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August 7, 2025

Amy M. Toman, Esq.,
City Attorney
City of Tallahassee, Florida
City Hall
Tallahassee, Florida 32301

Re: Potential transfer of Tallahassee Hospital Assets

Dear Ms. Toman:

You have asked for our review of the legality of any potential transfer to Florida State University ("FSU") of the assets owned by the City of Tallahassee, Florida (the "City") and currently leased to Tallahassee Memorial HealthCare, Inc., in light of the provisions of Section 155.40, Florida Statutes, as amended, and whether said statute is applicable to the transfer.

History of the Hospital

Although the City has operated hospital facilities since the 1920s, it constructed Tallahassee Memorial Hospital (the "Original Hospital") in the 1940s on property located at the intersection of Miccosukee Road and Magnolia Drive in Tallahassee, and operated the Original Hospital, with the employees thereof constituting City employees, until the late 1970s. In 1965, Chapter 65-2299, Laws of Florida (Special Acts of 1965) was passed, permitting the City to establish a Hospital Board to direct the management of the Original Hospital. In 1979, Chapter 79-569, Laws of Florida (Special Acts of 1979) was passed, authorizing the City to lease what was then called Tallahassee Memorial Regional Medical Center (the "Hospital") to a non-profit corporation. The City thereafter leased the land on which the Original Hospital was located and the physical assets thereon to Tallahassee Memorial Regional Medical Center, Inc. ("TMRMC") pursuant to a Lease Agreement, dated June 30, 1979 (the "Original Lease") for a period of thirty-five years. In 1998, TMRMC changed its corporate name to Tallahassee Memorial HealthCare, Inc. ("TMH").

The Original Lease provided for the payment as rent of an amount sufficient to pay the debt service on all then-existing debt related to the Original Hospital, and specified that TMRMC

would not incur any additional debt without the consent of the City. The Original Lease also provided that TMRMC could make improvements to the leased property, but any such improvements would become the property of the City upon the expiration or termination of the lease. TMRMC also agreed in the Original Lease to not deny urgent or emergency care to any person based on inability to pay. The Original Lease did not provide any compensation to TMRMC by the City toward indigent care.

The Original Lease has been amended several times (as so amended, the "Lease") since 1979 to, among other things, provide for a rolling extension of the term of the Original Lease and provide for the confirmation by the City of TMH board members.

Section 155.40, Florida Statutes

General. Section 155.40, Florida Statutes (the "Statute") was originally adopted in 1982. As many governmental hospitals sought to change their ownership structure to provide more flexibility both financially and operationally, the Statute was amended to permit county, district or municipal hospitals to "convert" such hospital to a nonprofit Florida corporation. The statute was amended in 1984 to change the "convert to" language to "reorganize as," and to change the terminology from "nonprofit Florida corporation" to "not-for-profit Florida corporation." In 1996 this language was further changed to authorize the "sale or lease" of such hospital to a "for-profit or not-for-profit Florida corporation." and to add restrictions on any such transfer, including requirements for public advertisement and that any such sale be for fair market value, as well as additional restrictions in situations where the transferee corporation received revenues annually of more than $100,000 from the transferring governmental entity. In 2012, the Statute was further amended, in the wake of certain litigation described below, to change the language from not-for-profit corporation to "not-for-profit entity," impose additional restrictions and require a state review of transfers made pursuant to the Statute.

Legislative History. The legislative history of Chapter 82-147, Laws of Florida, implementing the "conversion" language described above, does not provide any relevant analysis for such change. The legislative analysis available for Chapter 84-98, Laws of Florida, implementing the change from "conversion" to "reorganization" and changing the terminology from "nonprofit corporation" to "not-for-profit corporation" states that the change in terminology was to "conform the statute to other statutory language" and to address a Marion County circuit court case that had determined Chapter 82-147 to be unconstitutional for embracing more than one subject. The legislative analysis for Chapter 96-304, Laws of Florida, adding the "sale or lease" language and the ability to transfer to for-profit corporations, shows that it was in direct response to the Palm Beach County Health Care District case described below. The legislative analysis for Chapter 2012-66, Laws of Florida does not show any rationale for the change in terminology to "non-profit entity." However, it notes that the bill followed review by the Commission on Review of Taxpayer Funded Hospital Districts (the "Commission") that took place in 2011. As its title suggests, the Commission was particularly focused on the role of hospital taxing districts in delivering health care. The Commission recommended that all "public hospitals and health care systems" commence a one-time evaluation of the benefits of selling or leasing the hospital, and if determined that owning the hospital was no longer in the public's interest, to ascertain whether there are any interested or qualified purchasers or lessees. This requirement was codified in

Chapter 82-147 to reference "county, district or municipal or health care systems," although a municipal hospital "under lease as of the date of the act" was not required to comply with such provision. The City of Tallahassee did not perform such evaluation. The legislative analysis showed that additional provisions added to Section 155.40, Florida Statutes, such as requiring approval of any transfer by the Secretary of the Florida Health Care Administration and the use restrictions on the proceeds of any sale or lease, were intended to protect the public's interest in what were previously public hospital facilities.

Case Law

Campbellton-Graceville Hosp. Corp. v. All Electors and Taxpayers of the Campbellton-Graceville Hospital, 490 So.2d 1320 (Fla. 1st DCA 1986) – determined that corporation created by special act was not entitled to lease its facility to a for-profit entity.

Jess Parrish Memorial Hospital v. City of Titusville, 506 So.2d 22 (Fla. 5th DCA 1987) – voided a contract conveying hospital district assets to a non-profit corporation, determining that the district did not have the power under Section 155.40 to make the transfer.

Palm Beach County Health Care District v. Everglades Memorial Hospital, 658 So.2d 577 (Fla. 4th DCA 1995) – invalidated a lease between the district and a for-profit company, holding that the lease and financial support agreement failed to reserve sufficient control in the public authority.

Indian River County Hospital District v. Indian River Memorial Hospital, Inc., 766 So.2d 233 (Fla.4th DCA 2000) – determined that lease to the non-profit corporation was valid in that public hospital district retained sufficient control over the hospital where district paid hospital's indigent care costs.

AGO 79-74, dated August 20, 1979 – opined that TMRMC, Inc. was not a political subdivision of the State or a "unit" of the City of Tallahassee for state retirement system purposes.

Analysis

Analysis of whether the Statute applies to the potential sale of the Hospital to FSU falls along two different lines: (1) whether the Statute applies to a transfer to another governmental entity, as opposed to a private or not-for-profit formed entity, and (2) whether the Hospital is at this point a "municipal hospital" under the Statute.

Applicability to a Transfer to a Governmental Entity

As indicated above, the Statute was first amended in 1982 to permit "conversions" to non-profit corporations. This was subsequently amended to reference "reorganizations" and "not-for-profit corporations," amended in 1996 to permit a "sale or lease" to a for-profit" or "not-for-profit corporation" and amended from "not-for-profit corporation" to "not-for-profit entity" as part of the 2012 amendments. A "corporation not for profit" is defined in Chapter 617, Florida Statutes, as being a corporation no part of the income of which is distributable to its members, directors, or officers, except as otherwise permitted under said Chapter. "Not-for-profit entity" does not appear

to be defined in Florida law. Section 617.01401 does define the "successor entity" of a corporation not-for-profit, so one logical conclusion is that "not-for-profit entity" means for purposes of Florida law a corporation not-for-profit and any successor entity under Chapter 617. Another logical conclusion is that, as there are several forms of for-profit entities (partnerships, corporations, etc.) that the language was combined as a shorthand form with not-for-profit corporations to pick those up. Finally, Section 155.40(2)(b), Florida Statutes, provides that any lease, contract or agreement made pursuant to the Statute is required to specify that any non-profit corporation become qualified under Section 501(c)(3) of the Internal Revenue Code, which can be seen to indicate both the legislature's intent that underlying any "non-profit entity" is a non-profit corporation and the general terms non-profit entities must adhere to, including designation by the U.S. government.

State universities like FSU are defined in Section 1001.075, Florida Statutes as "agencies of the State which belong to and are a part of the executive branch of government." Pursuant to Article IX, Section 7 of the Florida Constitution, the Board of Governors of the State University System has the duty to operate, regulate, control and be fully responsible for the management of the funded State University System. Fourteen (14) of the members of the Board of Governors are appointed by the Governor of the State of Florida with confirmation by the Florida Senate. The remaining three members are the Florida Commissioner of Education, the chair of the advisory council of faculty senates or the equivalent and the president of the Florida student association or the equivalent.

Nothing in Section 155.40, Fla. Stat. or the legislative analysis leading up to it or any amendment to it indicates a specific intent to subject sales or leases to another governmental entity to the Statute. The first six subsections of the Statute, including in particular Section 155.40(1), all specifically refer to sales or leases to for-profit or not-for-profit entities. Although several of the following sections refer only generally to sales or leases, this ambiguity may be resolved by the statutory legal interpretation principle *ejusdem generis*, which provides that when a general word or phrase follows a list of specific terms, the general term should be interpreted to include only items similar in nature to the specific term listed. As such, it can be concluded that the whole of the Statute addresses sale or lease only to for-profit or not-for-profit entities, and is not applicable to transfers to governmental entities. The language of Section 155.40(5)(d), Florida Statutes, which differentiates between hospitals operated by a governmental entity and hospitals operated by a for-profit or non-profit entity, supports this interpretation. As the intent of many of the restrictions contained in the Statute appears to be to protect the public interest, it would certainly seem that such interest continues to be protected when the transferee is also a public entity. To do otherwise would render the somewhat ludicrous result of the State (the Secretary of the Florida Health Care Administration) having to approve a transfer to itself (FSU) under the Statute.

The Hospital is not a "municipal hospital"

An additional assertion can be made that the Hospital is not a "municipal hospital" under the Statute. "Municipal hospital" as referenced in the Statute is not defined elsewhere in Florida law. The Hospital was clearly owned and operated by the City from the 1940s until 1979, with Hospital employees being employees of the City and City tax revenues backstopping the cost of indigent care. The transformation of the Hospital in 1979, however, which followed a special act of the legislature authorizing such as well as a utilization of the City's home rule power, created a

much different structure. From that point forward, Hospital employees were no longer City employees, no City tax revenues were or have been paid to the Hospital, and the City has had no direct control over operation of the Hospital. The City's sole role from 1979 until today has been and continues to be as landlord and owner of the physical assets where the Hospital is located, approving TMH long-term debt, confirming board members and confirming any changes to TMH's articles of incorporation and by-laws. The early changes to the Statute, authorizing "conversions" or "reorganizations" of "municipal hospitals," all of which occurred in the 1980s after the modification of the structure of the Hospital's governance, seem to recognize this reality. The legislative history of the 2012 changes to the Statute, which followed the Commission's report, seemed focused more on hospital taxing districts which used tax revenues to pay for indigent care, along with the concern over the continued obligation of the government after a lease or sale to pay tax revenues to a private entity. The City has not provided tax or financial support or operating direction to the Hospital in over forty (40) years. Likewise, the language in Section 155.40(23), Florida Statutes regarding the applicability of the Statute to municipal hospitals under lease after the lease is terminated may be looked at as inapplicable in that the Hospital is not a municipal hospital after the conversion in 1979. As a Florida municipality, unless an action is prohibited by state law, the City has the power to govern itself and perform municipal functions, including in this case selling municipal property upon compliance with internal procedures and other applicable state law.

Conclusion

Based on the foregoing, it is reasonable for the City to conclude that Section 155.40, Florida Statutes is not applicable to a sale of the City's interest in the Hospital to FSU.

Such opinion is not a guarantee of any particular outcome in litigation, and is expressly qualified in connection with the exercise of judicial discretion. We have only considered the laws of the State of Florida, and the only opinions rendered hereby shall be those expressly stated as such herein. No opinion shall be implied or inferred as a result of anything contained herein or omitted herefrom.

This letter is given as of the date hereof and we assume no obligation to update, revise or supplement this letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Respectfully Submitted,