

**Frazer
Hubbard
Brandt
Trask &
Yacavone**
L.L.P.
Attorneys At Law

MEMORANDUM

To: City Manager

From: James L. Yacavone, III, Esq.

Date: August 9, 2010

Subject: Adventist Health System request to waive certain provisions in the lease between Lease the City of Tarpon Springs and the Tarpon Springs Hospital Foundation, Inc.

You have asked my opinion regarding two possible issues arising from the request by Adventist Health System to waive certain provisions in the lease between the City of Tarpon Springs and the Tarpon Springs Hospital Foundation, Inc., regarding Helen Ellis Hospital. The first issue is whether the Board of Commissioners can waive these conditions without a referendum, and the second is whether the operation of the hospital in accordance with Adventist Health System's practice violates the Establishment Clauses of the United States and Florida Constitutions.

I. Factual Background.

Adventist Health System Sunbelt Healthcare Corporation ("AHS") proposes to merge with and become the controlling member of University Community Hospital, Inc ("UCH"). UCH will remain a viable Florida Corporation, but it will be controlled by AHS. UCH is the sole member of the Tarpon Springs Hospital Foundation ("Foundation"). There is a lease between the Foundation and the City for the Helen Ellis Hospital property and facilities. Because of the way in which AHS operates its hospitals, and the way it will operate Helen Ellis Hospital through UCH, AHS has requested that the City waive the provisions of section 10.1(g) of the lease between the City and the Foundation. A copy of the lease is attached.

II. Waiver

AHS has asked that the provisions of section 10.1(g) of the lease be waived. Article 10 of the lease is entitled "Covenants Regarding Use of Hospital Facilities." Section 10.1 of Article 10 states: "The Foundation covenants and agrees that its shall comply with the following requirements during the lease term, *except to the extent the City consents to remove or waive such requirements, which consent shall not be unreasonably withheld or delay...*" In my opinion and the opinion of Mr. Hubbard who drafted the agreement, the language of section 10.1 gives

the Board of Commissioners the authority to remove or waive any of the requirements contained in section 10.1 of the lease, including the requirements of section 10.1(g), without submitting the issue to a referendum vote.

III. The operation of Helen Ellis Hospital by AHS does not violate the Federal or Florida Constitutions.

The Establishment Clause of the First Amendment to the United States Constitution provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Article I, Section 3, of the Florida Constitution provides: “There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof.” The Establishment Clause was intended to afford protection against sponsorship, financial support, and active involvement of the government in religious activities.

Federal courts use a three part test established by the United States Supreme Court to determine whether governmental action violates the establishment clause of the United States Constitution. The same test is applied by Florida courts to cases arising under the Establishment Clause of the Florida Constitution. In order to pass constitutional muster (a) the governmental action must have a secular legislative purpose; (b) the principal or primary effect of the governmental action must be one that neither advances nor inhibits religion; and (c) the action must not foster excessive government entanglement with religion.

Under the first prong of the test, in order to find that the governmental action is unconstitutional for lack of secular purpose, it must be demonstrated conclusively that the statute was motivated wholly by religious consideration. Courts look to and are normally deferential to the articulated legislative purpose of the statute. In the case of Helen Ellis Hospital, the primary secular purpose behind leasing the hospital property to AHS is to have a local community hospital to benefit the citizens of the City, and the secondary purpose is to generate revenue for the City.

Under the second prong of the test, in order to violate the establishment clause it must be shown that the primary purpose or effect of the government’s action is to “endorse” religion. Government endorses religion when the government itself has advanced religion or religious views through its own activities and influence. In the case of Helen Ellis Hospital, the primary purpose or effect of leasing the hospital to AHS is to assure local hospital care to Tarpon Springs’ residents. Furthermore, the City is not advancing religion through its own activities or influence; it is simply leasing hospital property and facilities to a company that is capable of operating a hospital.

The third prong of the test is whether the governmental action fosters excessive entanglement of the government with religion. Excessive entanglement occurs only when the government is intimately involved in the “details of administration” of the religious activity. In the case of Helen Ellis Hospital, the City is not intimately involved in administration of the hospital or its programs according to the terms of the lease.

A final test is required under the Florida Constitution. Article I, section 3, of the Florida Constitution states: “The statute must not authorize the use of public moneys, directly or indirectly, in aid of any sectarian institution.” In the case of Helen Ellis Hospital, no public

money is directly or indirectly used to aid the Hospital; thus, leasing the hospital facilities to AHS does not violate the “no-aid” provision of the Florida Constitution.