



Mountainview Medical Center

January 16, 2007

Jamie Doggett, Chair
Meagher County Commissioners
PO Box 309
White Sulphur Springs, MT 59645

RE: Harmon Trust & FY08 Budget

Dear Jamie:

Thank you for inviting MMC to visit with the Commission in December regarding hospital operations and current events. At that meeting you asked for additional information regarding the loans secured by the Harmon Trust and a budget breakdown to further explain the use of County Mil funds by MMC.

Harmon Trust

I pulled the Harmon Trust file to improve my background on the history of the trust and loans secured by the trust. I thought I'd share a little of the history with you.

In 1975 the Meagher County Commissioners sent a letter to the board of MMC voicing their commitment to use the Harmon Trust in an appropriate fashion, yet to be determined, to support the improvements of the medical facilities and construction of a 30 bed nursing home.

On February 4, 1976, the Commission Chair, George Zieg, Sr. wrote a letter to the USDA stating that the Commissioners committed the Harmon Trust for the purpose of servicing the repayment requirements of the loan. On June 10, 1976 Commissioner Zieg wrote a letter to FHA detailing the terms of the pledge of the trust. The construction was completed and two loans were made to MMC. A Security-Pledge Agreement was signed by the Meagher County Commissioners on August 3, 1977.

On September 19, 1996 Jeff Doggett, Commission Chair, wrote a letter to the USDA confirming that the Security-Pledge Agreement signed on August 3, 1977 applied to a new loan of \$180,000. At that point, Loan #2 was re-amortized for 20 years and had a loan balance of \$236,144.94. The new loan, Loan #3, for \$180,000 was amortized over 25 years. I'm not sure what happened to Loan #1. Perhaps it was paid off by then.

The only reference for the purpose of the new loan (#3) was to upgrade the plant infrastructure. I believe the boilers were replaced at that time so they may have been part of the upgrade.

The total outstanding indebtedness was \$416,144.94 in September 1977. Today the loans continue to be paid. As of today, the total outstanding is \$249,344.97. Loan #2 will pay off in December 2020 and Loan #3 will pay off in May 2016. I have included copies of our amortization schedules. They are internal documents so they have been written on by staff over time, but they should be legible.

Each month the payments of \$1,066 and \$1,559 are automatically withdrawn from MMC's main checking account at the Bank of the Rockies on the 19th or next business day if the bank is closed on the 19th. Each month, around the 22nd the County Treasurer gives MMC a check for \$2,625 to cover the loan payments. In addition to the pledge of the Harmon Trust for loan repayments, MMC is required to keep an amount equal to one year of payments on the outstanding loans in an account at the Bank of the Rockies. MMC does keep a separate savings account with \$31,500 in it to meet the requirements of the loans.

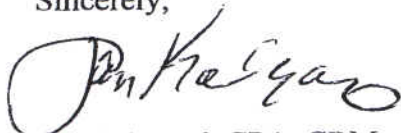
I hope you find this information on the Harmon Trust and the outstanding loans secured by the trust helpful. Please let me know if you have additional questions.

FY08 Budget

You had also asked for information relating to the usage of the county mil funds. I have attached a document that was prepared prior to the mil levy passage to provide general information for the voters. Additionally, I have included a brief budget recap for your reference. The report is through the month of November 2007 which is 5 months through the year. The far right hand column has the Annual Budget amounts. I hope you find this information helpful. Again, if you have additional questions, please let me know.

I look forward to our next meeting at your convenience.

Sincerely,



Jan Kalgaard, CPA, CRM
Interim CEO

Cc: John Dracon, Chair MMC Board of Directors

Attachments

KAKUK LAW OFFICES, P.C.
P.O. BOX 624
WHITE SULPHUR SPRINGS, MT 59645

MICHAEL S. KAKUK, ATTY.
LICENSED IN MONTANA,
WISCONSIN (INACTIVE),
AND U.S. PATENT BAR

PHONE: 406-594-0515
EMAIL: INFO@KAKUK.COM
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JULY 6, 2010

MEAGHER COUNTY COMMISSIONERS
COUNTY COURTHOUSE
WHITE SULPHUR SPRINGS, MT 59645

RE: HOSPITAL BOARD

Dear Commissioners:

Thank you for the opportunity to offer my services to the Mountainview Medical Center Board as a County Representative. In addition to my 20 years experience as a practicing attorney in Montana, I also have had the honor of serving on the Board of Directors for Spring Meadow Resources, Inc. (SMR) – a non-profit organization that provides a multitude of services for the developmentally disabled community in Montana. SMR has an annual budget of almost \$4 million and employs about 100 individuals. I have served as President of the SMR Board for the past two years.

If appointed to the Clinic Board, I would bring the following assumptions, goals, and objectives.

1. Assumptions. I believe that that everyone to date has been acting in good faith. In other words, I do not believe that there are any bad guys out there. I believe that the Board, the executive staff, and all employees, are working towards the same goal: a fully functional and financially sound clinic. However, I also believe that there is a definite and pronounced communication problem between the Clinic executive staff and the public. Unfortunately, this problem has now spilled over and, pardon the pun, has infected the Board as well.
2. Goals. While, as stated above, I do not believe that there is any malfeasance on anyone's part, if problems are uncovered I pledge to do my utmost to fix those problems as effectively and as efficiently as possible.

3. Objectives. Considering the apparent level of mistrust by some members of the public for the current Board and Clinic executive staff, my first action, if appointed, would be to move that a formal Investigative Committee be created to thoroughly look into any and all of the recent allegations and any other matter considered relevant by the Committee.

The Committee's charge would be open-ended and would include, but not be limited to:

- a. reviewing all relevant documents and records;
- b. interviewing current and former employees;
- c. meeting with interested members of the public to ensure that all relevant information is considered; and
- d. reporting back to the full Board, and therefore the public, within 60 days with a full and comprehensive report of the Committee's finding and recommendations, if any.

Since I have experience serving on and chairing non-profit investigative committees, I would request to serve on the Investigative Committee myself.

I make this detailed explanation of my objectives to ensure that you fully understand what you would be getting should you decide to appoint me to the Board. I've been authorized by the current Board President, Bill Galt, to let you know that he also supports the creation of an Investigative Committee.

In the interest of full disclosure, I must inform you that I have been asked by a neighbor of the Clinic to research certain land use and water right issues concerning the Clinic and that neighbor. My client has agreed that, should I be appointed to the Board, I would suspend such research pending the Investigative Committee's report. Obviously I could not serve on the Board and continue to represent that client should such representation be necessary.

If you consider these prior land use/water right research activities to be a conflict, another option for my, more limited, involvement would be for the current Board to appoint the Investigative Committee, and then simply request my assistance. That would allow me to contribute my services without actually serving on the Board itself.

MEAGHER COUNTY COMMISSIONERS
JULY 6, 2010
PAGE 3

Please understand that I'm not implying that my specific participation is necessary on the Investigative Committee. But given the current level of mistrust I believe that the Committee should have at least one person on it who is seen as objective and is not a member of the current Board.

In my opinion, ensuring adequate local health care services is the most important issue currently facing this community. Again, I appreciate the opportunity to be involved in this matter.

Sincerely,

Michael S. Kakuk
Attorney

Personal Trust
303 North Broadway
Billings, MT 59101
406.657.8189
406.657.8034 fax

December 9, 2010

Penny B. Doak
Vice President and Trust Officer
Telephone 1-406-657-8139
Fax 1-406-657-8034
Email: Penny.Doak@usbank.com

Mr. Herb Townsend
Meagher County Commissioners
P O Box 309
White Sulphur Springs, MT 59645

RECEIVED

DEC 10 2010

Re: **Mountainview Medical Center
Request for Information**

Dear Herb:

Thank you for your request for information regarding the Charles M. Bair Memorial Trust and Mountainview Medical Center. I am sorry that it has taken me so long to get the information you have requested to you. The Charles M. Bair Memorial Trust was established by the Last Will and Testament of Marguerite Lamb and has been administered by U.S. Bank and our predecessors since her death. Initially Alberta Bair was a co-trustee under the agreement and took an active management role in the decision making process. After the death of Alberta Bair, U.S. Bank continues on as sole trustee per Marguerite's Will.

With respect to the distribution to any of the 5 named remainder beneficiaries after the primary purpose of the trust is accomplished – that of paying for scholarships for students graduating from the area, the document reads:

"Having, each year, determined the amount expended from the year's net income of the trust for the support of scholarships as hereinabove set forth, and having set aside from net income a reserve for expenses of the trust for the ensuing year, the trustee shall annually divide and contribute the balance of the net income from the trust among the following religious and charitable institutions, in such proportion as the trustee may, in its sole discretion, determine, to-wit:

1. Any general hospital, or hospitals not operated for profit, then located in Wheatland County, Montana.
2. Any general hospital, or hospitals not operated for profit, then located in Meagher County, Montana.
3. The Billings Deaconess Hospital, Billings, Montana.
4. The First Church of Christ, Scientist, Billings, Montana
5. The Mother Church, The First Church of Christ, Scientist Boston, Massachusetts."

Because the document indicates the trust is to be a charitable trust, the Internal Revenue Code Section 4942 also applies and may overwrite the document. It was this provision that changed this trust into a private foundation under IRS guidelines. Based on the above-referenced language, it is not the opinion of our bank that any beneficiary would be excluded from receiving a "part of" or "portion of a share" of this type of distribution unless that organization disqualifies itself in a manner such as one of these below:

The hospitals may not operate for profit and must remain as "hospitals" under the state definition so certain types of change of facility type would disqualify a hospital.

If a charitable beneficiary fails to follow Internal Revenue Code, federal or state law it could also be disqualified. Additionally, if a charitable beneficiary fails to file required tax returns timely and thus is not in good standing with the IRS, it could lead to disqualification of a distribution for that period of time because there is zero tolerance by the IRS in making a distribution to an organization that is not a nonprofit in good standing. While this list is not exhaustive, these are some examples of disqualification from the Charles M. Bair Memorial Trust.

I am sure you can see why U.S. Bank as trustee is interested in monitoring and getting to the bottom of any issue that could disqualify any of the 5 remainder beneficiaries and doing everything possible to prevent an



organization from unintentionally being disqualified. We thus keep in good contact with beneficiaries and value good working relationships.

The timing and amount of discretionary distributions to the five remainder beneficiaries is a decision made by a committee that is semi-annually appointed by senior U.S. Bank trust management. The current committee is comprised of a regional bank president, area bank lenders, local trust personnel etc. No one individual ever has the ability to exclude one or another organization.

The information regarding each of the organization as is known on the date the committee meets is presented. I did present information that Mountainview Medical Center has been receiving mill levy taxes from the county and estimated that amount to be about \$200,000. I had discussed this matter with Aaron Rogers when we were met with Mountainview, but do not believe there was ever any statement that we might discontinue a distribution to Mountainview based on the county mill levy. The Mountainview Board of Directors indicated (to the best of my recollection) that the mill levy seemed to impact their ability to raise funds through charitable giving, but that was the extent of the conversation.

Ultimately, having worked with each of the named hospitals for a long time and seeing the costs of health care escalating and the funding for these organizations shrink, is of great concern.

In respect to Mountainview Medical Center, I am pleased to tell you that Aaron Rogers and I have had a good working relationship, and when I have asked Aaron for information, he has promptly provided me with that information. Aaron and I have had many frank telephone calls and emails throughout the years. Aaron did contact me shortly after you did and I agreed happily to provide Aaron with a copy of this letter. In dealing with public interest funds you and I agree that being willing to put something in writing and stand behind those statements has value.

In preparing for the meeting of the committee this last distribution meeting, Aaron went above and beyond the requirements by providing U.S. Bank with audited financials, and a host of information that is objective rather than subjective in nature.

The concern of the Charles M. Bair Memorial Trust is providing funding to named organizations that assists them in carrying on their respective missions within the parameters of Marguerite's Will. We have a vested interest in the continued success of each of the 5 remainder beneficiaries. Our records indicate that Mountainview Medical Center has received historical funding from the Charles M. Bair Memorial Trust in the amount of \$5,946,535.

While this is a significant contribution, please know that the annual increases to the cost of higher education seem to increase by about 5% annually. Several years ago, the scholarship guidelines were broadened a bit to include the costs of attending an out-of-state university and increased some of the items covered for scholars when studying abroad. Currently the annual expense for scholarships is running about \$500,000 to \$550,000. This amount alone could result in the determination that no distribution is required to be made (under the Will and IRS regulations) to the 5 remainder beneficiaries. The other side of the high cost of education is the recent market downturn and lack of income generated by bonds and other fixed income products which diminishes the trust's ability to generate funds for distribution.

Certainly it is my hope that the community can come together in a positive effort to support the organization for as long as having local health care is important to your citizens.

Sincerely,


Penny Doak

cc: Aaron Rogers

Jan, 4 2011

To: Meagher County Commissioners

From: Hospital District Board



Subject: correspondence between board and MMS A. Rogers, and our recommendations

We are including recent correspondence between our board and A. Rogers of MMC to illustrate the difficulty of communicating with the current administration over matter related to our charge. A question raised at the public meeting was about the status of the Bair. In other words, how much money is left in the endowed trust.

We requested to be on the MMC board's agenda for their Dec. 22, 2010 meeting to get that information. Following was an email exchange between Mr. Rogers and Board Chair Mr. Dracon. From this we learned that for the hospital district board to be on MMC's agenda requires permission from the liaison committee before this can occur. With this newly created requirement (based on what authority) and the naturally following question if there is an appeal process in place if the liaison committee denies our request to be on the board's agenda, you can quickly understand that Mr. Rogers is stonewalling and playing games.

His response of Dec. 21, 2010, is a classic example of a non sequitur (an inference that does not follow from the premises). And, of course, illogic when he states, "I appreciate your request, however, **due to numerous untrue and inaccurate allegations of illegal meetings**, (our emphasis) I am forced to deny your request to add mchdb to the agenda."

Then follows, "I would be more than happy to add you to the January agenda jointly with the Hospital Committee **at their request**". (our emphasis) Here he announces a new restriction placed before getting on the MMC board agenda.

In John Dracon's second email dated 12/22/2010, he elaborated on the purpose of asking to meet with the board, viz., seeking permission to contact U.S. Bank. Again, Mr. Rogers response implies that we would be "bypassing MMC," (with their consent is not bypassing) and that "You just happened[to ask for us to go against the bylaw stipulation." which Mr. Dracon didn't because that stipulation was unknown to him.

His comment cannot go unchallenged, viz., "You are absolutely correct in the understanding that the County Committee needs to make **any** and **all** requests of the the Hospital Board or administration through the MMC Committee."(our emphasis)

Mr. Dracon recently wrote to Mr. Rogers asking for information on his current compensation via IRS 990. See that letter. Since ordinary citizens can ask and receive such information, it appears from Mr. Rogers statement the Hospital District Committee request would be denied.

It is our understanding that the Hospital District Board has been appointed by the commissioners and given a charge which requires asking for information from various agencies including MMC. Our requests, therefore, should be 'honored as if they came from the commissioners themselves. Should the commissioners, public elected officials, answerable to the public, when submitting their requests to address the MMC Board (self-appointed and answerable to whom) be required to submit such requests to a petty committee of the MMC Board.? We think not.

We recommend, therefore, that the commissioners inform the MMC Board in writing that the Hospital District Board is an arm of county government authorized to seek information. As such it has the authority to make requests of the MMC Board in public meetings without seeking approval first from any petty committee the Board may wish to create.

Jan. 7, 2011

To: Commissioners

From: Hospital District Board



Subject: Chairman Galt's Jan. 5, 2011 letter to Dracon

Mr. Galt had been copied by a Jan 3, 2011 letter addressed to Mr. Aaron Rogers requesting his **current** level of compensation. You have that letter. Mr. Galt's later letter states their last audit report has the information we are seeking, which of course it doesn't because it is dated. The resistance to be forthright is really the issue and nothing else.

Nothing in our communication to MMC has even vaguely suggested "hidden charges," or "continued insinuations" or "requests for excessive paperwork," as stated in Mr. Galt's rhetoric. We have asked two questions: (1) what is the status of the Bair trust and (2) what is Mr. Roger's current compensation. MMC has told us the first (approximately \$581,000) and balked on the second. We did ask for copies of the minutes which they have agreed to transfer electronically. Once that has occurred and the minutes reside at both the hospital and the court house, public access will be greatly enhanced.

We recommend the commissioners publicly thank them for cooperating on that matter.

The more specific the district committee becomes in requesting information, the more resistance we can expect. When we meet with the County Attorney, we will discuss those issues with care.

There is reference in Mr. Galt's letter to several matters which are not connected to our board. Allow us to explain. When our request to appear on the MMC agenda at the Dec. 28, 2010 meeting was made (you know the story), Mr. Dracon used the public comment period to make comments. The first dealt with the Bair and the board shared information about it. The second comment expressly was made not as a member of the County District Board, but as a private citizen. The minutes will show that.

Those comments regarded the paying off the MFFA loan in 2008 and some history of the Bair legacy.

He will respond to Mr. Galt requests as a private citizen not as a county board member.

Jan. 25, 2011

To: Meagher County Commissioners

From: Hospital District Board, Sundstrom, Kakuk, and Dracon

Subject: Report on counties levying mills for hospital support

As the commissioners were already aware, the district board sought statewide county tax data from the Dept. of Revenue on Montana counties which levy mills for hospitals. Their economist, Steve Cleverdon, assembled data for your review and information.

Of the fifteen counties which levy mills, all are rural, sparsely populated counties. Based on the data shown, the mills levied vary significantly from Powell County with .5 mill to Chouteau with 91.03 mills.

What can be inferred from these data?

1. Even in counties which are rural and sparsely populated, a wide variation of taxation for hospitals occurs. Five (5) rural counties levy more mills than does Meagher, and nine (9) counties levy less mills.
2. The counties with sizable populations do not tax for their hospitals.
3. When compared to counties with more wealth per capita, Meagher County citizens are having to make a greater financial effort and receive less access to medical services. This appears to be a function of living in rural Montana for which there are no apparent solutions to address this situation.

The district board seeks direction from the Commissioners on how to disseminate this information to our public.

Meloy Threweiler
ATTORNEYS AT LAW

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PHYR MICHAEL MELOY
TERRY N. THREWEILER
BRIAN C. BRAMBLETT
ROBIN A. MEGUIRE

January 22, 2007

Chairman Barry Hedrich
Board of Directors, Mountain View Medical Center
16 West Main Street
White Sulphur Springs, MT 59645

Via facsimile: 406-547-3589

Dear Chairman Hedrich:

This letter is written on behalf of Jason Phillips of the Meagher County News who contacted our office through the Freedom of Information Hotline and reported that the Mountain View Medical Center is conducting board meetings and acting on items of significant public interest without following the proper procedures, as outlined in Montana's Open Meetings Laws, codified at § 2-3-101, MCA, *et seq.* One of these statutes provides:

All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.

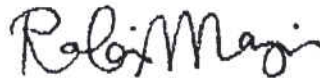
§ 2-3-203(1), MCA (emphasis added).

A medical center that receives state money, such as Medicaid funds, or county funds, is subject to Montana's open meetings laws. The Board of the Mountain View Medical Center must provide public notice and allow public comment on all matters that are of significant interest to the public. Section 2-3-103, MCA; 51 Op. Atty. Gen. No. 12 (2005). Such notice should be adequate to inform the public of their right to participate and should ideally be published in a newspaper. Further, minutes of any meeting must be kept and made available for inspection by the public. Section 2-3-212, MCA. The only valid reason for closing a meeting to the public is when the demand of individual privacy clearly exceeds the merits of public disclosure. Any such privacy interest can be waived by the person about whom the discussion pertains and, in that event, the meeting must be open. Section 2-3-203(3), MCA.

Mountain View Medical Center
January 22, 2007
Page 2

Any failure to adhere to these laws subjects the Board to a lawsuit which could ultimately result in the Board's action being voided pursuant to § 2-3-114, MCA, and § 2-3-213, MCA. Further, a prevailing plaintiff in such an action may be awarded reasonable attorney fees and costs in bringing the action pursuant to § 2-3-221, MCA.

Sincerely,



ROBIN A. MEGUIRE

cc: Jason Phillips, Meagher County News

UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C.

JOHN D. ALEXANDER
 NANCY P. CORY
 MARK F. HIGGINS
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January 23, 2007

Our File: MO59-02

Katharine Ann Campbell, CHE
 Chief Executive Officer
 Mountainview Medical Center, Inc.
 16 West Main, Box Q
 White Sulphur Springs, MT 59645

RE: Open Meeting Issues

Dear Katharine Ann,

As your board requested, following is my opinion as to whether, by virtue of your county funding, your board meetings are subject to Montana's open meeting laws. In a word, yes, they are. The relevant statute, § 2-3-203(1), states: "All meetings of public or governmental bodies . . . or agencies supported in whole or in part by public funds or expending public funds must be open to the public." As you can see, that language is pretty clear, and there is no case law limiting its application. Thus, although the county's portion of your budget is not significant, it is "part" of the budget, and thus renders the board meetings subject to the open meeting laws.

A further reading of the statutes will inform you of all of your duties under the open meeting laws. Basically, you must keep your meetings open unless the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. § 2-3-203(3). There are some matters over which Montana's protective right to privacy is stronger, and those topics may and should be discussed in executive session, closed to the public. Courts have interpreted this to include discussions about salaries, hiring, discipline, firing and promotions.

Another area for which you may close your meeting is discussions you may have regarding litigation and especially formulating strategy and discussion issues with witnesses and lawyers. The fact that a lawsuit is filed is not private.

In addition, you may not, under healthcare privacy laws, discuss protected healthcare information in front of outsiders. If you are discussing the care or payment issues related to a person who could be identified, by way of the details discussed, then such discussions must be held in private.

Note, however, that in discussions of either of the general subject areas above, or any other private matter related to one individual, that individual may waive his or her right to privacy, at which point the meeting must remain open. I would advise that you proceed with such discussions in private unless you are specifically told otherwise by the person at issue – i.e., don't be the party to bring up the waiver issue.

The statute also provides an express exception for discussions of strategy regarding litigation. These discussions may be closed. However, if the litigation is between two public entities, as that term is described in the open meeting statute, then the meeting must be open.

Another important area which requires closure of meetings is any discussions of matters commonly referred to as "peer review", which includes physician discipline and other matters. This law, § 50-16-201, is so important, I am setting out the types of matters it covers as a reminder to everyone:

written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with quality assessment or improvement activities, including the professional training, supervision, or discipline of a medical practitioner by a health care facility. The term does not include: (i) incident reports or occurrence reports; or (ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

Importantly, the individual waiver, as discussed above, will not serve to open up discussions of these matters. The confidentiality of these matters may not be waived by one individual, because the privilege of confidentiality belongs to everyone involved in the process, including outside reviewers.

§ 2-3-211 requires you to keep your meetings open to members of the press, and requires you to allow them to take photographs and televise. However, the presiding officer may ensure that such activities don't interfere with the meeting.

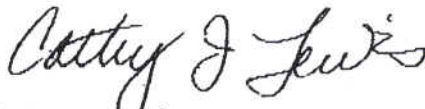
Finally, § 2-3-212 requires that minutes of the meetings be open for public inspection. Obviously, the minutes of the closed portions of meetings need not be open to public inspection.

You should also know that if you close a meeting, and that closure is challenged successfully in court, you are required to pay the attorney's fees for the challenge.

Those are the basics for the public meeting law and its requirements as applied to a hospital board. I hope this helps to clarify your rights and responsibilities. Please feel free to call if you have any further questions.

Sincerely yours,

UGRIN, ALEXANDER, ZADICK, & HIGGINS, P.C.



Cathy J. Lewis

January 13, 2011

Ms. Kimberly Deschene, County Attorney
Meagher County
White Sulphur Springs, Montana
59645

Dear Ms. Deschene,

The Meagher County Hospital Board respectfully asks you to seek the following information from the liaison committee appointed by the Mountainview Medical Center Board of Directors to interact with my committee. That committee consists of Otto Ohlson, Bill Schendel, and Lisa Gilbertson.

1. What is the annual compensation for CEO Aaron Rogers, including bonuses, if any, paid to him within his current contract year?
2. As reported in the Dec. 22, 2010, MMC minutes, page 3, funds identified as belonging to the Bair account were \$591,678. Cash on hand was reported by CEO Rogers to be 1.4 million dollars. Are these cash-on-hand dollars restricted in any manner, or can they be expended for operational costs at the direction of the board? Also, in what banks are these monies currently deposited, and what is the total deposit per bank?


Thank you for your assistance.

Sincerely yours,



John Dracon, Chairman
MSHDB

CC: Board members Kakuk and Sundstrom
Meagher County Commissioners

TO: MEAGHER COUNTY COMMISSIONERS
FROM: KIMBERLY DESCHENE 
DATE: February 2, 2011
RE: MMC Hospital District Board

Please find attached the information I received from the Mountainview Medical Center District Board – *Liason Committee*. I believe that MMC has satisfied the requests of the County District Board; however, let me know if more information is needed and I will be happy to follow up.



"The County with a Castle"

Meagher County, Montana

WHITE SULPHUR SPRINGS, MONTANA

OFFICE OF

KIMBERLY DESCHENE
COUNTY ATTORNEY

15 W. Main Street - P.O. Box 909
White Sulphur Springs, MT 59645

Phone (406) 547-3612 Ext. 122
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January 25, 2010

Mountainview Medical Center Board of Directors
Liaison Committee
P.O. Box Q
White Sulphur Springs, MT 59645

Re: Hospital District Board

Dear Liaison Committee:

Thank you very much for your letter with the information requested by the Meagher County Hospital District Board. I am hopeful that your response will be satisfactory to the District Board, as it appears to me to be complete.

Thank you for taking the time to complete this request.

Sincerely,

Kimberly Deschene
Meagher County Attorney

cc: Meagher County Hospital District Board
Meagher County Commissioners

KAKUK LAW OFFICES, P.C.
P.O. BOX 624
WHITE SULPHUR SPRINGS, MT 59645

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MARCH 22, 2011

KIMBERLY DESCHENE
MEAGHER COUNTY ATTORNEY
COURTHOUSE
WHITE SULPHUR SPRINGS, MT

HAND DELIVERED

RE: OPEN MEETING LAWS

Ms. Deschene:

I am writing on behalf of the Meagher County Hospital District Board and requesting your assistance regarding our Study Issue 10, reproduced below.

10. Are MMC Board financial meetings open to the public?

Proposed Research: Discussion with the Clinic Board, and or staff, including Clinic legal counsel.

Assigned: Kakuk

Update: Kakuk stated that, in his opinion, any sub-committee of the Hospital Board was subject to Montana's open meeting laws. (See Attachment 3.)

I have attached my research which clearly indicates, to me anyway, that any sub-committee of a board subject to Montana's open meeting laws, is also subject to those laws. (See for example, §2-3-203(6), MCA.)

KIMBERLY DESCHENE, ATTY.
MARCH 22, 2011
PAGE 2

Apparently the Clinic Board disagrees with this opinion as they have recently stated that a Financial Committee meeting was "*not an open meeting*". (See the Clinic February 23, 2011, Board Minutes, excerpts attached.)

Since the Clinic's position is clear, we have decided not to contact them until we receive your opinion regarding this issue.

We look forward to working with you on this important matter of public policy and compliance with state law.

Sincerely,

Michael S. Kakuk
Attorney

Encl: Study Outline, Attachment 3
Clinic Minutes Excerpt

cc: County Commissioners
Clinic Liaison Committee
Mountainview Medical Clinic
Mountainview Medical Clinic, Board of Directors



Mountainview Medical Center

A-12

January 31, 2011

Meagher County Attorney
P.O. Box 909
White Sulphur Springs, MT 59645

RE: request for information

Dear Ms. Deschene,

We are in receipt of your letter requesting financial documentation. We would like to clarify that we are the Mountainview Medical Center Board of Directors - Liaison Committee rather than the Meagher County Hospital Board.

Question #1)

Aaron Rogers is not under contract with MMC. He is employed by Cypress Healthcare who provides him to MMC.

Annual compensation that will be shown on the fiscal year 2010 IRS 990 (when completed) will be \$90,000, Aaron has never received a bonus. We would like to reiterate that this figure is included in the total figure paid to Cypress as noted in the audit report. It is not to be added to that figure.

Question # 2 & 3) *statements included*

Cash on hand total is \$1,498,473:

Bank of the Rockies	\$836,752
Restricted	\$231,974 (monies granted for specific purpose)
US Bank	\$592,322
Dutton State Bank	\$ 69,399
Restricted	\$ 69,399 (Ranchers to the Rescue, M.C. Campaign)

All unrestricted money can be used at the discretion of the Mountainview Medical Center Board of Directors. For future reference, all cash on hand is listed on the monthly balance sheet that is given to the Meagher County Commissioners.

As requested by Bill Galt in his letter to Mr. Dracon, he requested a list of information needed. As we have not heard from Mr. Dracon, we presume this completely fulfills that request.


Otto Ohlson, Chair
Liaison Committee
Mountainview Medical Center Board of Directors



[LOG OFF](#) [CHANGE PASSWORD](#) [HELP](#)

Bank of the Rockies N.A.

List of Accounts for MOUNTAINVIEW ME [ACCOUNTS](#) [EXPRESS TRANSFER](#) [CONSUMER BILL PAY](#) [BUSINESS BILL PAY](#)
Date Last Login: January 28, 2011 07:50:00 AM

Deposits		
Number	Nickname	Current Balance
██████	Resident Trust	2,353.53
██████	Main Checking	546,306.90
██████		9,501.76
██████		1,392.40
██████		231,974.13
██████		31,500.00
██████		7,886.13
██████		5,837.41
Total Deposits:		836,752.26

[CONTACT](#) [PRIVACY POLICY](#)  **MEMBER FDIC**

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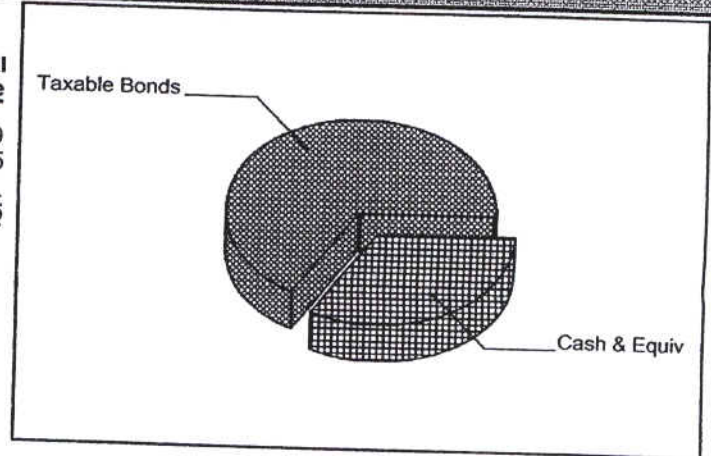


ACCOUNT NUMBER: 130006138050
 MOUNTAINVIEW MEDICAL CENTER
 INVESTMENT CENTER

This statement is for the period from
 December 1, 2010 to December 31, 2010

ASSET SUMMARY AS OF 12/31/10

Assets	Current Period Market Value	% of Total	Est Annual Income
Cash & Equivalents	195,172.73	33.00	.00
Taxable Bonds	397,149.55	67.00	12,076.25
Total Market Value	\$592,322.28	100.00	\$12,076.25



YOUR INVESTMENT OBJECTIVE IS ALL FIXED/NON
 TAXABLE

MARKET VALUE SUMMARY

	Current Period 12/01/10 to 12/31/10	Year-to-Date 01/01/10 to 12/31/10
Beginning Market Value	\$591,678.96	\$581,693.64
Taxable Interest	2,093.35	16,147.18
Fees and Expenses	- 271.18	- 3,230.78
Cash Receipts		1,378.30
Long Term Gains/Losses	- 727.25	- 677.25
Change in Investment Value	- 451.60	- 2,988.81
Ending Market Value	\$592,322.28	\$592,322.28

11044000

Certificate 2026302 - MOUNTAINVIEW MEDICAL CENTER

	Rel	Birthdate	Phone	Tax Identification
[01] MOUNTAINVIEW MEDICAL CENTER	*		*****	*****
PO BOX Q				
WHITE SULPHUR SPRING MT 59645				

Additional Relationships
 Tax Name: [1] MOUNTAINVIEW MEDICAL CENTER

Presentments

No Presentments for Account

Current & Previous Cycle

Description	Debits	Credits	Date	Balance
Balance Forward:			Oct 07, 2009	\$0.00
Deposit			Oct 07, 2009	\$67,859.41
Interest		\$67,859.41	Jan 06, 2010	\$68,244.26
Interest		\$384.85	Apr 06, 2010	\$68,622.88
Interest		\$378.62	Jul 06, 2010	\$69,007.83
Interest		\$384.95	Oct 06, 2010	\$69,399.19
Balance This Statement:		\$391.36	Nov 04, 2010	\$69,399.19

Interest CD at Sutton

11044000 391.36

51309000 391.36

Batch # 01470228
POSTED
 OCT 31 2010

Period 4

MOUNTAINVIEW MEDICAL CENTER
 BALANCE SHEET
 AS OF: 12/31/10

01/12/11 12:23 PM

	CURRENT MONTH	PRIOR MONTH
ASSETS		
ACCOUNTS RECEIVABLES	662,835	648,542
LESS CONTRACTUAL & BAD DEBT DEDUCTS	(186,964)	(186,964)
NET	475,871	461,578
CASH	565,972	531,842
INVENTORIES	119,948	118,124
PREPAID INSURANCE	14,294	24,277
BOND PRINCIPAL & INTEREST	929,106	928,427
ACCOUNTS RECEIVABLE-OTHER	4,635	4,635
OTHER CURRENT ASSETS	83,990	83,990
TOTAL CURRENT ASSETS	2,193,819	2,152,874
FUNDED DEPRECIATION	0	0
MEDICARE COST REPORT CURRENT YR	0	0
TOTAL BOARD DESIGNATED ASSETS	0	0
PROPERTY PLANT & EQUIPMENT	7,501,484	7,494,208
LESS ACCUMULATED DEPRECIATION	4,021,455	3,998,472
TOTAL ASSETS	5,673,847	5,648,609
LIABILITIES		
ACCOUNTS PAYABLE	59,604	32,201
ACCRUED PAYROLL AND PAYROLL TAXES	108,903	173,733
ACCRUED EXPENSES	31,920	31,850
SPECIAL TRUST	849	849
CURRENT MAT FHA	0	0
DEFERRED TAX APPROPRIATION	0	0
TOTAL CURRENT LIABILITIES	201,278	238,635
BONDS PAYABLE	188,322	190,144
TOTAL LIABILITIES	389,600	428,780
FUND BALANCE		
FUND BALANCE BEGINNING	5,450,074	5,450,074
CHANGE/LOSS FROM OPERATIONS	(165,827)	(230,244)
TOTAL FUND BALANCE	5,284,247	5,219,829
TOTAL LIABILITIES AND FUND BALANCE	5,673,847	5,648,609

January 25, 2010

Meagher County Hospital Board

Liaison Committee

P.O. Box Q

White Sulphur Springs, MT 59645

Re: Hospital District Board

Dear Liaison Committee:

I am writing this letter at the request of the Meagher County Hospital District Board. The Hospital District Board is in the process of gathering financial information about Mountainview Medical Center.

The District Board is requesting answers to the following questions:

- 1) What is the annual compensation for CEO Aaron Rogers, including bonuses, if any, paid to him within his current contract year?
- 2) As reported in the Dec. 22, 2010, MMC minutes, page 3, funds identified as belonging to the Bair account were \$591,678. Cash-on-hand was reported by CEO Rogers to be 1.4 million dollars. Are these cash-on-hand dollars restricted in any manner, or can they be expended for operational costs at the direction of the board?
- 3) Which banks hold the cash-on-hand money for the hospital and how much money does each bank hold?

Please accept my apologies if any of these questions have already been answered. If this is the case, the District Board kindly requests that they be answered again or that you direct them to the place where the answers may be found.

Thank you for your assistance with this request.

Sincerely,

Kimberly Deschene

Meagher County Attorney

April 15, 2011

Ms. Kimberly Deschene
Meagher County Attorney
15 West Main
White Sulphur Springs, Mt. 59645

Dear Ms. Deschene,

Thank you for consenting to meet with me this coming Tuesday, April 18, 2011 at 9:00 A.M. Enclosed please find research materials my committee has assembled during its brief existence. These documents, in our judgment, overwhelmingly support our contention that Mountainview Medical Center (MMC) is subject to Montana's open meeting laws in all aspects.

Before I continue with our presentation, allow me to share some facts about my own personal knowledge about MMC. I joined the MMC board in April of 2006, and was appointed as chairman in February of 2007 during a severe financial crisis. I resigned from the board in January of 2008.

During this period I became thoroughly familiar with the governance issues surrounding MMC, including the open meeting laws and its application. I also became interested in just what kind of "animal" the MMC's corporate structure represented. The data included are the result of research into defining the corporate nature of MMC as it exists today.

You may ask why as the Meagher County Attorney you should be asked to render your opinion on whether fundamental information my board has sought from the administration of MMC, including information discussed in subcommittee meetings, should be released to us? The answer to that question will become, we believe, self evident in our explanations below.

Moreover, we see your involvement as an appropriate and necessary step in aiding our board to carry out its duties. We believe it would be inappropriate, for example, for our board to bypass your office and go straight to the attorney general's office with our complaints. We hope you would concur with our position. The same holds true with the compliance

division of the IRS should we choose to file a complaint against the MMC Board of Directors.

Turning to the fundamental issues at hand, we see these to be centered around several questions.

What is the corporate nature of Mountainview Medical Center?

In 1991 the Montana legislature created the **Montana Nonprofit Corporation Act**. This act replaced prior state statutes and required MMC as a nonprofit to be incorporated as either a public benefit, mutual benefit, or religious corporation.

MMC is registered with the Secretary of State as a **public benefit** without members corporation. See attached registration. Also, see attachments 35-2-113 and the Attorney General's bulletin on nonprofit corporations. Also see 35-2-114 Definitions section (28), "Public benefit corporation means a domestic corporation designated as a public benefit corporation."

The generally accepted definition of a public benefit corporation is a public corporation **chartered** by a state designed to perform some public benefit. Nothing speaks to the nature of MMC as a corporation better than this. Its function is purely for the public benefit as a hospital, not a private benefit. It is in fact an agency created by the legislature to carry out its public function on behalf of all persons seeking medical help.

Without members means none of the directors have ownership in the properties of MMC. There is no stock issued for MMC. The directors really act as trustees in most regards to the corporation.

The public nature of MMC is overwhelming. Public schools districts, in contrast, are responsible only for students who reside legally within established school boundaries. Non residential students cannot attend public schools without inter-local agreements or the paying of non-resident tuition.

MMC, on the other hand has even a greater public function than a public school. MMC must accept any person who comes to it, regardless of age, gender, national origin, citizenship, established residence, ability to pay for

services, etc.

As a Montana corporation, MMC must adhere to a host of statutory requirements as outlined in Title 35, Chapter 2. Montana Code Annotated 2005. These requirements are common to all Montana corporations regardless of their status as either public or private.

In addition as a nonprofit public corporation, MMC must submit to the attorney general's office for approval mergers, disposal of assets or property, and dissolution, totally unlike that of a private corporation.

What make MMC not subject to Montana's Open Meeting Laws?

We contend that there is **nothing** to allow MMC to avoid its **legal duty** to conform to Montana's open meetings laws. MMC corporate status as described above, when examined in its entirety, is that of a purely public corporation and therefore subject to Montana's Open Meeting Laws. (see attached Chapter 2, Sections 2-3-201, 2-3-202, and 2-3-203. Also see Section 3 Right of Participation and Section 9 Right to Know from the 1972 Montana Constitution)

What makes MMC subject to Montana's Open Meeting Laws?

We contend that there is an undeniable statutory basis listed above and even a Montana Supreme Court decision which supports our claim. See Common Cause V Statutory Committee, 868 P.2d 604 (Mont. 1994. This case established the definition of public body as "a group of individuals organized for a governmental or public purpose." We contend that the Board of Directors of MMC are individuals serving both a governmental and a public purpose.

The MMC Board was advised by its lawyer on Jan. 23, 2007, that "...by virtue of your county funding, your board meetings are subject to Montana's open meeting laws...." See letter to then MMC CEO Katherine Ann Campbell from attorney Cathy Lewis giving that advice.

The MMC Board was also advised by the firm of Meloy/Trieweiler that MMC was subject to Montana's open meeting laws. See letter dated

January 22, 2007, to Barry Hedrich, chairman of MMC.

See also the comprehensive bulletin put out by the University of Montana's School of Journalism on access to public meetings. It references Chapter 2, Section 3, 2-3-203 (6) of Montana Code Annotated that "... any committee **or subcommittee** appointed by a public body...is subject to the requirements of this section."

Based on the substantial documentation provided in this correspondence, our committee respectfully asks your office to concur with our position that Mountainview Medical Center Board of Directors and its administration must permit public participation in all meetings of the Board, regular, special and subcommittee.

Should your office not concur with our stated position, we respectfully ask you in your opinion to state the legal reasons, references to case law, etc. for holding a different opinion.

Again, thank you for consenting to meet with me this coming Tuesday.

Sincerely yours,



John Dracon, Chairman
Meagher County Hospital District Board
Meagher County

CC: Board members Kakuk and Sundstrom