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May 5, 2011

Glenn R. Thomson, Esq.  
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Alston & Bird LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424

RE: Meadows Regional Medical Center, Inc. and Hospital Authority of Toombs  
County Proposed Sale/Leaseback Transaction

Dear Mr. Thomson and Ms. Williams:

This responds to your letter dated April 4, 2011, in which you requested a determination that the Hospital Acquisition Act, O.C.G.A. § 31-7-400 *et seq.* (the "Act"), does not apply to the proposed transaction referenced above. Your letter advises us that you represent Meadows Regional Medical Center, Inc. ("MRMC") in connection with a proposed "sale/leaseback/retransfer transaction" under which MRMC will transfer its new 57-bed replacement New Hospital (the "New Hospital") to the Hospital Authority of Toombs County (the "Hospital Authority"); the Hospital Authority will simultaneously lease the New Hospital back to MRMC. The proposed transaction appears to present a matter of first impression for this office.

### BACKGROUND

You have explained that the original hospital and skilled nursing facility (the "Original Hospital"), located in Toombs County, was owned by the Hospital Authority. In 1992, the Hospital Authority incorporated MRMC, a nonprofit corporation located in Toombs County, for the sole purpose of leasing the Original Hospital from the Hospital Authority. In 1994, the Hospital Authority entered into a lease agreement (the "Original Lease") with MRMC as part of a "restructuring." As part of the restructuring, the Hospital Authority also incorporated Meadows Healthcare Alliance, Inc. ("MHA"), a nonprofit corporation located in Toombs County, to act as a "parent" corporation to MRMC and several other healthcare related corporations. You have indicated that the principal place of business of both MRMC and MHA is in Toombs County and that neither corporation is owned, in whole or in part, or controlled by

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any other for-profit or nonprofit entity whose place of business is located outside Toombs County.

MRMC recently acquired land in Toombs County approximately one mile from the Original Hospital for the construction of a new 57-bed replacement hospital (the "New Hospital"). MRMC financed the acquisition, construction and equipping of the New Hospital through an FHA-insured mortgage loan.<sup>1</sup> In 2011, the New Hospital opened and the Original Hospital closed. The Original Lease has been assigned by MRMC to MHA for purposes of maintaining the building and grounds of the Original Hospital. The New Hospital is currently owned and operated by MRMC.

### PROPOSED TRANSACTION

The proposed transaction, as you have explained in your letter, involves a two-step process by which MRMC will transfer the New Hospital to the Hospital Authority for nominal consideration (\$100), and simultaneously, the Hospital Authority will lease the New Hospital back to MRMC for nominal annual rental payments (\$1.00 per year).<sup>2</sup> The end result of this transaction will be for the Hospital Authority to own the New Hospital and lease it to MRMC; just as the Original Hospital was owned by the Hospital Authority and leased to MRMC.

### LEGAL DISCUSSION

You have asked that we determine that the Hospital Acquisition Act does not apply to this transaction. You have asserted that although the Act may appear to apply to the form of this transaction, the General Assembly did not intend for the Act to extend to the substance of this transaction. Your letter also indicates that the purpose of this transaction is to enable a "restructuring" of the Hospital.

The Act covers specified "acquisitions" and "dispositions" of hospital assets by certain entities. Under the Act, the words "acquisition" and "disposition" do not include "the restructuring of a hospital owned by a hospital authority involving a lease of assets to any not for profit or for profit entity which has a principal place of business located in the same county where the main campus of the hospital in question is located and which is not owned, in whole or in part, or controlled by any other for profit or not for profit entity whose principal place of business is

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<sup>1</sup> Under Georgia Hospital Authorities Law, a hospital authority is not authorized to lease any of its lands, buildings, structures or facilities for more than 40 years. See O.C.G.A. § 31-7-75(6) & (7). You have indicated that the minimum lease required by FHA is 50 years and therefore, the New Hospital could not have been financed if it had been owned by the Hospital Authority and leased to MRMC, as was the case with the Original Hospital.

<sup>2</sup> You have indicated that this transaction will be subject to the existing mortgage loan financing. The New Lease will have a term of forty (40) years and will grant MRMC an option to renew the New Lease for an additional 40-year period. MRMC will also have a right of first refusal if the Hospital Authority ever wishes to sell its interest in the New Hospital.

located outside such county.” O.C.G.A. §§ 31-7-400(2)(B) (the “restructuring exception”).<sup>3</sup> Therefore, under the express terms of the Act, the principal components of a restructuring transaction carried out under the restructuring exception are (1) a lease of (2) a hospital (3) owned by a hospital authority (4) to an entity with (i) a principal place of business in the county where the hospital is located and (ii) which is not owned or controlled by any other entity having its principal place of business outside such county.

The issue you have presented involves a two-step process. First, MRMC, a nonprofit corporation, will sell the New Hospital to the Hospital Authority, which is located within the same county. Second, the Hospital Authority will simultaneously lease the New Hospital back to MRMC. The most problematic step in this process is the first step, in which MRMC will transfer ownership to the Hospital Authority. When the proposed transaction is completed, the organization of the New Hospital will mirror the organization of the Original Hospital; the Hospital Authority will lease the New Hospital to MRMC. The principal place of business of both MRMC and the Hospital Authority is in Toombs County, Georgia.

To make a determination as to whether the Act applies, we must look to the intent of the General Assembly. “The cardinal rule of statutory interpretation is to ascertain the legislative intent, ‘keeping in view at all times the old law, the evil and the remedy.’ O.C.G.A. § 1-3-1(a).” *Kemp v. City of Claxton*, 269 Ga. 173 (1998). “First, to ascertain the legislative intent and purpose in enacting the law and then to give that construction which will effectuate the legislative intent and purpose.” *Sawnee Elec. Membership Corp. v. Ga. Pub. Serv. Comm’n*, 273 Ga. 702, 704 (2001). In determining legislative intent, the whole statute and its overriding purpose must be considered. *Williams v. Bear’s Den, Inc.*, 214 Ga. 240, 242 (1958); 1976 Op. Att’y Gen. 76-119. The purpose of the Act is to “protect the public’s interest in the charitable assets of nonprofit hospitals by rigorously enforcing charitable trust laws.” Kevin F. Donohue, *Crossroads in Hospital Conversions—A Survey of Nonprofit Hospital Conversion Legislation*, 8 Ann. Health L. 39, \*51 (1999) (“Donohue Article”).

The Act was enacted to protect the public’s interest in the assets of a nonprofit hospital when such assets are transferred. There was a concern that charitable assets of these hospitals would be redeployed from nonprofit to for-profit status without informing the public of these transactions and with the potential that nonprofits would not receive fair value for sale of their assets. *Donohue Article, supra*, at 42. Full disclosure of the purpose and the terms of the transfer are required. See O.C.G.A. § 31-7-403. As stated by the Georgia Court of Appeals:

In response to a dramatic increase during the 1990s in the number of conversions of nonprofit hospitals to for-profit entities, many states passed legislation designed to protect the public’s interest in these transactions. “Legislative action was spurred by the secrecy that surrounded conversion activity, the perception that the assets were routinely undervalued and the suggestion that these

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<sup>3</sup> It is evident that in excepting restructuring transactions from the definitions of “acquisition” and “disposition” in the Act, the General Assembly intended to except restructuring transactions from the Act’s review and approval provisions.

transactions often involved self-dealing.” Legislation was also prompted by concern about the disposition of the proceeds of any acquisition.

*Turpen v. Rabun Cnty. Bd. of Comm’rs*, 245 Ga. App. 190, 194 (2000) (*Turpen*)(citations omitted).

The Hospital Acquisition Act, O.C.G.A. §§ 31-7-400 through 31-7-412, was enacted to protect the public’s interest in the assets of a nonprofit hospital when such assets are transferred. By requiring review of sales of nonprofit hospitals by the Attorney General under the Act, the General Assembly “clearly intended to provide: ...oversight by the public and Attorney General of disposition of the proceeds collected by the nonprofit corporation; and assurance of continued access to healthcare for the community including the needy.” *Turpen v. Rabun Cnty. Bd. of Comm’rs*, 245 Ga. App. at 197 (2000) (Hospital Acquisition Act applies to Rabun County’s purchase of a nonprofit hospital’s assets).

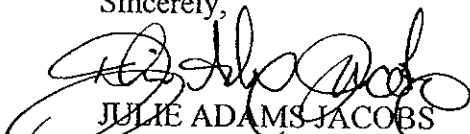
In a nonprofit to nonprofit transaction, the hospital assets transferred will continue to be used for charitable health care purposes consistent with nonprofit, tax-exempt status of the purchaser or lessee. The continued use of the hospital assets for a charitable purpose in a nonprofit to nonprofit transaction favorably informs the Act’s public interest considerations set forth at O.C.G.A. § 31-7-406. In this transaction, there does not appear to be any danger that nonprofit charitable Hospital assets will be redeployed from the public sector to the private sector. Likewise, the New Hospital will be owned by the Hospital Authority located in the same county.

Since, here, the transfer of assets will be done specifically in contemplation of restructuring the New Hospital to mirror the structure of the Original Hospital, and viewing the transfer as a whole, it appears that the transfer of assets from MRMC to the Hospital Authority is not an “acquisition” or “disposition” which the General Assembly intended to be covered by the Act. As a practical matter, there cannot be a meaningful review of the proposed transaction by this office.

Based on the factual representations you have made on behalf of the entities involved, we conclude that the Act does not apply to the proposed transaction as described. In reaching this conclusion, please note that we relied solely on the facts you presented and did not perform a separate factual investigation. We have not addressed other issues that may exist with respect to the facts as presented or the application of any other laws, rules, or regulations to the transaction and have not anticipated any possible factual changes, which might result in a different legal conclusion.

Please contact me if you have any questions.

Sincerely,

  
JULIE ADAMS JACOBS  
Assistant Attorney General