

# MINUTES } CITY OF PIKEVILLE

301

## SPECIAL MEETING MINUTES - OCTOBER 22, 1993

The Board of Commissioners of the City of Pikeville was called to meet in Special Meeting on Friday, October 22, 1993 at 3:00 p.m., for the following purpose:

TO CONSIDER PROPOSAL FOR ISSUING INDUSTRIAL REVENUE BONDS FOR THE METHODIST HOSPITAL OF KENTUCKY AND TAKE ANY NECESSARY ACTION

The meeting was conducted in the Commission's regular meeting place in the City Hall Public Meeting Room at 260 Hambley Boulevard.

There being a quorum present, Mayor Walter E. May called the meeting to order at 3:10 p.m. Commission Members present upon call of the roll were as follows:

MAYOR:	WALTER E. MAY
COMMISSIONER:	WALTER BLANKENSHIP
	SHARON CLARK
	JOHNNY MOUNTS

Commissioner Eugene Davis was absent.

Mayor May introduced Pikeville Methodist Hospital attorney, Pam Robinette; Bond Counsel Attorney, Parker Eades of the Louisville, KY law firm of Wyatt, Tarrant & Combs; and City of Pikeville attorney, Russell Davis, Jr.

Ms. Robinette appeared before the Commission on behalf of the Board of Directors of the Pikeville Methodist Hospital seeking approval for the issuance of Industrial Revenue Bonds to finance the construction of a \$1.2 million Cancer Center, the purchase of \$940,000 in equipment, renovation of the cardiac care unit as well as the intensive care unit, and to pay off \$1.9 million in existing bonds. Ms. Robinette called attention to Dr. Modur who is the radiation therapy physician. Ms. Robinette said that Dr. Modur has been forced, for the past 17 years, to treat patients with out-dated equipment. The \$940,000 proposed equipment purchase along with the new cancer center will afford Pikeville residents the opportunity to receive much needed medical treatment at home instead of traveling to Lexington or Huntington.

Ms. Robinette summarized the efforts of the Board of Directors to move forward with the project. Prior to seeking funding for the project, the Governor issued a moratorium on Certificates of Need, however the Board was able to revamp the proposal and receive approval. The hospital solicited bids from local financial institutions in an effort to obtain the lowest interest rates. Pikeville National Bank was the successful bidder. While going through the financing process, the Board, once again, ran into difficulties as it was learned that long-term financing was next to impossible since the hospital does not own the real estate. Additionally, the bank would not issue a second mortgage on the property. The bank suggested issuing Industrial Revenue Bonds in the amount of \$4,669,000 which would finance the new cancer center, finance the renovations and pay off the existing bonds. By using the Industrial Revenue Bond financing procedure, the City is relieved of any financial obligation with regard to the existing bonds. In order to commence with the issuance of the bonds, Ms. Robinette asked the Commission to approve a new agreement between the Methodist Hospital of Kentucky and the city of Pikeville for a 15 year lease of the real estate and facility. Ms. Robinette reported that the hospital board of directors and sub-committees had given approval of the financing arrangements.

Bond Counsel, Parker Eades, summarized the technical aspect of the issuance of the Industrial Revenue Bonds.

Commissioner Blankenship asked if all the local banks had been given the opportunity to bid. Ms. Robinette reported they had when the hospital was seeking an interest rate, but the hospital only negotiated with the low bidder, Pikeville National Bank & Trust Company, with regard to the issuance of the Industrial Revenue Bonds.

Commissioner Mounts asked City Attorney Davis to explain how the proposed lease would affect the City of Pikeville.

City Attorney Davis explained that to determine the effect of the transaction, one must first look at the history. Currently, Pikeville Public Hospital Corporation, an agency of the City of Pikeville, holds title to the hospital property. The Pikeville Methodist Hospital of Kentucky, Inc., operates the facility under a type of management contract. The existing bond, issued in 1969, provides that when these bonds are retired, Pikeville Public Hospital Corporation has the obligation to reconvey title of the hospital property to the City of Pikeville. Pikeville Public Hospital Corporation will remain in existence as they own some of the equipment at the hospital for which they are responsible for seeing the debt retired. The corporation also holds title to a tract of property in the river fill.



# MINUTES } CITY OF PIKEVILLE

As proposed in the lease, the City of Pikeville will be required to give Pikeville National Bank a mortgage on the title to the property. The current mortgage expires in the year 2009, as will the proposed mortgage. While the City of Pikeville will not be personally liable for the funds, the property will remain liable for the funds.

The City of Pikeville leases the property from the Pikeville Public Hospital Corporation and then in turn subleases the property to the Pikeville Methodist Hospital of Kentucky, Inc.

In comparing the existing lease agreement to the proposed agreement, Mr. Davis presented the following points:

1. the current lease agreement provides for a year-to-year lease with Pikeville Methodist Hospital of Kentucky, Inc.

The proposed lease agreement provides for a fixed 15 year term.

2. the current lease allows for a stronger City control over what is done by the hospital - i.e., the Methodists will charge on behalf of the city, such rates for services and facilities of the hospital project as are specified in the annual budget adopted by the City which shall become the budget of the Methodists, subject to such interim revisions in such rates as may from time to time be approved by the City, subject also to appropriate provisions for indigent patients. The Methodists will further observe and comply with the requirements of the annual budget, subject to such variations therefrom as may be specified and/or approved by the City.

In the new lease, this language will be deleted. The hospital will be required to submit copies of their budgets and financial statements upon request by the City.

3. the current lease provides that all funds derived by the Methodist Hospital will be first used to pay the operating expenses of the hospital, then shall be used to (a) retire or redeem bonds in advance of maturity; or (b) to make or finance capital improvements to the hospital; or (c) to enhance and improve the services and/or facilities of the hospital; as specified by the City.

This language will not be a part of the new lease.

The City Attorney advised that he was merely pointing out differences in the existing and proposed leases and the possible effect it may pose to the City. He added that while the bank would be uncomfortable in lending a non-profit organization approximately \$5 million for less than a fixed 15 year period, he proposed that the city should be given the option to pay off the existing indebtedness and return to a year-to-year lease.

The Hospital Attorney explained to the Commission that the reason the above provisions were added to the 1969 lease agreement was that the City was responsible to see that the bonds were paid. Ms. Robinette reiterated the fact that the City, through the issuance of the Industrial Revenue Bonds, would no longer be liable for the debt, however, if the city permits the issuance of the bonds, the hospital fails to make their bonds payments, and Pikeville National Bank chooses to foreclose and sell the property, the proceeds above and beyond the debt will be returned to the City.

Steve Combs asked what provisions had been included in the new lease agreement with regard to the appointment of members to serve on the Hospital Board of Directors. City Attorney Davis advised that the lease does not reflect on the manner in which the board members are appointed, nor does the existing lease require the City to make any appointments to the board. Hospital Attorney Robinette advised that the manner in which appointments are made to the board are addressed in the By-Laws. Mr. Combs offered his opinion that the City should want to have some input in the selection of individuals to serve on the board.

Commissioner Mounts asked how the Pikeville Public Hospital Corporation would be affected through the approval of the new lease agreement.

Ms. Robinette explained that since its creation, Pikeville Public Hospital Corporation has been used by the hospital to finance many acquisitions. As a not for profit organization, the hospital would have to pay the current interest rate, whereas the rate is drastically reduced when using municipal financing. The Elliott Building on South Mayo Trail, currently being used by the hospital for office space, was purchased through Pikeville Public Hospital Corporation. The corporation leases the property to the hospital for the amount of the loan payment. When the debt is retired, the property will be owned by the City of Pikeville. Ms. Robinette advised that the City Commission will continue to appoint members to serve on the Pikeville Public Hospital Corporation. Commissioner Mounts asked if financial control would be taken away from Pikeville Public Hospital Corporation should the new lease be approved. Ms. Robinette answered that it would not, however in the future, should the hospital wish to purchase additional equipment, instead of asking Pikeville Public Hospital Corporation to finance the acquisition, they



# MINUTES } CITY OF PIKEVILLE

would ask the City Commission. Bond Counsel, Parker Eades, advised that Pikeville Public Hospital Corporation could again be used as a means of financing just as long as the City Commission gave approval. It was stressed that the hospital has an option on which means of financing to use, and further, that the hospital is not precluded from obtaining financing on their own.

Mike McCoy, employed at Bank One in Pikeville, referred to Commissioner Blankenship's earlier question with regard to the solicitation of bids for the financing of the cancer center. He said that he did not recall seeing a bid sheet for this particular means of financing. Hospital Administrator, Jim Norris, advised that bids were solicited approximately 6-8 months ago and the bank did submit a proposal. Hospital Finance Committee Members, Dave Collins and Danny Stratton, affirmed the fact that each local bank was given the opportunity to bid.

Steve Combs again stated his recommendation that the City should have some input on hospital board appointments. He understood that the city had never had this obligation in the past, but the proposed lease takes away some control. Ms. Robinette countered that the hospital board is an independent, private corporation which leases property from the city. She gave an example using an individual's agreement with the city to lease a parcel in the Bob Amos Park saying that the city does not have a voice in how that individual operates his business.

The city attorney advised the Commission of the need to make a decision of whether to insert a clause into the new lease agreement to revert to a year-to-year lease should the City pay off the bonds. Mayor May contended that the City could not afford to pay off the bonds. Mr. Davis conceded that it was probably unlikely, but if the city wanted another health care provider to operate the hospital, that organization would probably pay off the bonds. Ms. Robinette advised the Commission that this scenario would not be feasible due to the Methodist Hospital of Kentucky, Inc. owning the licenses and Certificate of Need to operate a facility in this area. She added that the State would not issue other licenses and Certificate of Need for this area.

Commissioner Mounts asked what the vote was when the matter to use Industrial Bond financing came before the hospital's board of directors. Mayor May reported that the matter was approved by a vote of 13 - 8.

Steve Combs pointed out that when the lease agreement was negotiated for use of the facility to operate a day care center, the City insisted on input in the selection of the board of directors. He reported that this provision apparently solved the problems that the City felt they had. Mr. Combs continued by asking what measure has been taken to assure the Methodist Church's continued involvement in the selection of board members. He added that the City should also have had input in the preparation of the lease agreement. Ms. Robinette advised the Commission that Pikeville National Bank has mandated the conditions under which the will issue the Industrial Revenue Bonds and have stated in order to secure the loan, they want to contract with the Methodist Hospital Board as they know it to be because that is the board that turned the hospital around financially. Ms. Robinette continued by reporting that the Methodist Church retains control and added that she didn't think it a City issue as to whether the church will retain control of the hospital. It is mandated in the hospital's Articles of Incorporation that the board structure cannot be changed without approval from the Methodist Conference. As far as the lease negotiations are concerned, Ms. Robinette reported that the lease agreement was prepared primarily under the direction of Pikeville National Bank. She reported that she had renegotiated parts of the agreement on behalf of the hospital then gave the agreement to the city attorney for his review. Changes were also made by the city attorney and bond counsel. Mr. Davis reported that the only item they failed to agree upon was the term of the lease.

In discussing the lease term, Ms. Robinette explained that it was the hospital's position that if they were going to pay a \$300,000 per year bond payment, they should have use of the property for 15 years. Ms. Robinette continued by saying that the hospital has a long-range planning committee. One of the things in the future of the hospital is the construction of another tower. She stated that when the hospital gets ready for the construction, probably five years in the future, they want to be assured of their continued operation without being afraid that a future city commission would take the whole project away.

City Attorney Davis argued that the hospital pays \$300,000 annually in rental now and operates with a year-to-year lease.

Commissioner Mounts expressed his concern over the 8 members who had cast negative votes with regard to the bond issue. Hospital board member, Hugh B. Hall, told the Commission that he wanted to continue to see the Methodist Church operate the hospital. Mr. Hall stated his opinion that time is of the essence and the cancer center needs to be built.

Ms. Robinette addressed the audience and informed them that the hospital is not subject to public disclosure each time they ask for



# MINUTES } CITY OF PIKEVILLE

financing approval from Pikeville Public Hospital Corporation. The hospital has followed normal procedure.

Commissioner Mounts reported that he had spoken with two hospital board members prior to this date's meeting. They informed him that they did not oppose the construction of the cancer center, however knew nothing of the lease agreement. Ms. Robinette pointed out that the hospital board is a volunteer board and not every board member makes it to every meeting. She assured the Commission that the matter had been fully discussed prior to the hospital board's meeting held earlier on this date. She reported that the hospital's finance committee reported to the entire board that \$150,000 would be saved by using Industrial Revenue Bond financing.

Ed Maddox asked if the Commission had the opportunity to view the lease. Commissioner Blankenship announced they had not, but had been advised of the agreement.

Steve Combs questioned if the city attorney had been authorized by the Commission to negotiate the lease. Commissioner Mounts replied that Mr. Davis had not been given Commission approval. Mayor May advised legal negotiations are the nature of Mr. Davis' job duties.

Mayor May asked City Attorney Davis if he would feel more comfortable if he briefed the Commission further on the provisions of the lease. Mr. Davis advised the agreement was a pretty standard and reasonable lease that he would feel comfortable with, however it was his professional opinion, not legal opinion, that the term of the lease should be further negotiated.

Commissioner Mounts asked for someone to explain to him the urgency in adopting the lease at this time. Hospital Administrator, Jim Norris, offered the following statement:

"With all due deference to the City Commission, I agree that you don't need to be trying to make decisions about the operation of the hospital. The operation of the hospital is a highly complex issue. It's almost too complex for anybody to understand. The integral operations of the hospital differ from almost any other business. The reason they differ is because of an entirely separate set of regulations...Now if you want to look at the relationship here between the city and the hospital's operations, you're talking about an \$8 million operation compared to about an \$80 million operation. Are you going to make it so impossible to finance that we go for a year trying to establish financing mechanisms, trying to establish some cash to function through a period of time when we normally see low cash flow? You make that difficult to do that just to protect a bond issue for \$1,897,000 to be specific. I don't think that's what you all want. I don't think that's what the community wants. The community wants this city to do what's necessary and they want the hospital board to do what's necessary to provide the community's health care needs...We ought to be taking care of the population. We ought to be more concerned with the general health of this population than we are with the bickering about who's got control. We don't need to stand here and block the progress. We're doing something that we need desperately to do. We seem to have some idea that some particular group wants control. I think that's kind of absurd. I've been in health care a long time. I'm more interested in the vision than I am the process....or whether we need for the city to make decisions about who is on the board....You City Commissioners have got a big responsibility because you can make a decision that will help ease the problem with financing that cancer center. If you want to make a decision that will be beneficial to your community from now on, then you've got another decision to make and that's, let's get on with it. Let's not waste a lot of time doing something that isn't going to produce any positive result, whatsoever, from the time that you spend thinking about or arguing about or even discussing this financing situation...Dealing directly with the city might be a good idea sometimes. Dealing with Pikeville Public was not bad, not bad at all and it provided us with some savings. Dealing with the banks individually has been good too. But I've got a primary interest, and that primary interest is with providing this community's health care needs."

Commissioner Mounts reiterated that he did not see the urgency in adopting an emergency ordinance at this time. Mr. Norris reported that there are hearings underway in Frankfort at this time relative to the state's health care reform. Out of those hearings there could be just as rapid decisions, as those made in April, to stop all new construction, which would result in this community's loss of a cancer treatment center.

Mayor May referred back to the board of director's vote of 13-8 approving the move to go forward with the project. The Mayor though it relevant to point out that Burlin Coleman did not vote because his bank is buying the bonds and that he (May) did not vote because he has a sworn oath to represent the City and didn't feel it appropriate that he be voting on both sides of the issue.

David Collins, Hospital Finance Committee Chairman, stated that he had been working on the financing of the project for about a year and has found it very frustrating to have to wait, even though he did not think it would matter to wait until Monday (October 25, 1993) to get Commission



## MINUTES } CITY OF PIKEVILLE

approval. He continued with explaining the funding of the emergency room renovations and the board's decision to use cash on hand to finance that venture. Mr. Collins reported that a letter of commitment had already been signed with regard to the construction of the cancer center as well as the purchase of the linear accelerator and pleaded with the Commission that if they do not approve the suggested means of financing that they provide another means.

Commissioner Mounts expressed that he had only known about this matter for a week and would not vote for something he did not fully understand. He continued by saying that he would like to defer the matter until Monday to give the city attorney time to explain the provisions in more detail.

Dr. Fannin and Dr. Modur, both, spoke in support of the hospital's plan to expand the facility to include a cancer center. Dr. Fannin spoke to the urgency of moving forward with the project because of not knowing what health care reform will mandate.

Steve Combs stated that he wanted to make it clear that he was 100% in favor of the cancer center, but his difference lies with the proposed lease. He added that it was his opinion that the commissioners owed it to the voters to negotiate a good lease.

Ms. Robinette advised the Commission that any delay in approving the funding mechanism could cost the hospital extra dollars should the interest rate increase. Any delay would also postpone the publishing of the ordinance until Friday which would again give the opportunity for the interest rate to increase since the ordinance would not become effective until published. News-Express publisher, Marty Backus, said if the Commission voted to adopt the ordinance on Monday that he would make sure that the ordinance was published in Wednesday's edition. Mayor May suggested having first reading of the ordinance at this time then come back on Monday and have second reading. Commission Members gave their consent to Commissioner Mounts' request to have an early meeting on Monday to allow the city attorney time to review the lease with them.

Bond Counsel, Parker Eades gave first reading to the Ordinance entitled as follows:

AN ORDINANCE OF THE CITY OF PIKEVILLE, KENTUCKY, AUTHORIZING THE ISSUANCE ITS REVENUE BONDS (PIKEVILLE UNITED METHODIST HOSPITAL OF KENTUCKY, INC. PROJECT) IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$4,669,000, TO DEFRAY THE COST OF ACQUIRING, CONSTRUCTING AND EQUIPPING A HOSPITAL PROJECT; AUTHORIZING THE EXECUTION AND DELIVERY ON BEHALF OF THE CITY OF [1] A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF SUCH BONDS ON A NEGOTIATED BASIS, [2] A TRUST INDENTURE SECURING THE BONDS, [3] A LEASE OF SUCH PROJECT BETWEEN THE CITY, AS LESSOR, AND SUCH CORPORATION, AS LESSEE, PROVIDING FOR RENTAL PAYMENTS SUFFICIENT TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS AS THE SAME BECOME DUE AND [4] A MORTGAGE AND SECURITY AGREEMENT SECURING THE BONDS; AND TAKING OTHER RELATED ACTION.

The ordinance will be on file in the office of the City Clerk for public inspection.

There being no further business to come before the Commission, Walter Blankenship made the motion, seconded by Commissioner Clark to adjourn the meeting. Upon call of the roll, the motion carried 3 - 0 (Commissioner Mounts not present at the time of the vote). Adjournment Time 4:55 p.m.

APPROVED

*Walter E. May*  
WALTER E. MAY, MAYOR

ATTEST:

*Karen Harris*  
KAREN HARRIS, CITY CLERK