

performance since it began operations. TCHS made a number of capital infusions into the facility to keep it in operation. By June 2014, however, the Hospital had accumulated an aggregate net loss since inception of \$19.3 million and had only \$0.9 million in available cash.

NGTC Health Properties, LLC (“NGTC”)¹ holds the leasehold interest in the hospital building and 39 acre hospital campus. NGTC provided \$8.3 million in equity financing to develop and construct the facilities under a long-term lease agreement with the Franklin County Industrial Authority. TCRMC makes lease payments to NGTC, which are in turn, used to make payments toward the bond debt incurred to construct the Hospital. Due to the Hospital’s financial distress, the Hospital ceased making payments on the bonds in the summer of 2014.

Based on the financial difficulties of the Hospital, the Hospital Board made the decision to search for a buyer. TCHS, TCRMC and NGTC jointly engaged Hammond Hanlon Camp LLC (“H2C”) as their financial advisor to explore strategic alternatives, including the sale of the Hospital to a third party. H2C made initial contact with sixty (60) potential buyers, of which ten (10) expressed initial interest in conducting due diligence. St. Mary’s Healthcare System, Inc. (“St. Mary’s”), a Georgia nonprofit corporation, was the only party to formally respond to the Hospital’s Request for Proposal. During the negotiation process with St. Mary’s, the Seller continued to solicit other potential buyers. Despite their efforts, however, no other parties made a formal offer to Seller.

Fort Oglesby, Chairman of the TCHS Board, testified that the Board entered into a letter of intent with St. Mary’s because St. Mary’s holds “the same values and mission statements” that the Hospital currently strives to uphold for the citizens of its community. Mr. Oglesby also testified that if the transaction between TCHS and St. Mary’s does not close, the Hospital will be left with no choice but to close its doors.

THE PROPOSED TRANSACTION

TCHS negotiated an Asset Purchase Agreement (“APA”) to sell the Hospital and substantially all of its assets to St. Mary’s, a nonprofit corporation, for a cash price of

¹ NGTC is owned by 65 private physician investors (77%), TCHS (17%) and MPA of Georgia, LLC (6%).

\$12.95 million. TCHS and NGTC has agreed to indemnify St. Mary's against certain liabilities arising out of the development and operation of the Hospital. The indemnity has a \$3.0 million deductible, the aggregate amount of which must be exceeded prior to any indemnification payment becoming available.

Upon closing of the transaction, NGTC and the Hospital will terminate the sublease agreement with NGTC settling and releasing all past due amounts due to NGTC under the sublease agreement. The Hospital will pay \$500,000 of the purchase consideration to the investors in NGTC in exchange for a mutual release of any and all rights or claims, or causes of actions against the Hospital, its construction, operation or financing. NGTC and the Franklin County Industrial Building Authority will terminate the long term lease and then, convey to St. Mary's title to the Real Property and related Hospital Premises, such that St. Mary's will hold title to the Hospital building, the Real Property and all improvements located thereon free and clear of all liens or encumbrances.

The remaining Purchase Price proceeds will be paid to U.S. Bank National Association ("U.S. Bank"), as Trustee for the holders of the Revenue Bonds, for distribution to the holders of the Revenue Bonds (the "Revenue Bondholders"). The Trustee will subsequently release all liens and encumbrances held by the Revenue Bondholders on the Real Property, related Hospital Premises and on Hospital Assets.

St. Mary's will not assume any actual or contingent liabilities or obligations of the Seller, except certain liabilities and obligations arising out of normal operations of the Hospital. The liabilities not assumed by St. Mary's include the debt associated with the PILOT and RZN bonds, as well as the outstanding obligations related to the sublease agreement.

VALUATION ANALYSIS

H2C was jointly engaged by TCRMC, TCHS and NGTC as their exclusive financial advisor to provide investment banking services and financial advisory services in connection with the sale of the Hospital. As part of this engagement, H2C assisted the Hospital and NGTC with the auction process for the Hospital and prepared a fairness opinion with respect to the proposed Transaction. C. Richard Bayman of H2C testified at the public hearing.

There are three approaches to value typically considered in a valuation analysis including a fairness opinion. The three approaches are: (1) the Income Approach, (2) the Market Approach, and (3) the Cost (Net Asset Value) Approach. The Income Approach is based on the concept that the value of a business is the present worth of the expected future economic benefits to be derived by the owners of the business. Under the Market Approach, value is derived through a comparison of transaction prices for similar assets trading in the marketplace. In the Cost (Net Asset Value) Approach, value is estimated based on the value of the subject business' underlying assets, both tangible and intangible.

In its analysis, H2C considered all three approaches to value, but relied only upon the Market Approach in reaching its conclusion of fairness as to the Purchase Price in the proposed Transaction.² Within the Market Approach, H2C utilized two methodologies: the Comparable Public Company Method and the Comparable Transactions Method. H2C's first analysis – the Comparable Public Company Method – utilized the revenue and earnings multiples of selected public companies (adjusted for illiquidity and financial distress) and the subject Hospital's revenue and earnings metrics to derive an indicated range of value of \$1.2 million to \$15.4 million, and observed that the purchase price of \$12.95 million is toward the high end of this value range.

H2C's second analysis used the Comparable Transactions Method. Under this methodology, consideration is given to the purchase prices paid in recent comparable hospital transactions. H2C identified twenty-three comparable transactions and derived a value range of \$1.2 million to \$27.3 million using the observed transaction multiples, and the revenue and earnings metrics of the Hospital. H2C observed that the purchase price of \$12.95 million is within this value range. Ultimately, H2C concluded that the Proposed Purchase Price of \$12.95 million is fair from a financial point of view based on its Market Approach analyses.

² H2C determined that the Cost Approach was not appropriate because under the proposed transaction the Hospital is required to continue to operate as a "going concern" enterprise. As such, it was not necessary for H2C to appraise the Hospital's physical assets or determine their "highest and best use." H2C also did not utilize the Income Approach because management was not able to provide a five-year forecast given the Hospital's current distressed financial condition.

Pursuant to O.C.G.A. § 31-7-405(b), Ernst & Young, LLP (“EY”) was retained as an independent financial advisory consultant by the Attorney General to assist in the review of H2C’s fairness opinion. The Attorney General engaged EY to provide valuation advisory services, but not to provide a separate valuation or a fairness opinion. Ms. Bridget Bourgeois, a partner at EY specializing in health care valuations, testified at the hearing. As part of its engagement, EY held discussions with representatives of all the parties involved in the proposed transaction and performed independent research and analyses to review the conclusions contained in H2C’s fairness opinion.

In its review, EY confirmed that the Income, Market, and Cost Approaches to value considered by H2C are consistent with generally accepted valuation standards, and further indicated that H2C’s decision to rely solely upon methodologies under the Market Approach is reasonable given the facts and circumstances. In the course of its engagement, EY analyzed H2C’s underlying valuation methodologies and assumptions, and performed a number of sensitivity analyses to test the impact of changing certain assumptions employed by H2C in its analysis.

In particular, EY conducted independent research of valuation multiples for comparable hospital transactions and performed sensitivity analyses to assess the impact of changing certain assumptions on H2C’s value range for the Hospital and its conclusions regarding the fairness of the Proposed Purchase Price. Based on this independent research and analysis, EY observed that the valuation multiples implied by the Proposed Purchase Price of \$12.95 million are within the range of valuation multiples observed for comparable hospital transactions in the market place. Ultimately, EY concluded that it appears H2C conducted a robust sales process for the Hospital, and used reasonable valuation methods and techniques in its analysis of the Proposed Transaction to support its conclusion.

PUBLIC COMMENT

The public hearing was held on May 7, 2015, at 5:00 p.m. in the Large Conference Room at the Hospital, located at 367 Clear Creek Parkway, Lavonia, Georgia 30553. There were no public comments made at the hearing.

Following the public hearing, the record was held open until the close of business on May 12, 2015, at 5:00 p.m., for any further public comment. This Office did not

receive any written public comments after the public hearing. Counsel for the Seller and Purchaser were requested to inform this Office in writing before the record closed, as to whether their respective clients intended to proceed with the proposed transaction as structured or modify the proposed transaction in some respect. Counsel for both parties have written a joint letter stating that their clients wish to proceed with the transaction as proposed.

II.

FINDINGS

The Hospital Acquisition Act (the “Act”) involves a public interest determination in the Attorney General’s review of a proposed disposition and acquisition of hospital assets. *See* O.C.G.A. § 31-7-400 *et seq.*; *Sparks v. Hospital Authority of City of Bremen and County of Haralson*, 241 Ga. App. 485 (1999) (physical precedent only). The Act requires a written notice filing and a public hearing “regarding the proposed transaction in the county in which the main campus of the hospital is located.” O.C.G.A. §§ 31-7-401, 31-7-405(a). The purpose of the public hearing is “to ensure that the public’s interest is protected when the assets of a nonprofit hospital are acquired by an acquiring entity by requiring full disclosure of the purpose and terms of the transaction and providing an opportunity for local public input.” O.C.G.A. § 31-7-406.

Under the Act, disclosure is linked to whether “appropriate steps have been taken to ensure that the transaction is authorized, to safeguard the value of charitable assets, and to ensure that any proceeds of the transaction are used for appropriate charitable health care purposes.” O.C.G.A. § 31-7-406. The Act identifies thirteen (13) factors that are key considerations in determining whether the appropriate steps have been taken by the parties. *Id.* The thirteen factors are listed in Appendix A to this report.

The thirteen (13) factors set forth in O.C.G.A. § 31-7-406 can be grouped into four (4) categories relating to (a) the exercise of due diligence by the seller (factors number 1, 2, 3, 4 and 8), (b) conflicts of interest (factors number 5 and 13), (c) valuation of the hospital assets (factors number 6, 7 and 10), and (d) the charitable purpose of the proposed transaction (factors number 9, 11 and 12).

The Exercise of Due Diligence by the Seller

The disposition of the Hospital is authorized by applicable law as provided in factor number 1, and TCHS has taken the appropriate actions to sell the Hospital. O.C.G.A. §§ 14-3-302, 31-7-400 *et seq.* With respect to factor number 2, there are no major donors who have contributed over \$100,000 to the Hospital.

The due diligence factors number 3 and 4 necessitate review of the process and procedures employed by the Seller “in deciding to dispose of hospital assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition.” O.C.G.A. § 31-7-406(3). In this instance, TCHS exercised appropriate due diligence in its selection process because the evidence shows that an extensive process was conducted by the Hospital with the assistance of its professional consultants, H2C. H2C made initial contact with sixty (60) potential buyers, of which ten (10) expressed initial interest in conducting due diligence. St. Mary’s was the only party to formally respond to the Hospital’s Request for Proposal. During the negotiation process with St. Mary’s, TCHS continued to solicit other potential buyers. Despite its efforts, however, no other parties made a formal offer. The deliberative process employed by TCHS in selecting the proposal of St. Mary’s demonstrates the exercise of due diligence, consistent with factors number 3 and 4.

Since there is no separate management or services contract negotiated in conjunction with the proposed transaction, factor number 8 is not applicable to the determination of Seller’s exercise of due diligence.

Conflicts of Interest

The disclosure of any conflict of interest involving the Sellers, the Chief Executive Officer of the Hospital and its expert consultant is to be considered under factor number 5. Conflict of interest certifications as required by the Act and the notice filing requirements of the Attorney General have been filed by members of the Governing Board of the Hospital, by the Chief Executive Officer of the Hospital, by the Board of Directors of Ty Cobb Healthcare System, Inc., by the board of the Governing Body of the Hospital, and by the expert consultant retained by the Seller. Such certifications do not disclose any impermissible conflicting financial interest in the proposed transaction.

With regard to factor number 13, health care providers will not be offered an opportunity to invest or own an interest in the Hospital. Therefore, factor number 13 is not applicable.

Valuation of the Hospital Assets

The value of the Hospital and the amount of consideration to be paid in the proposed transaction must be weighed under factors number 6, 7 and 10. In a sale of hospital assets from one nonprofit corporation to another nonprofit corporation, the nonprofit seller should receive an enforceable commitment for fair and reasonable community benefits for its assets. *See* O.C.G.A. § 31-7-406(6). A determination of the value of the hospital assets to be sold aids in the measurement of the consideration and the community benefits to be received by the nonprofit seller “for its assets.”

Collectively, the Fairness Opinion analysis and conclusions developed by H2C, as reviewed by EY, indicates that the valuation multiples implied by the proposed cash consideration of \$12.95 million are within the range of valuation multiples observed for comparable hospital transactions in the market place. Additionally, EY observed that H2C used reasonable valuation methods and techniques in its analysis of the Proposed Transaction to support its conclusion. As it appears that the value of the total consideration under the proposed transaction is within the range of the value of the total contribution, Seller will receive an enforceable commitment for fair and reasonable community benefits in exchange for its assets as required by the Act.

Since the Seller is not financing any portion of the proposed transaction, factor number 7 is not applicable. The proposed transaction complies with factor number 10 because the Asset Purchase Agreement provides TCHS with a right of first refusal, to be exercised within three (3) years of closing, to purchase the Hospital and its assets from St. Mary’s in the event St. Mary’s decides to consider a third-party offer to purchase the Hospital.

Charitable Purpose of the Proposed Transaction

With respect to the charitable purpose of the proposed transaction, factor number 9 requires that the disposition of proceeds be used for charitable health care purposes consistent with the nonprofit’s original purpose. The testimony and documents filed disclose that the proceeds from sale will be used to pay off some of the Hospital’s

indebtedness. After the Hospital's indebtedness is satisfied, it does not appear that there will be any remaining proceeds from sale.


The other two charitable purpose factors, factor numbers 11 and 12, concern the purchaser's commitment to provide (a) continued access to affordable care, (b) the range of services historically provided by the seller, (c) health care to the disadvantaged, the uninsured and the underinsured and (d) benefits to the community to promote improved health care. Don McKenna, President and Chief Executive Officer of St. Mary's, testified that the emergency room will remain open 24 hours a day, seven days a week. After completion of the transaction, the Hospital will continue in existence as a Georgia nonprofit corporation. In addition, St. Mary's plans to expand the services currently offered at the Hospital and recruit more physician specialists. The Hospital will continue to accept Medicare and Medicaid. In addition, the Hospital will continue to serve uninsured, underinsured and indigent patients without regard to ability to pay. The evidence, taken as a whole, demonstrates an enforceable commitment to improve health care in the community and to assure continued access to affordable care.

III.

CONCLUSION

Upon review of the public record and in accordance with the Hospital Acquisition Act, the Hearing Officer finds that the public record in this matter discloses that the parties have taken appropriate steps to ensure (a) that the transaction is authorized, (b) that the value of the charitable assets is safeguarded and (c) that any proceeds of the transaction are used for appropriate charitable health purposes.

This 29TH day of May, 2015.


JULIE ADAMS JACOBS
Senior Assistant Attorney General
Hearing Officer

APPENDIX A

- (1) Whether the disposition is permitted under Chapter 3 of Title 14, the Georgia Nonprofit Corporation Code, and other laws of Georgia governing nonprofit entities, trusts, or charities;
- (2) Whether the disposition is consistent with the directives of major donors who have contributed over \$100,000.00;
- (3) Whether the governing body of the nonprofit corporation exercised due diligence in deciding to dispose of hospital assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition;
- (4) The procedures used by the nonprofit corporation in making its decision to dispose of its assets, including whether appropriate expert assistance was used;
- (5) Whether any conflict of interest was disclosed, including, but not limited to, conflicts of interest related to directors or officers of the nonprofit corporation and experts retained by the parties to the transaction;
- (6) Whether the seller or lessor will receive fair value for its assets, including an appropriate control premium for any relinquishment of control or, in the case of a proposed disposition to a not-for-profit entity, will receive an enforceable commitment for fair and reasonable community benefits for its assets;
- (7) Whether charitable assets are placed at unreasonable risk if the transaction is financed in part by the seller or lessor;
- (8) Whether the terms of any management or services contract negotiated in conjunction with the transaction are reasonable;
- (9) Whether any disposition proceeds will be used for appropriate charitable health care purposes consistent with the nonprofit corporation's original purpose or for the support and promotion of health care in the affected community;
- (10) Whether a meaningful right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained if the acquiring entity subsequently proposes to sell, lease, or transfer the hospital to yet another entity;

- (11) Whether sufficient safeguards are included to assure the affected community continued access to affordable care and to the range of services historically provided by the nonprofit corporation;
- (12) Whether the acquiring entity has made an enforceable commitment to provide health care to the disadvantaged, the uninsured, and the underinsured and to provide benefits to the affected community to promote improved health care; and
- (13) Whether health care providers will be offered the opportunity to invest or own an interest in the acquiring entity or a related party, and whether procedures or safeguards are in place to avoid conflicts of interest in patient referrals.