

MARK D. KINDT
Attorney-at-Law
16004 Detroit Avenue, Suite 4
Lakewood, Ohio 44107

February 15, 2016

Via email

[Name]

Council Member

City of Lakewood

RE: Process that Resulted in the Closure of Lakewood Hospital

Dear Council Member,

I urge you to vote to rescind the ordinance passed lasted December that resulted in the closure of Lakewood Hospital. The vote of Council held on December 21, 2015 relates to a process that is likely illegal, unethical or otherwise compromised.

I also urge you as well as each member of Council, particularly board members of the Lakewood Hospital Association (LHA), to obtain an independent legal opinion with respect to any legal or ethical duty that you may have had to recuse yourself from such voting in the past or may have in the future.

I write as no ordinary citizen. My grandfather was a public official (Postmaster); my father was a public official (Assistant Secretary of State, U.S. Marshall). I have served in significant public offices at the State and Federal levels of governments (Assistant Attorney General; Regional Director, Federal Trade Commission.) I have practiced law for almost 37 years in both public and private roles.

I would like to share the following points with you as you continue your deliberations with respect to the process by which Lakewood Hospital was closed.

I. The Process is Likely Tainted by Illegality

I remain deeply troubled that the process that led to the closure of Lakewood Hospital had serious legal defects.

- A. I am particularly concerned that substantial public assets have been sold in a transaction that met none of the public bidding requirements.

- B. This is even more problematic when the Ohio Ethics Commission has established that the Mayor committed misdemeanor violations of Ohio law during his board tenure at LHA. The logical consequence of these violations is that the participation of the Mayor with respect to LHA in developing the private bid process (conducted by Subsidium) was tainted by this non-waivable conflict of interest.
- C. Perhaps even more disturbing is that the sale of these substantial public assets never even met the actual requirements of the established (though questionable) private bid process. This is a typical *indicia* of a “sham” bidding process, discussed below.
- D. No professional appraisals of the Lakewood Hospital assets were conducted prior to or during the private bid process.
- E. The private bid process that was conducted by Subsidium has many of the *indicia* of a “sham” or illusory bidding process, a form of illegal bid-rigging. Depending upon the actual facts, there is a risk that participants in such a process may have violated federal antitrust laws. These *indicia* are, however, numerous.
- F. Other potential antitrust issues flow from the competitive restraints in the transaction likely to lead to more expensive future litigation for the City.
- G. Regardless of the legality or illegality of the private bid process and the ultimate transaction with the buyer, the transaction results in the highly-questionable transfer of LHA’s multi-million dollar portfolio of investments assets to a future private party that doesn’t even exist yet. It is clear that the deal has been structured to preserve at least some of the corpus of these public charitable assets, however, the result of the deal is that the remaining public charitable assets will be, in large part, controlled by the private buyer.
- H. Finally, given the problems identified in this Section and Section II below, I am very concerned that City Council has exacerbated these problems by routinely evading the Ohio statutory open meeting requirements related to deliberations conducted in executive session.

II. The Process Appears Rife with Conflicts of Interest

I am deeply concerned that the transaction that resulted in the closure of Lakewood Hospital was rife with undisclosed and unresolvable conflicts of interest. This is apparent from the recent Ohio Ethics Commission opinions related to the Lakewood Hospital board members, including the Mayor.

- A. Council members serving on the Lakewood Hospital Association board with knowledge of the process and its likely defects (as described above), failed to recuse themselves from participating in deliberations with respect to the LHA transaction and from voting upon it.

- B. If Council members received campaign contributions from then current LHA board members or CCF employees, wasn't there also a duty to recuse themselves from deliberations and from voting upon the transaction?
- C. Council members who served on the LHA board or who may have received campaign contributions from LHA board members (or CCF employees) likely have a continuing duty of recusal with respect to the transaction and its implementation.
- D. Given the above issues, the public has both a reasonable and legitimate concern in understanding whether Council members were promised, expected or received other inducements with respect to the LHA transaction. To the extent that such inducements have been received are or expected, such Council members likely have (at a minimum) a continuing duty of recusal.

III. The Process is Otherwise Compromised.

A few additional but troubling points should also be noted.

- A. Despite the startling lack of appraisals of the assets sold as noted above, City officials have regularly misrepresented the actual value of the transaction (most recently in the Water Department bill enclosure). To the extent that no professional appraisals were sought or received, City officials obfuscated the value and viability of the Hospital.
- B. The process that resulted in the closure of Lakewood Hospital has also been compromised by the pre-transaction conduct of the Cleveland Clinic Foundation, the Lakewood Hospital Association and the City of Lakewood that is the subject of the current litigation in State court and the Federal Trade Commission complaints. This conduct is described in detail in those documents and you should have ready access to them.
- C. The problematic issues described in this letter, many of which are well known to the public, has opened the City of Lakewood to significant potential liability from current and future lawsuits and perhaps other governmental investigations.

Clearly, I am not alone in these observations. Numerous other concerned and experienced local attorneys (as well as many experienced physicians) have raised these and similar objections to the manner and process that led to the closing of the Hospital.

Based on the seriousness of all of the foregoing points, it is clear that the transaction that resulted in the closing of Lakewood Hospital is an improper and poor public policy outcome for the citizens, voters and taxpayers of Lakewood. Please cast your vote to rescind the December 21st ordinance.

Very truly yours,

Mark D. Kindt, Esq.

Attorney-at-Law