

August 22, 2024

VIA EMAIL – tchristensen@tvhcare.org

Troy Christensen
Chief Executive Officer
Teton Valley Health Care
120 East Howard Avenue
Driggs, Idaho 83422

Re: Idaho Code Section 31-3508 | Implications for TVHC Transaction

Dear Troy:

You have asked us to analyze whether Teton Valey HealthCare (“TVHC”) may legally acquire title to the real property of the hospital under Idaho Code § 31-3508 to obtain financing for renovating your current facility. As explained below, the statute does not expressly address TVHC’s unique situation and we found no relevant cases; accordingly, we cannot guarantee how a court would rule, but we believe the better arguments support the county’s authority to convey the property to TVHC.

Idaho Code § 31-3508 allows counties to lease *or convey* county hospitals and their equipment to private entities.¹ Among other things, the statute requires that the receiving party be a nonprofit corporation.² Idaho Code § 31-3508(1)(a). If a hospital transferred ceases to be used as a nonprofit hospital, unless the proceeds from the sale of the premises are utilized to establish or expand another nonprofit hospital, the ownership reverts back to the county. Idaho Code § 31-3508(2). A lease under the statute terminates if it ceases to operate as a nonprofit hospital. *Id.* Notably, Idaho Code § 31-3508(1)(c) contemplates that the *initial* governing body of the nonprofit will consist of existing members of the hospital trustees’ board. Thereafter, the governing board is selected per the nonprofit’s articles of incorporation.³ As long as the transaction meets all these criteria, the general rules regarding the sale and disposition of county-owned property do not apply.

¹ Idaho Code § 31-3508 is an alternative to Idaho Code § 31-3507, which also allows counties to lease or sell county hospitals but requires the transaction be approved by a majority of qualified electors at a county election.

² The statute further requires that any lease term not surpass 99-years. Idaho Code § 31-3508(1)(b). The nonprofit must also provide care for indigent patients and admit any person falling sick or injured within the county. Idaho Code § 31-3508(1)(d). The transfer agreement must address the transfer of patients, staff, employees, any trusts or bequests, and the maintenance of records related to the existing public hospital. Idaho Code § 31-3508(1)(e).

³ The articles of incorporation must ensure the corporation’s membership represents a wide range of the public, including residents from all incorporated cities and the unincorporated area of the county. Idaho Code § 31-3508(1)(c).

Some years ago, Teton County leased its hospital to TVHC pursuant to Idaho Code § 31-3515A, which contained identical requirements to those outlined above. TVHC has been operating the hospital under this lease ever since. TVHC now wants to acquire title to the real property of the hospital rather than continue with the lease and come to a new financial arrangement with Teton County. Ideally, TVHC may do so without being restricted by the public finance laws that are otherwise generally applicable to such transactions (i.e., public auction, etc.).

While Idaho Code § 31-3508 unequivocally permits the transfer of land ownership to a nonprofit hospital, the statutory language contemplates a *concurrent* transaction, not a situation where the property was originally leased and, years later, a transfer of land is desired. *See, e.g.*, Idaho Code § 31-3508(1)(c) (outlining process for selecting *initial* governing body). In our view, however, there does not appear to be anything in Idaho Code § 31-3508 that *prohibits* a two-step transaction if the property will continue to be run as a nonprofit hospital and the other requirements under § 31-3508 have been met. We understand the express requirements have been or will be satisfied and, accordingly, we believe that TVHC may satisfy the express terms and the intent of the statute. The conveyance agreement will have to provide for the possibility that title will revert to the county if the location ceases to be used as a nonprofit hospital.

We have not been able to locate any legal authority interpreting the scope of Idaho Code § 31-3508 in analogous circumstances, so we cannot guarantee a court would arrive at our same conclusion. The Attorney General's Office has indicated to us that they likely have neither oversight nor enforcement authority over this matter.

The main potential challenge to the transaction could arise from a disgruntled county citizen who objects to the transfer of land, but TVHC and the County would likely prevail. An available remedy to this risk is TVHC or the County could try seeking declaratory relief from a court in advance of the transaction for additional certainty.

Please let me know if you would like to discuss the situation further.

Very truly yours,

Kim C. Stanger
Partner
of Holland & Hart LLP

The articles must dictate that the governing body be selected by the corporation's membership or exclusively by a parent corporation, except for filling vacancies for unexpired terms. *Id.* The articles must limit a member of the governing body to serve no more than two consecutive three-year terms. *Id.* The price for the transfer or lease must either be the acceptance of all assets and assumption of all liabilities or any other price agreed upon by the commissioners and the nonprofit corporation. Idaho Code § 31-3508(1)(f)(i)-(ii). The transfer agreement must address the transfer of patients, staff, employees, any trusts or bequests, and the maintenance of records related to the existing public hospital. Idaho Code § 31-3508(1)(e).

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