In summary, the personal property of the county hospital could be sold, leased, or given to the hospital district.

In your third question, you ask whether the hospital board may transfer its debts and accounts receivable to the hospital district.

As personal property, receivables can be disposed of under Idaho Code § 31-3616A. As discussed previously, Idaho Code § 31-3616A exempts disposal of hospital board property from the procedures of Idaho Code § 31-808, so long as the property is worth less than \$5,000. (The "threat to public safety" exemption of Idaho Code § 31-3616A would not apply to receivables.) Also, receivables could be transferred under Idaho Code § 67-2322.

Even though accounts receivable are personal property, the fact that they represent debts owed to the county hospital board may restrict the board's ability to dispose of them. County officers are under a duty to account for debts owed to the county. See Naylor v. Vermont Loan and Trust Co., 6 Idaho 251, 55 P.297 (1898).

It follows that if the hospital's accounts receivable can be sold at all, they would probably have to be sold at market value.

In your fourth question, you ask whether the hospital district must ratify or accept any transfer of property from the county. There are no Idaho statutes specifically dealing with acceptance of property transfers in this situation. Idaho Code §§ 67-2322 to 67-2325, which govern transfers of property between governmental entities, require that all transfers of property must be approved by two-thirds of the governing body of each unit. Idaho Code § 67-2324. However, Idaho Code § 67-2324 only applies to conveyances pursuant to Idaho Code §§ 67-2322 to 67-2325. If the county proceeds pursuant to some other statutory authority, majority acceptance by the hospital district board would still probably be required. Hospital districts have a separate corporate existence. See Idaho Code § 39-1331. One of the powers of the hospital district board is to acquire property for the district. Idaho Code § 39-1331(d). Since the power to acquire property is reserved to the district board, it could not be forced to accept property. Instead, approval of at least a majority of the district board would be required. See Idaho Code § 73-112 (authority given to three or

more public officers is construed as being vested in a majority of them). Thus, no transfer of property to the district would be valid without the approval of at least a majority of its board.

In your fifth question, you ask whether transfers of property from counties to hospital districts must be for fair market value. There are two statutes dealing with this problem. Idaho Code § 31-808 requires that sales of county real and personal property of a value over \$50 must be by public auction. However, Idaho Code § 31-3616A exempts personal property of county hospitals from the procedural requirements of Idaho Code § 31-808, if the property involved has a value of \$5,000 or less.

On the other hand, Idaho Code § 67-2322 states that:

In addition to any other general or special powers vested in counties, [and] . . . hospital districts, . . . said units of the government or districts shall have the power to convey or transfer real or personal property to another such unit. . . . Such conveyance or transfer may be made without consideration or payment when it is in the best interest of the public in the judgment of the governing body of the granting unit.
[emphasis added]

Since the authority conferred by this section is "in addition to" other powers of counties, the auction requirements of Idaho Code §§ 31-808 would not apply to a transfer under Idaho Code § 67-2322.

Thus, the consideration for a transfer of county hospital property could be either the highest bid at auction, if the county acts pursuant to Idaho Code § 31-808 (subject to the exceptions in Idaho Code § 31-3616A), or the consideration could be any amount agreed upon by the county and the district, under Idaho Code § 67-2322, and the exceptions to Idaho Code § 31-808. Finally, the transfer could be gratuitous.

In your sixth question, you ask whether the county hospital's license will remain in effect after the hospital facilities are transferred to the newly-formed hospital district. Chapter 13 of title 39 of the Idaho Code governs licensing of all hospitals, including government-operated hospitals. Idaho Code § 39-1305 states that:

Each license shall be issued only for the premises and persons or governmental units

named in the application and shall not be transferable or assignable except with the written approval of the licensing agency.

Thus, in order for the hospital to remain licensed after the transfer of facilities, consent must be obtained from the department of health and welfare, the "licensing agency." Idaho Code § 39-1301(h).

Your seventh question asks about the effects of a transfer of hospital facilities on the county's obligation under the Hill-Burton Act, 42 U.S.C. §§ 291 et seq. 42 U.S.C. § 291i(a) provides that the United States can sue to recover Hill-Burton funds, if facilities built or modernized with such funds are sold or transferred to any entity not qualified to receive such funds.

Recovery can be from the transferor or transferee, and the precise amount of liability is determined according to 42 U.S.C. § 291i(c). Since hospitals built with Hill-Burton funds can only be transferred to hospitals that would be eligible for Hill-Burton funds, the county's current obligations would continue after the transfer of facilities to the hospital district.

It should be kept in mind that the restriction of 42 U.S.C. § 291i(a) only applies for 20 years after construction or modernization funded by Hill-Burton.

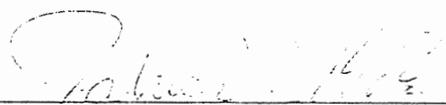
Also, 42 U.S.C. § 291i(a) only permits transfers to transferees approved by the state agency that administers the Hill-Burton program. In Idaho, that agency is the division of health facilities survey and construction, of the state department of health and welfare. Idaho Code § 39-1403.

Your final questions ask about the effect that transfers of hospital property would have on accreditation, charitable groups involved with the county hospital, and contracts with medical staff.

We do not have available the information to answer these questions; specifically, nor would it be appropriate for us to do so. However, the following general information is provided. As for accreditation, you should consult the accrediting agencies involved. To determine the impact on charities, you should consult those groups and also examine their charters and by-laws. Finally, as to the medical staff, you have provided us with a copy of by-laws of the county hospital staff. In those by-laws, "hospital" is defined as Gooding County Memorial Hospital. This definition would have to be amended to refer to the new district's hospital.

In general, the effects of a transfer of hospital property on current contracts depends on the terms of each contract involved. Unless a contract states that it binds the county's successors in interest, it would be necessary to assign the county's interest. If a given contract forbids assignment, it will be necessary to obtain a waiver of that prohibition. As with the assignment of the hospital land lease, to avoid continuing liability under existing contracts, the county may want to enter into negotiations with the hospital district and the parties with whom the county has contracts.

Finally, in your letter you mention that there is a "satellite" clinic in Wendell operated by the county hospital board. So far as we can determine, the real property upon which the clinic is located is owned in fee by the county, and thus it could be transferred in fee to the hospital district. With that difference, the foregoing analysis would control the transfer of the clinic property to the district.



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