

April 27, 2009

CALLED MEETING
FLOYD COUNTY BOARD OF COMMISSIONERS
April 27, 2009 9:30 A.M.

PRESENT: Chairman John Mayes, Commissioners Irwin Bagwell, Garry Fricks, Eddie Lumsden and Chad Whitefield.

OTHERS

PRESENT: County Attorney Tommy Manning, Deputy Clerk Jaime Foster, Assistant Manager Blaine Williams, and Floyd Medical Center Attorney Wade Monk.

CALL TO ORDER: Chairman Mayes called the meeting to order.

APPROVE INTERGOVERNMENTAL CONTRACT BETWEEN THE HOSPITAL AUTHORITY OF FLOYD COUNTY AND FLOYD COUNTY RELATING TO THE PROPOSED ISSUANCE BY THE HOSPITAL AUTHORITY OF FLOYD COUNTY OF ITS REVENUE ANTICIPATION CERTIFICATES FROM TIME TO TIME IN ONE OR MORE SERIES; AND FOR OTHER PURPOSES:

County Attorney Manning reviewed the proposed Intergovernmental Contract. Chairman Mayes stated under the Right of First Refusal Option the county has a 90-day opportunity to give notice, and then they have a 90-day period to make the sale. He stated he would like to be sure that all of the commissioners have thought that through. Commissioner Fricks stated originally it was 30-days, but it has been changed to 90-days. County Attorney Manning stated that would max it out and give them 180-days. Chairman Mayes asked is that enough time for the county to find the money to buy back an asset that is in the tens of millions of dollars. He stated when the stadium was built we had to put the SPLOST out and that took a year. He stated even having in the contract that they have an option to buy the hospital, when you put 180-days it is almost like wasted ink. County Attorney Manning stated that would be six months, but it would probably be hard to put together. Commissioner Fricks stated the 180-days was the wording that they agreed on. Chairman Mayes stated that it is better than it was previously, but he just wanted to be sure that they were all aware and understood that. County Attorney Manning stated this is a scenario, and a scenario not necessarily where the hospital is in trouble, but a scenario if there is money that has been backed by the county, and the Hospital Authority desired somehow to sell all or substantially all of its assets to a third party, then that is when the county could step in. He stated his understanding is that before that could take place, the Attorney General for the State of Georgia would have to be involved to approve such a transaction.

Attorney Wade Monk stated he feels comfortable in saying that the Hospital Authority and the Floyd Management Company are not going to be hung up on this. Mr.

Monk stated they meet this afternoon, and if the Board would like him to go back and change that to a year, he is sure they would not have any problems with that. County Attorney Manning stated that period could be increased if that is the pleasure of the Board, but they may have some notice that something is coming before there is an actual offer. Chairman Mayes stated he would not ask to change the wording. He would ask to be treated the same as a potential buyer. He stated if the potential buyer had asked for a change then the county should receive the same benefit. County Attorney Manning asked Chairman Mayes if he means a change in the time to close. Chairman Mayes stated if the county made a decision that we can not move that fast, then a corporation came in and said they can not move that fast either and asked for another six months, the county should receive the same benefit. County Attorney Manning stated they would not be able to do that because it is the Right of First Refusal. He stated if an entity made their offer, you have to exercise the Right of First Refusal or not within the time frame. He stated if they would rather see if the hospital is agreeable to extending that period of time we can do that. Commissioner Bagwell asked if they would be agreeable to a year. Commissioner Fricks stated the notification period is the most important. He stated he would just keep the 90-days of notification in there and maybe use a broad based description on the second one of a reasonable time. He does not know if they should even put a year. He stated the most important thing is if they follow their intent, and within that 90-days, they could decide what their intentions are. Mr. Monk stated one thing they might consider would be within a reasonable time not to exceed 24-months, or to keep it consistent within a reasonable time not to exceed 730 days. Commissioner Fricks stated that is fine, but leave the 90-day notification period. County Attorney Manning incorporated suggested language for the Commissioners to review.

Commissioner Whitefield asked if a private entity did step up to buy the hospital and the county did not counter offer, after the debt reduction where do the proceeds end up. He stated if the Hospital Authority owns it then they would not have a need for a Hospital Authority any longer. Mr. Monk stated in the Hospital Authority's law, it is mandated that any proceeds from the sale go into an indigent care trust fund, and it would continue to be administered by the authority as long as it stayed in place. He stated those counties that have done this, there have been a few that have sold their hospitals, and typically what they do at some point is have the Authority go out of business and they just turn those funds over to the county, but those funds do not go into general fund. Mr. Monk stated the funds have to be used for indigent care. Commissioner Whitefield stated he understands indigent care is all those funds can ever be used for. Mr. Monk stated there are a few other permitted uses such as education. He stated some hospitals have gone as far as to use the money to fund scholarships for healthcare professionals, and things like that, but it has to be health related. Commissioner Whitefield stated but that the state cannot take it because it has to stay in Floyd County. Mr. Monk stated it has to be used in that county.

County Attorney Manning stated the last thing that needs to be determined is in regards to the appointments. He stated he has the proposed new language as well as the old language, whichever they choose. Commissioner Fricks asked from when the five year period in one draft be measured. He stated for example some would go to 2011 on that last issuance of the bonds. He asked is that five years from that date, or is that five years

from the contract date. Mr. Monk stated his interpretation would be five years from the last closing. Commissioner Whitefield asked would that run consistently from now through 2015, or is there a gap there between the original bonds. Mr. Monk stated he does not think they contemplated there would be any gap at all. He stated it may not be as artfully worded as it should be right now, but he thinks the intent was the five years would start with the first closing, but it would actually be extended to five years from the second closing. Commissioner Fricks stated it bridges over and just resets itself with issuance of each bond. He stated they struggled with this on the first issuance of bonds. He said one reason they came up with this is because of the discussion they had with Jamie Wilson, bond council for Floyd County. He stated Mr. Wilson felt like once we made it past that five-year period that was when it kind of weaned the county off the responsibilities. Once they established the ability to make payment after the issuance of bonds they are on their own and that is the reason they felt safety in the five years at the first issuance. He stated we have also tightened up a lot of the language on this contract giving us more protection, and checks and balances as well.

Commissioner Fricks stated they called Merchant Capital, which is our bond council, and we did an outside evaluation of the financials of Floyd Hospital compared to “like kind” size hospitals. He stated secondly, we felt like our bond council should evaluate the financial position of the company we are backing to determine who would be negatively effected if we extended ourselves too far out with the hospital. He stated in that comparison the biggest variation, or biggest weakness, was the cash on hand. He stated we ran into that same scenario a few years ago here. He stated when you say non-profit hospital, and you keep piling cash on top of that it is a bad scenario because if you are considered non-profit then you are not supposed to make a profit. One reason we are backing these bonds is cash on hand. He stated it is not because of their credit worthiness, or their ability to pay. Actually, we have shown that their indebtedness is slightly lower than the average “like kind” comparative hospitals and it showed their strength growing with their indebtedness. Commissioner Whitefield stated it does not matter to him if there are one or four commissioners on there. He stated what he would love is if there was just a commitment even on an annual basis, to have the Commission informed of the financial condition of the hospital so that he feels comfortable if someone questions him. Commissioner Fricks stated the fact that they have not done a good job of that, or discussed that very well internally, was part of the discussion with County Manager Poe and Kurt Stuenkel, and to define a time to review the financials. He stated we have never defined it in the past and that needs to be done.

Commissioner Bagwell stated as it stands now one member is specifically determined by County Commissioners and the other one is picked from the five commissioners in which we have no say so. He stated he feels two commissioners on board gives us better protection for \$135 million, and feels that is fair for this county to have that representation on board. It certainly does not give a majority and they cannot sway a vote with two members out of eleven. He stated it provides protection through the Board of Commissioners and to the taxpayers of the county. Ultimately, we are going to vote on their behalf and have to look out for their interest. He feels for the life of the bonds we need two commissioners on the Health Care Management Board. Commissioner Fricks stated

he has run several scenarios, and he has tried to look at it independently from both sides. He stated backing the bonds is going to give us better control over the future whether we put one commissioner or two commissioners in the contract. If they default, it still falls in our lap. He does not want an issue that small to get in the way of moving forward on these bonds. He stated the most important thing right now is by backing the bonds we are saving interest going outside the county.

Chairman Mayes stated he feels they need to move forward with a motion. County Attorney Manning stated whatever motion is made to adopt the Resolution should include the language that they are adding on page 10 and page 11 of the attached contract regarding the Right of First Refusal and which way they choose to go with regard to the board members.

Chairman Mayes called for a motion. Commissioner Bagwell made a MOTION to adopt the Resolution that incorporates the language ‘for so long as this Contract remains in effect, at least one additional seat on the Corporation’s Board of Directors shall be reserved for a second individual who is a member of the Floyd County Board of Commissioners to be appointed by the Corporation’ for the life of the bonds, and the changes made to page 10 (i) (iii) with the deletion of 90-days and insertion of a reasonable time not to exceed 730 days and the same deletion and insertion on (ii) (iv). SECOND by Commissioner Lumsden. VOTING:

YES NO

Commissioner Bagwell
" Fricks
" Lumsden
" Whitefield
Chairman Mayes

Motion Carried

ADJOURNMENT:

There being no further business to come before the Board, MOTION was made by Commissioner Whitefield, SECOND by Commissioner Lumsden, that the meeting be adjourned. VOTING:

YES NO

Commissioner Bagwell
" Fricks
" Lumsden
" Whitefield
Chairman Mayes

Motion Carried

**FLOYD COUNTY BOARD OF
COMMISSIONERS**

JOHN MAYES, CHAIRMAN