

801.40 (LLC)

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

JAN 3 10 08 AM '96

January 2, 1996

VIA FAX - 202/326-2624

Mr. Dick Smith
Senior Attorney
Premerger Notification Office
Federal Trade Commission
Bureau of Competition
Washington, D.C. 20580

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

Re: Rule 801.40 - Joint Venture
Premerger Notification Requirements

Dear Mr. Smith:

Thank you for the opportunity to visit by telephone last
Wednesday concerning the Premerger Notification Requirements Under
the Heart-Scott-Rodino Antitrust Improvement Acts of 1976 ("Act")
with respect to the proposed joint venture between our client, [REDACTED]
non-profit corporation [REDACTED], and [REDACTED]
[REDACTED]. In my letter dated December 26, 1995, I
outlined certain facts surrounding the formation of a joint venture
between the [REDACTED] for the operation of a hospital
in [REDACTED]. The parties were discussing whether to
structure the transaction as a limited partnership or limited
liability company and the impact of such decision on whether a
filing would be required under the Act. In our conversation you
raised questions about the representatives serving as Class A
Governors and the Class B Board of Governors described in paragraph
3 of my earlier letter. The [REDACTED] would appoint the Class A
Governors and they would consist solely of directors, officers
and/or employees of the [REDACTED]. [REDACTED] would appoint the
Class B Governors and not less than three of five of those Class B
Governors would be officers, employees, or directors of [REDACTED].
The remaining two positions on the Class B Board of Governors would

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be filled by a physician on staff with the Hospital and a representative from the community the Hospital serves. Depending on whether you view the physician as an insider, not less than sixty percent and possibly eighty percent of the Class B Governors would be "insiders". As indicated in the earlier letter, the Class A Board of Governors and the Class B Board of Governors each initially hold 50% of the voting power of the joint venture.

Based on our conversation last Wednesday, it would appear to me that the [redacted] Class A Board of Governors consists totally of insiders and no filing would be required. However, with the slight variation of the make-up of [redacted] Class B Board of Directors, we are again requesting an informal statement of the FTC's position on this matter. Because more than a majority (at least 60%) will consist of insiders to [redacted], it would be our feeling that a joint venture structured as an LLC would not be subject to the filing requirements.

I would ask that you contact me at your earliest convenience to discuss this matter. As we are anxious to move forward with structuring the transaction, I would ask that if at all possible you contact me on Wednesday since we are attempting to make a decision on structure no later than Friday. I would also like to conference [redacted] or one of his representatives from [redacted] on the call so that we can clarify and properly address any questions that you may have. Your assistance and cooperation in responding to this inquiry are greatly appreciated.

I look forward to hearing from you.

Cordially yours,

[redacted signature]

[redacted text]

1/4/96 - Advised writer, who confirmed that [redacted] would stay in existence. That [redacted] would not be deemed to be taking back voting stock in LLC and only [redacted] would be deemed to be acquiring 100% of the LLC's voting stock, i.e., the right to appoint two external directors to the LLC board that not 801.40 Joint venture (which requires the taking of voting stock by more than 1 person) would be reportable. RB Smith