

MINUTES } CITY OF PIKEVILLE

SPECIAL MEETING MINUTES - OCTOBER 25, 1993

The Board of Commissioners of the City of Pikeville met in Special Meeting on October 25, 1993. The meeting was held in the City Hall Meeting Room at 260 Hambley Boulevard.

There being a quorum present, Mayor Walter E. May called the meeting to order at 6:00 p.m. Commission Members present upon call of the roll were as follows:

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

Stated purpose of the meeting was to consider further the proposal for issuing Industrial Revenue Bonds for the Methodist Hospital of Kentucky and discuss the lease negotiations between the City of Pikeville and the Methodist Hospital of Kentucky.

City Attorney Davis disclosed that the law firm with which he is associated, Baird, Baird, Baird & Jones, acts as general counsel for Pikeville National Bank and Trust Company, who proposes to finance the bond arrangement for the hospital. Because of this association, Mr. Davis reported that he may have a conflict of interest due to his representation of the City of Pikeville. Mr. Davis further explained that while his office does legal matters for the bank from time to time, he does not personally represent the bank. Baird, Baird, Baird & Jones has not done any legal matters in regard to this particular transaction because the bank's in-house counsel, Bill Hickman, has worked on it to the extent they needed counsel and there is also bond counsel that is employed by the hospital who has substantially prepared all the financial documents. The City Attorney advised that Pikeville National Bank CEO, Burlin Coleman, agreed to waive any conflict. Commissioner Blankenship made the motion to acknowledge disclosure of the conflict and to waive the conflict. Commissioner Mounts seconded the motion. Upon call of the roll, the motion carried unanimously.

City Attorney Davis reported that he does not have much dispute with the documents which create the liens on the property or the manner in which the security interests created for the bank (Pikeville National) would occur if approved. Mr. Davis advised his biggest concern is with regard to the new lease agreement that the hospital is asking the City to approve due to the financing arrangement. Mr. Davis explained the necessity in changing the existing lease is that the existing lease agreement is basically a management contract and is a year-to-year agreement which can be terminated under certain circumstances. The bank requires a 15 year lease. Mr. Davis compared the provisions of the 1969 lease agreement to those of the proposed lease agreement as follows:

Page 3 of the 1969 lease agreement provides for a year-to-year lease for as long as the hospital continues to make the bond payments. The new agreement would have a fixed 15 year lease.

Page 4 of the current lease agreement allows the hospital to terminate the lease agreement thus leaving the city with the debt of \$1.9 million and various equipment purchases. The proposed lease provides for the hospital to be totally liable for the debts.

Page 5 of the current lease has a clause which states "Upon redemption or retirement of all the \$2.9 million of the original bond issue, the title to the hospital project will be transferred from the Pikeville Public Hospital Corporation to the City and the sublease agreement shall expire and terminate and the Methodists shall give immediate possession of the hospital project to the City". The proposed lease agreement provides for the term expiration in 2008.

Page 6A of the current lease agreement has a provision which says that if any equipment or fixtures that are used at the hospital and acquired by the hospital with revenues in operating the facility, then the equipment will be owned by the City of Pikeville. The proposed lease agreement says that from henceforth, if the hospital purchased a piece of equipment, to be used at the hospital, with hospital funds, then the equipment would be the property of the Methodist Hospital of KY, Inc.

The present lease agreement provides that the Methodist Hospital of KY would pay all expenses for all utilities. Mr. Davis commented that he could not find this matter addressed in the proposed lease, but assumed the utilities would remain the hospital's responsibility. The present lease agreement also has a provision which states that 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 provisions in such rates as may from time to time be by the City, subject also to appropriate provisions for indigent patients. The Methodists will further observe and comply with the requirements of the

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annual budget subject to such variations therefrom as may be specified or approved by the City. All funds and revenues derived by the Methodists from the operation of the hospital project, shall be deposited by the Methodists in a revenue fund of the City maintained at such banks as directed by the City. Such funds be dispersed by the Methodists as contemplated by the aforementioned for the cost of maintaining and operating the hospital project including the wages, compensation, personnel, material supplies, insurance, taxes and rentals necessary to pay off the debt. Any balance of net revenues remaining thereafter shall unless otherwise required by the budget be applied (1) to redeem or retire bonds in the banks of maturity. (2) Make or finance capital improvements or (3) enhance and improve services and/or facilities of the hospital as specified by the City. Mr. Davis explained that these provisions prohibited the Methodists from engaging in other business utilizing funds from the hospital project.

The present lease provides that all financial records of the hospital will be available for review by the City. This language has been deleted from the proposed lease.

The present lease provides that should a malpractice suit be filed, the Methodists will pay for the defense of that suit on behalf of the City.

The present lease provides that the Methodists will not assign or transfer their sublease agreement without the written consent of the City. The proposed lease says that the hospital will not assign or sublease without the consent of the City, however the City will be prohibited from unreasonably withholding consent. Mr. Davis advised that hospital officials have agreed to delete the language "unreasonably withheld".

The proposed lease agreement has language as follows: "To further the City's interest in insuring the uninterrupted availability of hospital and health care services to the citizens of Pikeville, KY, and surrounding service areas and so not to impair the City's ability to operate this project directly through a future Lessee upon termination of this lease for any reason, the Lessee shall not engage in any collective bargaining with any internal or external committees, organizations, representatives, or other entity which ceases to claim to represent the employees as collective bargaining representatives. The Methodists shall not use or suffer to commit any person to use the project or any part thereof for the purpose of violation of the law".

The proposed lease agreement provides that the hospital will be responsible for any liability, debts, lawsuits, and will defend the city from those who carry insurance. The proposed agreement also requires the hospital to carry liability insurance, workers compensation, medical malpractice insurance, and requires that coverage be acquired from a reputable company. In addition, it requires the hospital to list the City as an insured party and to provide copies of the policies.

The proposed lease agreement allows the hospital to remodel and make improvements to the hospital facility.

A new provision has been added to the proposed lease agreement which is not found in the existing agreement which says, "the Lessee (the hospital) agrees and covenants that the ratio determined by dividing the current assets by the current liabilities calculated by the accountant of the board shall not be less than 1.5 during the term. Mr. Davis advised this provision is required by the bank but it also gives the City some security in that it limits the amount of debt that the hospital can incur as opposed to their total assets.

The hospital will be required to furnish, upon request, a copy of their annual budget, audit reports and financial statements.

Danny Carter, an area resident, asked the Commission that should they not approve the new agreement, would the hospital be refused funding. Hospital Attorney, Pam Robinette, answered that this method of funding was the only alternative left to the hospital to finance the construction of the cancer center.

Dan Stratton, of TransFinancial Bank, offered a brief history to the Commission with regard to this matter. Mr. Stratton reported that his father was the hospital's attorney for a number of years and in 1969, the hospital was failing and was about to go under. In an effort to save the hospital, a plan was formulated which involved the construction of a new building with a lease through the City to make financing possible. In 1969, bonding laws were considerably different from what they are today. The City, as Mr. Stratton understood from his father, was to be a vehicle, in part, to allow the financing to take place. What took place was merely legal loopholes which allowed financing. Mr. Stratton stated, that as was the original intent, the City remained neutral in the hospital's operation. Mr. Stratton told the Commission that the proposed lease agreement is vitally necessary to continue the expansion of the hospital and asked for their approval of the lease.

Commissioners Davis and Mounts commented to the fact that no issues concerning the hospital had been presented before them until a year ago.

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Both Commissioners stated they had the opinion that the City should not become involved with the day to day operations of the hospital and agreed that the 1969 lease agreement was a vehicle for financing and was never meant to involve the City with the operation of the hospital.

Hospital Attorney, Pam Robinette, in an effort to present the new lease agreement from the hospital's point of view, commented as follows:

The City will be relieved of the \$1.9 million debt. The bond laws, now, no longer require a City Commission to set rates for hospital facilities. The bond requires the hospital to advise the City of what their current assets will be and what the ratios are. There are some provisions of the new lease agreement that are not required by bond laws, such as collective bargaining. Ms. Robinette explained this provision was added due to the position taken by the City approximately one year ago when the hospital was directed to not engage in collective bargaining. Ms. Robinette spoke to the urgency in getting an agreement in place to allow financing for the purpose of constructing an oncology center as hearings are now underway in Frankfort which may result in hospitals being limited in future construction. Ms. Robinette asked for the opportunity to go over, point by point, the terms of the lease. City Attorney Davis reported that he has no legal problems with the proposed lease, however thought it necessary to consider further the proposed lease term and collective bargaining.

With regard to the lease term, City Attorney Davis advised that Pikeville National Bank CEO, Burlin Coleman, indicated the necessity of a 15 year lease period. Mr. Davis suggested that a provision be inserted which would revert the lease to a year-to-year term once the bonds are retired. Commissioner Blankenship made the motion to approve a 15 year term. Commissioner Clark seconded the motion. Upon call of the roll, the motion carried 4 - 0 - 1 (Mayor May abstained from the vote).

With regard to reverting to a year-to-year lease once the bonds are paid, which would allow the City the option of paying off the bonds, Mr. Davis asked the Commission to decide whether they wanted this provision added to the lease. Mr. Davis advised that should the City pay off the bonds early that the City would have to reimburse the hospital for advanced rentals paid (in the form of bond payments). Ms. Robinette further asked that the City also assume all debts for improvements made to the hospital. Mayor May suggested the insertion of a clause which states that neither party could pay off the bonds without the other party's consent. Commissioner Mounts made the motion to approve the insertion of a clause giving the City or the Hospital the right to pay the debt off early, refund to the hospital the unused portion of rental monies, and then revert to a year-to-year lease. Ms. Robinette asked that the Commission incorporate into the language that if the City opts to terminate the lease, that the City would be responsible for any hospital debts. City Attorney Davis advised the addition Ms. Robinette had requested was too broad. She defined the debts as improvements made to the hospital. Mr. Davis pointed out that under the existing lease agreement, any improvements made to the hospital are the property of the City. The motion died from lack of a second.

Steve Combs asked Bond Counsel, Parker Edes, why the lender didn't elect to draw up an overriding subordination agreement. Mr. Edes reported this option wasn't discussed. Mr. Combs pointed out that the lender could have an overriding subordination which would give the lender the rights it wanted. Ms. Robinette reported she had met with Pikeville National Bank official, Burlin Coleman and attorney Bill Hickman, who gave the hospital the right to negotiate the lease, however it was to be understood that should the bank take the property due to default none of the restrictions would govern the bank in their ability to rule the hospital in the future. There is a provision in the proposed lease which gives the City the right to cure the default.

Ms. Robinette requested that the Commission approve a 15 year term subject to the hospital meeting the covenants contained in the proposed lease agreement. Commissioner Blankenship made the motion to accept Ms. Robinette's request. The motion died from lack of a second.

With regard to the provision on Collective Bargaining, Commissioner Mounts made the motion, seconded by Commissioner Davis to delete the clause from the lease which would prohibit the hospital from engaging in collective bargaining with hospital employees. The Commission heard comments from both Hospital CEO, Jim Norris, and Dr. Harry Altman. Mr. Norris explained he was neither in favor nor opposed to unions however felt it in the City's best interest to maintain the clause in the lease agreement which prevented collective bargaining in order for the community to receive medical assistance when needed. Dr. Altman spoke that he wanted to see the provision added to prevent another strike from happening as it did in the early 1970's. Upon call of the roll, the motion failed with Commissioners Davis and Mounts voting yes; Commissioner Blankenship and Mayor May voting no; and Commissioner Clark abstaining from the vote.

Section 6.2 of the proposed lease deals with remodeling and improvements made by the hospital to the facility. The clause would allow the corporation to remove any improvements, funded with hospital revenues,

if they cease to operate the hospital except for those improvements which are essential to the operation of the hospital. City Attorney Davis suggested the addition of language which would provide for the City to pick up any existing debts on any pieces of equipment that would remain in the event of default or termination of the lease should the City want to keep the piece of equipment. Commissioner Blankenship made the motion to accept the clause with the added language as explained by the City Attorney. Commissioner Davis seconded the motion. Upon call of the roll, the motion carried 4 - 0 - 1 (Mayor May abstained from the vote).

Steve Combs pointed out to the Commission that the existing lease provided that the hospital could not be assigned or subleased to a party that was not a non-profit corporation. City Attorney Davis explained that the proposed lease states that the hospital can not assign without City approval. The Commission agreed to add the language to the proposed lease as found in the existing lease concerning assignments or subleases.

Section 9.5, dealing with the operating ratios, current assets and current liabilities was discussed. Ms. Robinette explained this language was added in the place of the provision in the existing lease agreement which states that the hospital must have their annual budget approved by the City Commission. Ms. Robinette stated that with the addition of this language, the hospital is assuring the City that they will operate the hospital within the specified ratios. Ms. Robinette advised the Commission that the ratios had been negotiated with Burlin Coleman and Steve Belcher of Pikeville National Bank. The Commission agreed to leaving this provision in the proposed lease.

Section 9.6, provides that a copy of the annual budget and annual audit will be furnished to the City upon request. The existing lease provided for approval of the budget by the Commission and that the audit would be forwarded to the City. In addition, a provision has been added that any reports given to the City will be treated as confidential records which would place the hospital outside the open records law. The Commission agreed to add Section 9.6 as summarized by counsel.

City Attorney Davis referred back to the existing lease with regard to page 8 of that document where there is a provision that says that the Methodists will charge on behalf of the City such rates for services and facilities of the hospital project as specified in the annual budget adopted by the City and shall become the budget of the Methodists subject to interim provisions in such rates as may from time to time be by the City, subject also to appropriate provisions for indigent patients. The Methodists will further observe and comply with the requirement of the annual budget subject to variations therefrom as may be specified and or approved by the City. Mr. Davis advised it was not up to him whether this provision was added to the proposed lease but inferred this clause to be a method of control. Ms. Robinette said it was the hospital's position that they would assure proper operation of the hospital within the ratios agreed upon by Pikeville National Bank. It was her concern that rates may be established that would not conform to guidelines established by Medicare, Blue Cross/Blue Shield, etc. Steve Combs expressed his view that the provisions in the existing lease provides the City with a slight control, such control which is necessary due to the property asset and urged the Commission to not make a hasty decision which could jeopardize that asset. Ms. Robinette suggested adding a provision to the proposed lease agreement giving the City the authority to develop an amended budget for the hospital should the management fail to operate the hospital within the specified ratios. Discussed was adding a ratio figure higher than that accepted by the bank whereby the City would be notified that the hospital may be approaching a default. After discussion of some length as to what figure the ratio should be set, Pam Robinette recommended adding language to the effect that the hospital would agree to maintain ratios required by the bank; and there will be a second set of ratios developed by Mr. Norris, subject to bank approval, city attorney's approval and bond counsel's approval that when the hospital reaches those ratios, the city has the right to make changes in the operating budget. Figures will be provided to the City on a monthly basis subject to an independent audit at least once annually. If the city determines there is a need for an independent audit on those ratios before the end of the year, they have the option to order that at the hospital's expense. Steve Combs questioned if the city would employ an independent certified public accountant to advise on the set of ratios and will the city have the language in the lease that would allow them to get the documents that it needs to make an investigation should the need arise. The City Attorney agreed that a provision needed to be added that the hospital would provide access to all financial records subject to confidentiality. He further agreed to the need to employ an independent certified public accountant as he advised he was not qualified nor was he sure that the accountants on the city staff were qualified in establishing ratios. The Commission agreed to incorporate both Ms. Robinette's and Mr. Comb's recommendations in the proposed lease agreement.

There being no further points to discuss with regard to the lease, Commissioner Blankenship made the motion, seconded by Commissioner Clark to authorize the City Attorney to prepare a lease agreement between the Methodist Hospital of Kentucky, Inc. and the City of Pikeville with the provisions as discussed.

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Upon call of the roll, the motion carried 4 -0 -1 with Mayor May abstaining from the vote.

At 9:10 p.m., Commissioner Blankenship made the motion to adjourn. Commissioner Mounts seconded the motion. Upon call of the roll, the motion carried unanimously.

APPROVED

Walter E. May
WALTER E. MAY, MAYOR

ATTEST:

Karen Harris
KAREN HARRIS, CITY CLERK

X

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REGULAR MEETING MINUTES - OCTOBER 25, 1993

The Board of Commissioners of the City of Pikeville met in regular session on Monday, October 25, 1993. The meeting was conducted in the City Hall Public Meeting Room at 260 Hambley Boulevard.

Due to a Special Meeting of the Board of Commissioners, the meeting was not held at the regular meeting time of 7:00 p.m., but was called to order at 9:20 p.m.

Mayor Walter E. May presided and called the meeting to order. Commission Members present were as follows:

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

There were no additions or deletions to the prepared agenda.

The minutes of the September 27, 1993 regular meeting were included in each Commission Member's agenda package. There being no additions or corrections, Commissioner Blankenship made the motion, seconded by Commissioner Mounts to approve the minutes as submitted. Upon call of the roll, the motion carried unanimously.

Bond Counsel Attorney, Parker Edes, presented and gave second reading to an Ordinance which would authorize the issuance of Industrial Revenue Bonds on behalf of the Methodist Hospital of Kentucky, Inc. The Ordinance was read entitled:

AN ORDINANCE OF THE CITY OF PIKEVILLE, KENTUCKY, AUTHORIZING THE ISSUANCE OF 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

Commissioner Blankenship made the motion to adopt the Ordinance as presented. Commissioner Mounts questioned the language included in the Ordinance which stated that the Mayor could, at his sole discretion, change terms in the lease agreement. City Attorney Davis advised that most Ordinances have this type language inserted and advised the Commission that no changes are envisioned with regard to this lease agreement. After further discussion, it was decided to recess the meeting to allow the attorneys to prepare the lease as discussed during Special Meeting and present the amended agreement at the next meeting for a decision.

Commissioner Clark made the motion, seconded by Commissioner Mounts to recess the meeting until 6:30 p.m. on October 26, 1993. Upon call of the roll, the motion carried unanimously.

APPROVED Walter E. May
WALTER E. MAY, MAYOR

ATTEST:

Karen Harris
KAREN HARRIS, CITY CLERK