



12650 DETROIT AVENUE 44107 216/529-6055 FAX 216/226-3650

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March 27, 2015

Ohio Ethics Commission
William Green Building
30 West Spring Street, L3
Columbus, Ohio 43215-2256

Re: Advisory/Guidance Related to Hospital Transaction

Dear Commission Members:

The undersigned are current members of Council for the City of Lakewood, Ohio, a chartered municipal corporation. The Council is in the process of reviewing a January 14, 2015, Letter of Intent (Attachment 1), which calls for the closure of Lakewood Hospital, the dissolution of Lakewood Hospital Association and the Lakewood Hospital Foundation, and the disposition, sale, transfer and use of hospital assets (real and personal) and assets of the Lakewood Hospital Association and the Lakewood Hospital Foundation. This Letter of Intent was signed by the Lakewood Hospital Association, Lakewood Hospital Foundation, Inc., and the Cleveland Clinic Foundation. The Letter of Intent has been submitted to Council by the Mayor of Lakewood (Attachment 2). In the near future, it is anticipated that ordinances and/or resolutions pertaining this matter will also be brought before Council for consideration. We are writing to seek guidance and an advisory with respect to consideration of these matters under the Ohio Ethics Law and related statutes.

Hospital Background

Lakewood Hospital, founded by private physicians in 1907, is an acute-care, community-based hospital. In accordance with a municipal charter provision adopted by the citizens of Lakewood in 1930 (now reflected as Article XV of the 2nd Amended Charter of Lakewood adopted on November 7, 2000) (Attachment 3) and ordinances (Chapter 907 of the Codified Ordinances of Lakewood) (Attachment 5) adopted there under, the City of Lakewood acquired the hospital and operated the hospital as a public municipal hospital. In 1956 the Lakewood Hospital Foundation Inc., a charitable organization, was established to encourage and administer gifts to the hospital. In 1985 Lakewood Hospital changed status from a public hospital to a private, non-profit governance structure. The Lakewood Hospital Association, a nonprofit hospital agency as defined in Ohio Rev. Code Sec. 140.01, was formed to lease the hospital from the City of Lakewood and operate the hospital. At the end of 1996, by ordinance, the City

of Lakewood entered into an amended and restated lease of Lakewood Hospital with the Lakewood Hospital Association. (Attachment 6) This lease permitted the Lakewood Hospital Association to contract with the Cleveland Clinic Foundation to operate the hospital through 2026. With this authority, the Lakewood Hospital Association entered into a "Definitive Agreement" with the Cleveland Clinic Foundation for the operation of the hospital. At that time, the Cleveland Clinic Foundation became the sole member of Lakewood Hospital Association.

Lakewood Hospital Association Board of Trustees

Pursuant to the 1996 amended and restated lease (page 2 of Attachment 6), the Governing Board of the Lakewood Hospital Association is composed of 23 members including the Mayor of Lakewood and two members of Lakewood City Council. The Mayor and Councilmembers are to serve as representatives of the City and members ex officio of the Governing Board, with all the privileges and emoluments of such membership, including voting rights. (See Article XIII, 2nd Amended Charter of Lakewood) (Attachment 4.) The Mayor and Council can nominate several members of the community to serve on the Board, who are then elected by the Board and must be ratified by the Cleveland Clinic Foundation. Moreover, the Cleveland Clinic Foundation appoints three members to the Board.

This structure has resulted in interlocking directorates between the Governing Boards of the Lakewood Hospital Association and the Cleveland Clinic Foundation. For example, the Chairman of the Lakewood Hospital Association also is a member of the Board of Trustees for the Cleveland Clinic Foundation. Article III, Sec.3.11, Duality of Interest, of the Definitive Agreement between the Lakewood Hospital Association and the Cleveland Clinic Foundation states: "A Trustee shall not be considered to have a conflict of interest and shall not be required to refrain from voting on any matter merely because such Trustee is also a trustee or director of any direct or indirect subsidiary or sister entity of the Corporation."

1996 Lease Agreement

The 1996 amended and restated lease (Attachment 6) provides, in part:

1. The agreement is a lease of the real and personal property for the operation of the Hospital from the City to the Lessee (Lakewood Hospital Association) and continues the transfer from the City to the Lessee of all liabilities, debts, monies, accounts and inventories of the Hospital. (Page 2 of Attachment 6)
2. The term of the Lease is thirty years (through 2026). (Page 2 of Attachment 6)
3. At the end of the term of this Lease or of the additional term if the Lessee exercises its option, the Lessee shall retire or make provision for retiring all of the Lessee's indebtedness and pay or cause to be paid all of its liabilities and shall relinquish the real and personal property of Hospital and all monies, accounts and inventories then held by the Lessee to the City. (Page 2 of Attachment 6)
4. The Lessee agrees to continue to provide within the City healthcare services in accordance with the terms of this Lease and, so long as effective, the Definitive Agreement between the Lessee and CCF. (Page 3 of Attachment 6)

The lease also provides that the Lakewood Hospital Association has an ongoing duty to make periodic payment of money to the City of Lakewood through the expiration of the lease at the end of 2026. (Pages 2, 16-17 of Attachment 6)

We have cause for concern of potential breaches of contract and duties of loyalty and breaches of fiduciary duties relating to the amended and restated lease.

Letter of Intent

The January 14, 2015, Letter of Intent (Attachment 1) calls for early termination of lease at the end of 2016. The current lease term expires at the end of 2026. It also calls for the closure of Lakewood Hospital, the dissolution of

Lakewood Hospital Association and the Lakewood Hospital Foundation, and the disposition, sale, transfer and use of hospital assets (real and personal) and assets of the Lakewood Hospital Association and the Lakewood Hospital Foundation. As part of this agreement is the transfer of 2.5 acres of current hospital property owned by the City of Lakewood to the Cleveland Clinic Foundation to build a medical office building.

Moreover, the Letter of Intent includes the following two provisions:

I. The parties hereto, including the City's current Mayor (as of the effective date of the 2015 Definitive Agreement) in his capacity as a trustee of LHA, will publicly support the transition from hospital-based services to ambulatory services. The City will promptly grant zoning, architectural, construction, engineering, regulatory, tax-exemption or other approvals within its authority as requested by the Clinic in the design, construction, and maintenance of the FHC.

III. Exclusive Discussions

A. The parties will continue exclusive and confidential discussions about the terms of the Potential Arrangement and the best structure to achieve the goals stated above, as well as related due diligence. Prior to the effective date of the 2015 Definitive Agreement, no party hereto will enter into negotiations with another hospital or health system located in Cuyahoga County or its geographically contiguous counties regarding an arrangement that provides for the health services for the residents of Lakewood. Although the City is not a party to this Letter of Intent, the parties hereto expect that the City will abide by the principles contained herein, not only in this Section III, but as described elsewhere in this Letter of Intent, and rely upon the City and its officials to take all measures available by law to do so.

Moreover, Letter of Intent grants exclusive rights to the Cleveland Clinic to operate a health care facility on the current leased premises:

K. Unless the Clinic were to grant prior approval, no health care system provider would be permitted to operate or manage a facility, and no signage identifying such provider would be permitted, on the land currently leased by the City to LHA while the Clinic owns and operates the FHC.

(Appendix at p. 6.) In addition, it should be noted that throughout the Letter of Intent that the term "parties" makes reference that parties include the City of Lakewood.

The Mayor and the two Council members on the Governing Board of Lakewood Hospital voted affirmatively for the Letter of Intent. Moreover, the Mayor participated in the negotiations surrounding the Letter of Intent. It should be noted that it is our understanding that an attorney who is paid legal counsel for the Cleveland Clinic Foundation also served as legal counsel for the Lakewood Hospital Association at the time of the negotiations and drafting of the Letter of Intent.

Guidance and Advisory

As previously mentioned, we are seeking guidance and an advisory as Council proceeds with respect to consideration of these matters. We are familiar with the Ethics Commission's advisory opinions considering whether public officials and employees can serve on the boards of nonprofit corporations in their "official capacity" as representatives of their public agencies. Adv. Ops. No. 83-010, 84-001, and 93-012. However, we also understand that public officials can serve in an "official capacity" as long as the public official "has no other conflicts of interest." Adv. Op. Nos. 84-010, 88-005 and 96 005.

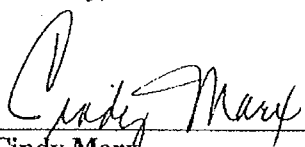
The Letter of Intent directs the Mayor and City Council to give the Cleveland Clinic Foundation, the sole member of the Lakewood Hospital Association, preferential treatment with regards to a decision to terminate the lease agreement early and not to enforce its provisions. (By way of City Charter and Lease, the Lease can only be modified or terminated by approval of City Council.) The Letter of Intent also prescribes preferential treatment to the Cleveland Clinic Foundation with regards to real and personal property transfers and "[t]he City will promptly grant zoning, architectural, construction, engineering, regulatory, tax-exemption or other approvals within its authority as requested by the Clinic in the design, construction, and maintenance of the FHC." The letter of Intent prescribes that the City of Lakewood give preferential treatment to the Cleveland Clinic Foundation with regard to providing health care to the citizens of Lakewood, including prohibiting the negotiation with other hospitals or health systems.

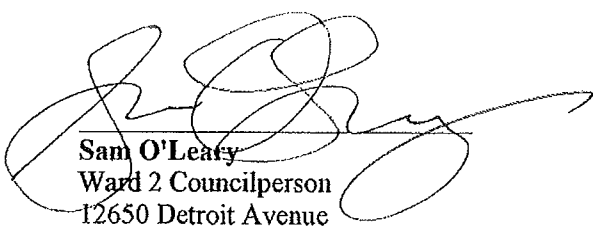
Specifically, we request that the Commission address these areas of concern:

- 1) Are any of the various agreements pertaining to Lakewood Hospital, including the new Definitive agreement identified in the Letter of Intent, public contracts?
- 2) As the Mayor and Council have duties and responsibilities assigned by statute, ordinance and/or common law in reviewing and deciding to terminate early a public contract, to transfer or sale real and personal property, to grant tax exemptions or zoning approvals, etc., does the adoption of the Letter of Intent by Lakewood Hospital Association, with the sole member being the Cleveland Clinic Foundation, present an irreconcilable conflict with the performance of the public duties of the Mayor and Council Members?
- 3) Are any ethical concerns raised by the affirmative vote for the January 14, 2015, Letter of Intent, by the Mayor and the two Council Members who are members of the Governing Board of the Lakewood Hospital Association? Did a conflict of Interest exist to such an extent that the Mayor and two Council members were not acting in their "official capacity."
- 4) Can the Mayor and the two Council Member who are members of the Governing Board of the Lakewood Hospital Association and who affirmatively voted for the January 14, 2015 Letter of Intent, participate in their official capacities in the deliberations and decision making (voting) on matters proposed in the Letter of Intent.

We request that you additionally address any other considerations pertaining to this matter.

Sincerely,


Cindy Marx
Councilperson at Large
1587 Grace Avenue
Lakewood, OH 44107


Sam O'Leary
Ward 2 Councilperson
12650 Detroit Avenue
Lakewood, OH 44107