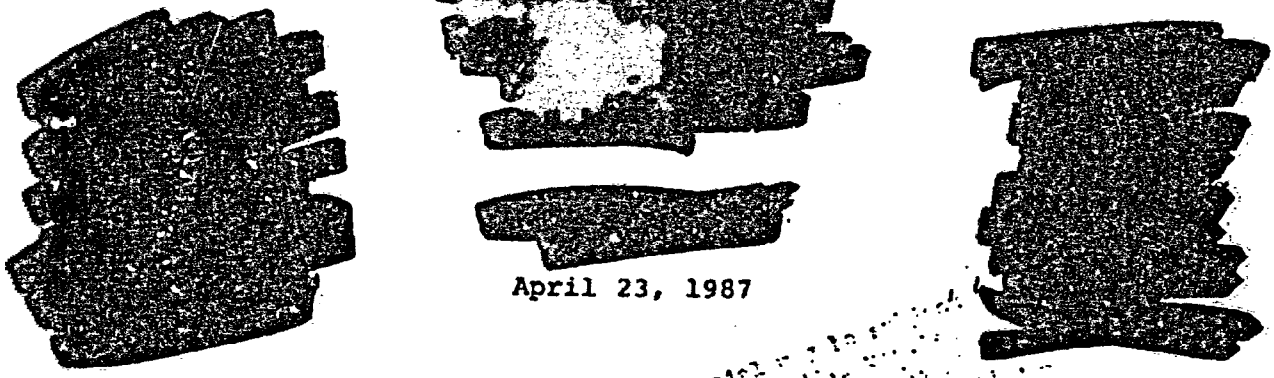


April 23, 1987

Mr. Patrick Sharp
Compliance Specialist
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20037

Dear Mr. Sharp:

This letter will summarize our several telephone conversations concerning a proposed transaction between two nonprofit hospitals.

Two corporations ("Contributing Corporations"), both recognized as exempt entities under Section 501(c)(3) of the Internal Revenue Code, intend to create a new corporation ("Joint Venture Corporation"), which will also apply for recognition under Section 501(c)(3). For reasons unrelated to the Hart-Scott-Rodino Act the transaction will not be consummated unless the IRS recognizes the Joint Venture Corporation as tax exempt under Section 501(c)(3).

The Joint Venture Corporation is being created to operate, administer, and manage two physically adjacent hospitals ("Hospitals") owned by the Contributing Corporations. Those Hospitals are now operated separately as divisions by the two Contributing Corporations. Each of the Contributing Corporations owns one or more other hospitals, which will continue to be operated separately by the Contributing Corporations.

At the present time, the two Hospitals jointly own or operate a number of assets. These include a jointly operated radiology department that serves the two Hospitals, an emergency room owned by one Hospital but leased to a joint venture of both Hospitals, a physicians office building, a parking ramp, and a clinical services division. The agreement for creation of the

Joint Venture Corporation provides that it is the intent of the parties "at the appropriate time to incorporate the functions, management, and assets" of the existing joint ventures into the Joint Venture Corporation. The agreement does not define the appropriate time or otherwise bind the parties to incorporate existing joint venture assets into the new Joint Venture Corporation.

The agreement for creation of the new Joint Venture Corporation does not require the Contributing Corporations to transfer the current physical facilities of the Hospitals to the new corporation. Rather, the new Joint Venture Corporation will operate the facilities under agreement, which requires each of the Contributing Corporations to "make available" to the new Joint Venture Corporation all "real and personal property" of the two Hospitals for the purposes for which the new Joint Venture Corporation has been created. That obligation continues, subject to earlier termination for breach, for a period of fifteen years. If during that fifteen-year period any such property ceases to be used by the Joint Venture Corporation for the purposes for which it was created, that property reverts to the Contributing Corporations. At the end of the agreement, all property contributed by the Contributing Corporations is returned to them subject to a payment being made between the parties to equalize the value distributed to each party.

All revenues from operations of the two Hospitals will be collected by the Joint Venture Corporation. Out of those proceeds the Joint Venture Corporation will pay its operating expenses, including fees to one of the Contributing Corporations for certain services that that Contributing Corporation will perform for the Joint Venture Corporation; a "membership" fee to the Contributing Corporations, which is an amount initially calculated with relation to the debt service on and the capital value of the assets made available by the Contributing Corporations; and if, after such payments are made, the Joint Venture Corporation's working capital reserve exceeds $3 million, the excess will be paid equally to the Contributing Corporations.

Because of the substantial time lag between billing and receipt of payment, the Contributing Corporations will have to advance working capital to the Joint Venture Corporation to fund operating expenses until receipts from billings of the

Joint Venture Corporation come on stream. The amount of such advances has not been fixed by contract and will depend on how fast or slow the Joint Venture Corporation's receipts actually come in. Based on past experience, our client anticipates that such advances will exceed $10 million. The agreement between the parties contemplates additional capital contributions for capital improvements, if any, and additional working capital only with the mutual agreement of the Contributing Corporations.

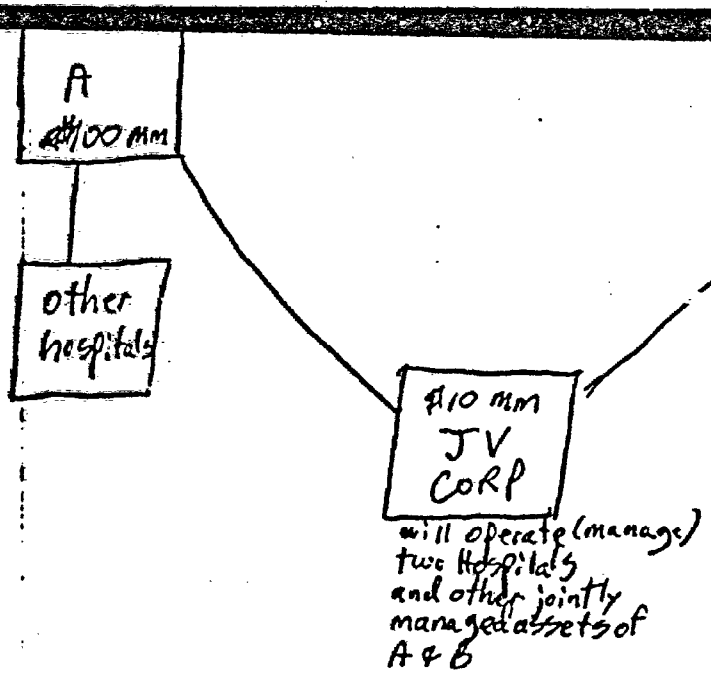
The form of the transaction--in particular the decision of the Contributing Corporations to subject their assets to an operating agreement rather than transfer them to the Joint Venture Corporation--was selected for business reasons unrelated to the Hart-Scott-Rodino Act's requirements.

It was your opinion that even though the amount of the contribution the Contributing Parties will make to the Joint Venture Corporation's working capital is not fixed, because the parties anticipate that the contribution will be in excess of $10 million, the proposed transaction would be held to meet the size-of-transaction level requiring filing under the Act.

We asked you whether you agreed with our opinion that the transaction would be exempt under Reg. § 802.40. You said you were not prepared to give us an opinion on that question unless we made the request in writing, which we are doing now.

Thanks for your assistance.

Sincerely yours,



The parties are forming a Joint venture to manage a portion of their assets, not all of their assets. Although this transaction meets the size-of-~~the~~ test, It is clear to me that this is exempt under § 802.40 of the rules. The rule is clear, a newly formed company that will be not for profit within the meaning of sections 501(c)(4) of the Internal Revenue Code is exempt under Section 802.40. The party asserts the the joint venture "will not be consummated unless the IRS recognizes the Joint Venture Corporation as tax exempt under section 501(c)(3)". The statement of Basis and Purpose describes the types of organizations related to section 501(c)(3) as "civic leagues or employee associations." Although this is not the normal hospital merger, (parties are forming a management company) I don't recall any transactions ~~as~~ concerning hospitals as being exempt under 802.40. Any thoughts?

called [redacted] May 15, 1987.

The PMN off has determined that this is exempt under 802.40.