

Resolution # 37-2014

**Resolution
Of
The Board of Montrose County Commissioners**

Concerning: County Hospital Financial Matters

WHEREAS, Montrose County ("County") has established a County Hospital ("Hospital"), and

WHEREAS, the Montrose County Board of County Commissioners ("Commissioners") has appointed a Board of Trustees ("Trustees") pursuant to C.R.S. 25-3-301 *et. seq* (the "statute"), and

WHEREAS, the Trustees are a local public body pursuant to the statute, and

WHEREAS, any person, including entities, performing any of the responsibilities or duties of the Trustees pursuant to the statute must adhere to all duties and responsibilities required of local public bodies pursuant to Colorado and applicable local laws, ordinances, rules, regulations and policies, and

WHEREAS, the statute requires the Commissioners to carry out certain duties and responsibilities concerning the Trustees and the Hospital, and

WHEREAS, the Commissioners desire to set forth the rules, regulations and policies that it and the County will use in carrying out their duties and responsibilities pursuant to the statute, and

WHEREAS, the public health, welfare and safety of the citizens of Montrose County, its businesses and valued visitors mandate that the Commissioners set forth such rules, regulations and policies in advance in order to avoid any delays or confusion in carrying out its duties pursuant to the statute and other laws, and

WHEREAS, the Commissioners desire to set forth guidance as to its rules, regulations and policies in order to assist the Trustees in their development of bylaws, rules and regulations for their own guidance in order to provide for the economic and equitable conduct of the Hospital for the benefit of all citizens of the County, no matter where located, and

WHEREAS, the statute provides that the Trustees shall make and adopt bylaws, rules and regulations for its own guidance and for the government of the Hospital, and

WHEREAS, the Trustees must adhere to the statute's mandate to provide for the economic and equitable conduct of the Hospital, and

WHEREAS, the statute provides that the Trustees "shall have the exclusive control of the use and expenditure of all moneys collected to the credit of the Hospital, including the right to invest the Hospital's moneys, and

WHEREAS, the statute requires that the Trustees and the Hospital obtain the approval of the Commissioners to:

- a. acquire by lease real and personal property;
- b. borrow money;
- c. incur indebtedness;
- d. issue bonds; and/or
- e. issue any other evidence of indebtedness, and

WHEREAS, the statute requires that the Trustees file the following reports (the "Reports") with the Commissioners:

- a. in the first week of January each year, a report of the Trustees' proceedings with reference to the Hospital and a statement of all receipts and expenditures of the Hospital during the half year,
- b. in the first week of July each year, a report of the Trustees' proceedings with reference to the Hospital and a statement of all receipts and expenditures of the Hospital during the half year,
- c. on or before each October first, a certification of the amount necessary to maintain and improve the Hospital for the ensuing year; and

WHEREAS, the Commissioners must ensure the completeness of the Reports and make use of the Reports in carrying out its duties pursuant to the statute; and

WHEREAS, the Trustees have the authority pursuant to the statute to take actions concerning the existence or not of an enterprise designation which exercise of discretion may impact the duties of the Commissioners pursuant to the statute; and

WHEREAS, the Commissioners have the duty pursuant to the statute to object to or not object to the Trustees issuance of any revenue bonds for the benefit of the Hospital; and

WHEREAS, the Commissioners must be fully informed as to all matters and details concerning the business and financial condition of the Trustees and the Hospital in order to carry out its duties pursuant to the statute; and

WHEREAS, it is the intent of the Commissioners to maintain a continual awareness of the business, fiscal health and condition of the Trustees and the Hospital in order to carry out its duties pursuant to the statute; and

WHEREAS, it is the Commissioners' intent to set forth rules, regulations and policies to inform the Trustees, any person with duties emanating from the or derivative of the Trustees and the public of the manner and process to be used by the Commissioners in carrying out its duties pursuant to the statute; and

WHEREAS, the Trustees must approve, after a public process, the plans and specifications of any hospital buildings to be erected or constructed and such work shall be publicly bid; and

WHEREAS, the statute requires that all real property acquired for the benefit of the Hospital be titled in the name of the County and the Commissioners must approve taking such title as a matter of law and, for many reasons including but not limited to, insuring that the County does not become the title holder to environmentally contaminated property; and

WHEREAS, the Commissioners must be provided with professional appraisals and environmental reports prior to approving title being taken in the name of the County; and

WHEREAS, the Trustees must provide by rule for appraisals, environmental reports and audits, and

WHEREAS, any such plans for building and/or expansion must be contained in one or more of the Reports; and

WHEREAS, the statute mandates that the Hospital be managed and run in order to provide the greatest benefit to the greatest number of the residents of the County and our visitors; and

WHEREAS, the Commissioners, the Trustees and any person, including entities, performing any of the responsibilities or duties of the Trustees pursuant to the statute must adhere to all duties and responsibilities in a manner insuring the greatest benefit to the greatest number of the residents of the County and its visitors; and

WHEREAS, the Commissioners must receive a report from the Trustees and any person, including entities, performing any of the responsibilities or duties of the Trustees pursuant to the statute, as to the Hospital's plan and adherence to the statute's mandate of providing the greatest benefit to the greatest number of the residents of the County and its visitors; and

WHEREAS, the Commissioners find that the public and economic health of the County, its citizens and businesses, are tied to compliance with the statute; and

WHEREAS, the statute requires that the records of any Hospital, whether in the possession of the Commissioners, Trustees or any person, including entities performing any of the responsibilities or duties of the Trustees pursuant to the statute, must be public records; and

WHEREAS, the Commissioners find and resolve that all such records of the Hospital must be public records available pursuant to law; and

WHEREAS, the Commissioners further find and resolve that any failure to maintain the records of the Hospital as public records constitutes a breach of the statute and of any contract that the Trustees may have entered into with any person, including entities performing any of the responsibilities or duties of the Trustees pursuant to the statute; and

WHEREAS, the statute provides that the Trustees may lease or rent the Hospital to a non-profit for a rent and for a term that the Trustees deem reasonable and proper, consistent with the statute; and

WHEREAS, the Trustees entered into a lease; and

WHEREAS, the statute requires the Trustees to perform their statutory duties, which duties cannot be amended, repealed or eliminated by virtue of a lease; and

WHEREAS, it is the intent of the Commissioners and the County to adhere to any legal requirements flowing to it by virtue of lease; and

WHEREAS, the lease to which the County and Commissioners are not parties to does not alter their duties pursuant to statute; and

WHEREAS, the Commissioners shall take compliance with the lease and the management of the lease into account in exercising their duties pursuant to the statute; and

WHEREAS, the lease requires that the Trustees be provided with the following information which the County and Commissioners require be provided to the Commissioners, as it is provide to the Trustees, in order for the Commissioners to perform their duties pursuant to the statute (all capitalized terms have the meaning as defined in the lease):

- a. the status of all Rent payments,
- b. the status of all Assumed Liabilities,
- c. the status of all Existing Bonds,
- d. a listing and status of all leases of real and personal property;

- e. a report on the Hospital's operations in a manner that carries out its charitable healthcare mission and public purpose of providing health services to a broad cross section of the community in a manner that takes priority over maximizing profits,
- f. reports of the Hospital's indigency determination policies,
- g. reports on any notices of any deficiencies issued by any local, state or federal authority as to any function of the Hospital,
- h. reports on any lien, mortgage, security interest or other encumbrance on any Leased Hospital Asset,
- i. reports on any lien, mortgage, security interest or other encumbrance on any leased fee interest in the Hospital or any part of the Hospital's economic unit,
- j. reports on any sale, exchange, or disposal of any Leased Hospital Assets,
- k. reports on any additions, alterations, changes and deletions to any Leased Hospital Assets,
- l. reports on compliance with procurement laws concerning any Leased Hospital Assets,
- m. reports of insurance procured by the Lessee concerning the Hospital and its operations,
- n. reports, at least bi-annually, concerning compliance with section 4.14 of the lease,
- o. all reports required by section 4.15 of the lease,
- p. all section 4.16 of the lease matters,
- q. all section 4.17 of the lease reports,
- r. back up material to allow independent computation of the ratios set forth in section 4.17 of the lease which back up material shall be detailed in a manner in compliance with generally accepted accounting principles (GAAP),
- s. the County and Commissioners shall be provided with electronic copies of all meeting notices posted by the Trustees or Lessee within sixty minutes of the posting of any such notice, which the Commissioners will instruct its staff to repost in an appropriately designated portion of the County website, and

WHEREAS, section 3.1 of the lease requires that all rent be paid to the Trustees, except as provided in Articles VII and X of the lease, and

WHEREAS, the Commissioners will rely on all such rent being paid to the Trustees in exercising its discretion pursuant to the statutes and other laws, no liens, encumbrances, pledges or other obligations shall be placed on such rent during the term of the lease, and

WHEREAS, section 5.2 of the lease requires that the Lessee pay for the Trustees expenses of complying with its duties pursuant to the statute and the lease, and

WHEREAS, the Trustees shall adopt rules, regulations and standards providing that it pay for the County and Commissioners expenses of complying with their duties concerning the Hospital, and

WHEREAS, such costs of compliance shall be contained in the Hospital's short and long term budgets, in amounts acceptable to the Trustees and County, and

WHEREAS, the lease provides that no liens or encumbrances shall be filed against the Leased Hospital Assets, and

WHEREAS, the County requires that the Trustees certify that no liens or encumbrances have been filed against the Leased Hospital Assets, the Trustees must so report bi-annually, and

WHEREAS, title to all Hospital real property is and shall be in the County, and no such property can be sold, conveyed, liened or encumbered, the Trustees must report at least bi-annually to the County on the Hospital's compliance with such requirements, and

WHEREAS, the Trustees shall forward any notice it receives pursuant to Article VII of the lease to the Commissioners and County within 48 hours of receiving any such notice, and

WHEREAS, the Commissioners intend to act expeditiously concerning any of its duties pursuant to the statute, the timing of its actions will be directly impacted by the actions or inactions of the Trustees and any person, including entities performing any of the responsibilities or duties of the Trustees pursuant to the statute, for example, if the Commissioners have timely received all reports and notices required by the statute and this resolution, the Commissioners can act more quickly as plans for financing, leasing, expansions and the like will be known substantially in advance,

THEREFORE, IT IS RESOLVED THAT THE FOLLOWING RULES, REGULATIONS AND POLICIES ARE ADOPTED AND SHALL GOVERN THE COUNTY AND THE COMMISSIONERS' COMPLIANCE WITH THEIR DUTIES CONCERNING THE HOSPITAL.

1. The recitals are incorporated herein as if set out in full.
2. All reports, documents and other matters referenced herein shall be provided to the Commissioners as required herein; if no time period is set forth herein, the reports, documents and other matters referenced herein shall be provided to the Commissioners as required by the Statute and/or the Lease.
3. The Commissioners are unlikely to approve expenditures, leases, budgets and/or debt of any kind if it has not received all documents set forth herein and if the proposed action has not been set out and justified in the Reports.

4. In the exercise of its statutory and regulatory responsibilities, the Commissioners will place significant weight on the impact of any requested action on the statute's mandate of providing the greatest benefit to the greatest number of the residents of the County throughout the County and its visitors.
5. In the exercise of its statutory and regulatory responsibilities, the Commissioners will be unlikely to approve any pledge or encumbrance on the rent the Lease requires be paid to the Trustees.
6. The Commissioners expect, and hope for, a collaborative working relationship with the Trustees and any entity or person acting through or pursuant to any authority of the Trustees.
7. A copy of this Resolution shall be forwarded to the hospital Board of Trustees.


Adopted this 15th day of September, 2014

By and Through its Board of County Commissioners



David S. White, Chairman

Attest:



Deputy Clerk of the Board

