

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**The North Carolina Medical Care Commission  
809 Ruggles Drive  
Raleigh, North Carolina**

**MINUTES**

**CALLED MEETING OF THE EXECUTIVE COMMITTEE  
CONFERENCE TELEPHONE MEETING ORIGINATING  
FROM THE COMMISSION'S OFFICE  
DECEMBER 3, 2015  
2:00 P.M.**

**Members of the Executive Committee Present:**

John A. Fagg, M.D., Chairman  
Joseph D. Crocker, Vice-Chairman  
Charles T. Frock  
Charles H. Hauser  
Albert F. Lockamy, RPh  
Mary L. Piepenbring  
Robert E. Schaaf, M.D.

**Members of the Executive Committee Absent:**

None

**Members of Staff Present:**

Drexdal R. Pratt, DHSR Director, MCC Secretary  
Christopher B. Taylor, CPA, Assistant Secretary  
Crystal Watson-Abbott, Auditor  
Alice S. Creech, Executive Assistant

**Others Present:**

Tommy Brewer, BB&T Capital Markets  
Gene Cahalan, Efficient Capital  
Kevin Dougherty, McGuire Woods, LLP  
Allen Robertson, Robinson Bradshaw & Hinson, P.A.  
Gary Shull, United Church Homes and Services  
Lee Syria, United Church Homes and Services  
Don Trippel, Hugh Chatham Memorial Hospital

1. **Purpose of Meeting**

To authorize the sale of bonds, the proceeds of which are to be loaned to Hugh Chatham Memorial Hospital, Inc., (2) Series resolution requesting final approval to authorize the sale of bonds, the proceeds of which are to be loaned to United Church Homes and Services, (3) Medical Care Commission Policy for Recusal, Disclosure and Participation with supporting documentation, and (4) Hospital Improvements Without Tax Money Article that was passed out at the November 13, 2015 Commission Meeting by Allen Robertson.

2. **Resolution of the North Carolina Medical Care Commission Authorizing the Issuance of \$25,845,000 North Carolina Medical Care Commission Health Care Facilities Refunding Revenue Bonds (Hugh Chatham Memorial Hospital) Series 2015** – Remarks were made by Gene Cahalan, Allen Robertson & Don Trippel.

**Executive Committee Action:** Motion was made by Dr. Fagg, seconded by Ms. Piepenbring and unanimously approved.

WHEREAS, the North Carolina Medical Care Commission (the “Commission”) is a commission of the Department of Health and Human Services of the State of North Carolina and is authorized under Chapter 131A of the General Statutes of North Carolina, as amended (the “Act”), to borrow money and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of financing or refinancing health care facilities and to refund bonds previously issued by the Commission; and

WHEREAS, Hugh Chatham Memorial Hospital, Inc. d/b/a Hugh Chatham Memorial Hospital (the “Corporation”) is a nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina and is a “nonprofit agency” within the meaning of the Act; and

WHEREAS, the Corporation has made application to the Commission for a loan for the purpose of providing funds, together with other available funds, including the existing debt service reserve fund for the 2003 Bonds (as described below), to (i) refund the outstanding principal amount of the Commission’s Health Care Facilities Revenue Bonds (Hugh Chatham Memorial Hospital Project), Series 2003 (the “2003 Bonds”), (ii) fund a debt service reserve fund and (iii) pay certain expenses incurred in connection with the sale and issuance of the Bonds (as hereinafter defined) by the Commission; and

WHEREAS, the proceeds of the 2003 Bonds were used to (1) finance the acquisition, construction and equipping of additional facilities at Hugh Chatham Memorial Hospital (the “Hospital”), which is located at 180 Parkwood Drive in Elkin, North Carolina, including (a) the acquisition, construction and equipping of approximately 48,963 additional square feet of space and the renovation of approximately 18,743 square feet of existing space, primarily for the purpose of increasing the size of the radiology department and increasing the number of operating rooms from four to five, (b) the addition of a swimming pool used for rehabilitation purposes, (c) the acquisition, construction and equipping of an additional 12-bed inpatient rehabilitation unit and

(d) the acquisition of capital equipment for use at the Hospital, including a computer assisted tomography “CT” scanner, (2) finance the acquisition, construction and equipping of six additional independent living units at Parkwood Place, a retirement center operated by the Corporation and located at 601 Johnson Ridge Road in Elkin, North Carolina (collectively, the “2003 Project”), (3) repay a loan from the Commission to the Corporation of a portion of the proceeds of the Commission’s Variable Rate Hospital Revenue Bonds (Pooled Financing Project) Series 1996A (the “1996 Bonds”), the proceeds of which were used to (a) finance the cost of acquiring, constructing and equipping a 120-bed replacement nursing home, which was sold in 2014, (b) repay a loan from the Commission to the Corporation of the proceeds of the Commission’s Hospital Revenue Bonds (Pooled Financing Project), Series 1994 (the “1994 Bonds”), the proceeds of which were used to (i) repay a loan from the Commission to the Corporation of a portion of the proceeds of the Commission’s Hospital Revenue Bonds (Pooled Equipment Financing Project), Series 1985, the proceeds of which were used to acquire, construct and equip certain additions and renovations to the Hospital, including the addition of a new radiology department, the addition of a new intensive care unit, the renovation of nursing stations, the renovation of administrative space for medical records and materials handling, and the renovation of areas used for physical therapy and outpatient surgery, (ii) repay a loan from the Commission to the Corporation of a portion of the proceeds of the Commission’s Hospital Revenue Bonds (Pooled Financing Project), Series 1986A-2, the proceeds of which were used to acquire, construct and equip Parkwood Place, (iii) acquire capital equipment for use at the Hospital and (iv) pay certain costs incurred in connection with the issuance of the 1994 Bonds and (c) pay certain costs incurred in connection with the issuance of the 1996 Bonds, (4) pay a portion of the interest accrued on the Bonds during the acquisition and construction of the 2003 Project, and (5) pay certain expenses incurred in connection with the sale and issuance of the 2003 Bonds by the Commission; and

WHEREAS, the Commission has determined that the public will best be served by the proposed financing and, by a resolution adopted by the Commission on November 5, 2015, has approved the issuance of the Bonds, subject to compliance by the Corporation with the conditions set forth in such resolution, and the Corporation has complied with such conditions to the satisfaction of the Commission; and

WHEREAS, there have been presented to officers and staff of the Commission draft copies of the following documents relating to the issuance of the Bonds:

(a) a Trust Agreement, to be dated as of December 1, 2015 (the “Trust Agreement”), between the Commission and U.S. Bank National Association, as bond trustee (in such capacity, the “Bond Trustee”);

(b) a Loan Agreement, to be dated as of December 1, 2015 (the “Loan Agreement”), between the Commission and the Corporation;

(c) a Supplemental Indenture for Obligation No. 7, to be dated as of December 1, 2015 (“Supplement No. 7”), between the Corporation and U.S. Bank National Association, as master trustee (the “Master Trustee”) under the Amended and Restated Master Trust Indenture dated as of September 1, 2008 (as supplemented, the “Master Indenture”) between the Corporation and the Master Trustee;

(d) Obligation No. 7, to be dated as of the date of delivery thereof (“Obligation No. 7”), from the Corporation to the Commission;

(e) a Contract of Purchase, to be dated as of the date of delivery of the Bonds (the “Purchase Agreement”), between the Local Government Commission of North Carolina (the “LGC”) and Siemens Public, Inc., as the initial purchaser of the Bonds (the “Purchaser”), and approved by the Commission and the Corporation;

(f) a Continuing Covenant Agreement, to be dated as of December 1, 2015 (the “Covenant Agreement”), between the Corporation and the Purchaser;

(g) a Supplemental Indenture for Obligation No. 8, to be dated as of December 1, 2015 (“Supplement No. 8,” and collectively with Supplement No. 7, the “Supplemental Indentures”), between the Corporation and the Master Trustee;

(h) Obligation No. 8, to be dated as of the date of delivery thereof (“Obligation No. 8,” and collectively with Obligation No. 7, the “Obligations”), from the Corporation to the Purchaser; and

(i) an Amended and Restated Deed of Trust dated as of December 1, 2015 (the “Deed of Trust”), from the Corporation to the deed of trust trustee named therein for the benefit of the Master Trustee; and

WHEREAS, the Commission has determined that the Corporation is financially responsible and capable of fulfilling its obligations under the Loan Agreement, the Master Indenture, the Supplemental Indentures, the Obligations, and the Covenant Agreement; and

WHEREAS, the Commission has determined that adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Bonds;

NOW, THEREFORE, THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE, as follows:

Section 1. Capitalized words and terms used in this Series Resolution and not defined herein shall have the same meanings in this Series Resolution as such words and terms are given in the Master Indenture, the Trust Agreement and the Loan Agreement.

Section 2. Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of North Carolina Medical Care Commission Health Care Facilities Refunding Revenue Bonds (Hugh Chatham Memorial Hospital), Series 2015 (the “Bonds”), in the aggregate principal amount of \$25,845,000. The Bonds shall mature on October 1, 2030 (the “Maturity Date”) and shall bear interest at such rates determined in accordance with the Trust Agreement, and shall be subject to the Sinking Fund Requirements set forth in Schedule 1 hereto. During the initial Direct Purchase Period (which is to December 16, 2025), the Bonds will bear interest at a fixed rate not to exceed 4.00% per annum, subject to adjustment under certain circumstances.

The Bonds shall be issued as fully registered bonds in (i) denominations of \$250,000 and multiples of \$5,000 in excess thereof during any Direct Purchase Period, (ii) denominations of \$100,000 and multiples of \$5,000 in excess of \$100,000 during any Short-Term Rate Period or any Medium-Term Rate Period that is not a Direct Purchase Period, and (iii) denominations of \$5,000 and integral multiples thereof during any Fixed Rate Period that is not a Direct Purchase Period. Except during a Direct Purchase Period, the Bonds shall be issuable in book-entry form as provided in the Trust Agreement. Subject to the limitations set forth in Section 2 hereof, interest on the Bonds shall be paid at the times and at the rates determined as specified in the Trust Agreement. Payments of principal of and interest on the Bonds shall be made to the registered owners of the Bonds in such manner as is set forth in the Trust Agreement.

Section 3. The Bonds shall be subject to (i) optional, extraordinary and mandatory redemption, (ii) during any Weekly Rate Period, optional tender for purchase, and (iii) mandatory tender for purchase, all at the times, upon the terms and conditions, and at the prices set forth in the Trust Agreement.

Section 4. The proceeds of the Bonds shall be applied as provided in Section 2.08 of the Trust Agreement. The Commission hereby finds that the use of the proceeds of the Bonds for a loan to refund the 2003 Bonds and pay costs of issuing the Bonds will accomplish the public purposes set forth in the Act.

Section 5. The forms, terms and provisions of the Trust Agreement and the Loan Agreement are hereby approved in all respects, and the Chairman or Vice Chairman (or any member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Trust Agreement and the Loan Agreement in substantially the forms presented at this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 6. The form, terms and provisions of the Purchase Agreement are hereby approved in all respects, and the Chairman, Vice Chairman, Secretary or any Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) are hereby authorized and directed to execute and deliver the Purchase Agreement in substantially the form presented at this meeting, together with such changes, modifications, insertions and deletions as they, with the advice of counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 7. The forms of the Bonds set forth in the Trust Agreement are hereby approved in all respects, and the Chairman or Vice Chairman (or any member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such forms of the Bonds, and to deliver to the Bond Trustee for authentication on behalf of the Commission, the Bonds in definitive form, which shall be in substantially the forms presented at this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may

deem necessary, appropriate and consistent with the Trust Agreement, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 8. The forms, terms and provisions of the Supplemental Indentures, the Obligations, the Deed of Trust and the Covenant Agreement are hereby approved in substantially the forms presented to this meeting, together with such changes, modifications and deletions as the Chairman or Vice Chairman (or any member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission, with the advice of counsel may deem necessary and appropriate and the execution and delivery of the Trust Agreement as provided in Section 5 of this Series Resolution shall be conclusive evidence of the approval of the documents listed in this Section by the Commission.

Section 9. The Commission hereby approves the action of the LGC authorizing the private sale of the Bonds to the Purchaser in accordance with the Purchase Agreement at the purchase price of 100% of the principal amount thereof.

Section 10. Upon their execution in the form and manner set forth in the Trust Agreement, the Bonds shall be deposited with the Bond Trustee for authentication, and the Bond Trustee is hereby authorized and directed to authenticate the Bonds and, upon the satisfaction of the conditions set forth in Section 2.08 of the Trust Agreement, the Bond Trustee shall deliver the Bonds to the Purchaser against payment therefor.

Section 11. U.S. Bank National Association is hereby appointed as the initial Bond Trustee and the Paying Agent for the Bonds.

Section 12. If the Bonds are converted to a Rate not in a Direct Purchase Period, the Depository Trust Company, New York, New York is hereby appointed as the initial Securities Depository of the Bonds, with Cede & Co., as nominee thereof, being the initial Securities Depository Nominee and initial registered owner of the Bonds.

Section 13. John A. Fagg, Chairman of the Commission, Joseph D. Crocker, Vice Chairman of the Commission, Drexdal R. Pratt, Secretary of the Commission, Christopher B. Taylor, C.P.A., Assistant Secretary of the Commission, and Kathy C. Larrison and Crystal Watson-Abbott, Auditors for the Commission, are each hereby appointed a Commission Representative as that term is defined in the Loan Agreement, with full power to carry out the duties set forth therein.

Section 14. The Chairman, Vice Chairman, Secretary, and any Assistant Secretary of the Commission (or any member of the Commission designated by the Chairman) are each hereby authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and deliver any such documents, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by the Trust Agreement, the Loan Agreement, the Purchase Agreement, the Deed of Trust and the Covenant Agreement.

Section 15. This Series Resolution shall take effect immediately upon its passage.

Schedule 1

<u>Due</u> <u>October 1</u>	<u>Sinking Fund</u> <u>Requirement</u>	<u>Due</u> <u>October 1</u>	<u>Sinking Fund</u> <u>Requirement</u>
2016	\$1,650,000	2024	\$1,775,000
2017	1,650,000	2025	1,775,000
2018	1,650,000	2026	1,775,000
2019	1,650,000	2027	1,775,000
2020	1,650,000	2028	1,775,000
2021	1,650,000	2029	1,775,000
2022	1,745,000	2030*	1,775,000
2023	1,775,000		

\* Maturity

Professional Fees Comparison for  
Hugh Chatham Memorial Hospital, Inc. d/b/a Hugh Chatham Memorial Hospital

<u>Professional</u>	<u>Fees Estimated</u> <u>In Preliminary</u> <u>Approval</u> <u>Resolution</u>	<u>Actual Fees</u>
Financial Advisor fee	\$50,000	\$50,000
Purchaser Counsel	35,000	35,000
Bond Counsel	60,000	60,000
Corporation Counsel	35,000	35,000
Trustee Fees and Counsel	5,000	6,500
Miscellaneous (surveyor)	10,000	10,000

3. **SERIES RESOLUTION AUTHORIZING THE ISSUANCE OF UP TO \$31,570,000 NORTH CAROLINA MEDICAL CARE COMMISSION RETIREMENT FACILITIES FIRST MORTGAGE REVENUE BONDS (UNITED CHURCH HOMES AND SERVICES), SERIES 2015B** - Remarks were made by Tommy Brewer and Kevin Dougherty.

**Executive Committee Action:** Motion was made by Dr. Schaaf, seconded by Dr. Fagg and unanimously approved.

**WHEREAS**, the North Carolina Medical Care Commission (the "Commission") is a commission of the Department of Health and Human Services of the State of North Carolina and is authorized under Chapter 131A of the General Statutes of North Carolina, as amended (the "Act"), to borrow money and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of financing or refinancing health care facilities; and

**WHEREAS**, United Church Homes and Services (the "Corporation") is a private, nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina which owns and operates continuing care retirement communities located in Thomasville and Newton, North Carolina; and

**WHEREAS**, Lake Prince Center, Inc. ("Lake Prince") is a private, nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina which owns and operates a continuing care retirement community located in Suffolk, Virginia; and

**WHEREAS**, the Commission has previously issued its Retirement Facilities First Mortgage Revenue Refunding Bonds (United Church Homes and Services), Series 2005A in the aggregate principal amount of \$13,755,000, of which \$5,850,000 in aggregate principal amount is currently outstanding (the "Prior Bonds"), pursuant to that certain Trust Agreement, dated as of April 1, 2005, between the Commission and The Bank of New York Mellon Trust Company, N.A., as Trustee, securing the Prior Bonds; and

**WHEREAS**, the Corporation has made an application to the Commission for a loan for the purpose of providing funds, together with other available funds, to (a) pay, or reimburse the Corporation for paying, the cost of the Project (as described in the hereinafter-mentioned Loan Agreement), (b) refund the Prior Bonds and (c) pay certain expenses incurred in connection with the issuance of the Bonds (as hereinafter defined); and

**WHEREAS**, the Commission has determined that the public will best be served by the proposed financing described above, and, by resolution adopted on November 13, 2015, has approved the issuance of the Bonds, subject to compliance by the Corporation with the conditions set forth in such resolution, and the Corporation has complied with such conditions to the satisfaction of the Commission; and

**WHEREAS**, there have been presented at this meeting draft copies of the following documents relating to the issuance of the Bonds:



(a) the Contract of Purchase, dated December 10, 2015 (the “Contract of Purchase”), between the North Carolina Local Government Commission (the “LGC”) and STI Institutional & Government, Inc. (the “Purchaser”), and approved by the Commission and the Corporation;

(b) Supplemental Indenture for Obligation No. 12, dated as of December 1, 2015 (“Supplemental Indenture No. 12”), by and between the Corporation and The Bank of New York Mellon Trust Company, N.A., as master trustee (the “Master Trustee”), supplementing the Amended and Restated Master Trust Indenture, dated as of April 1, 2005 (the “Master Indenture”), by and among the Corporation, Lake Prince and the Master Trustee;

(c) the Trust Agreement, dated as of December 1, 2015 (the “Trust Agreement”), by and between the Commission and The Bank of New York Mellon Trust Company, N.A., as bond trustee (the “Bond Trustee”), the provisions of which relate to the issuance of and security for the Bonds;

(d) the Loan Agreement, dated as of December 1, 2015 (the “Loan Agreement”), by and between the Commission and the Corporation, pursuant to which the Commission will lend the proceeds of the Bonds to the Corporation;

(e) Obligation No. 12, dated the date of its delivery (“Obligation No. 12”), to be issued by the Corporation to the Commission pursuant to the Master Indenture and Supplemental Indenture No. 12 and assigned to the Bond Trustee;

(f) the Guaranty and Credit Agreement, dated as of December 1, 2015 (the “Credit Agreement”), by and among the Corporation, Lake Prince and the Purchaser;

(g) Supplemental Indenture for Obligation No. 13, dated as of December 1, 2015 (“Supplemental Indenture No. 13”), by and between the Corporation and the Master Trustee;

(h) Obligation No. 13, dated the date of its delivery (“Obligation No. 13”), to be issued by the Corporation to the Purchaser pursuant to the Master Indenture and Supplemental Indenture No. 13;

(i) the Fifth Amendment to Amended and Restated Deed of Trust, dated as of December 1, 2015 (the “Lake Prince Amendment”), among Lake Prince, Mark D. Williamson, as Deed of Trust Trustee, and the Master Trustee, amending the Amended and Restated Deed of Trust, dated as of April 1, 2005, as amended (the “Lake Prince Deed of Trust”), from Lake Prince to Mark D. Williamson and Karen L. Duncan, as Deed of Trust Trustees, for the benefit of the Master Trustee, with respect to certain real property of Lake Prince located in the City of Suffolk, Virginia;

(j) the Sixth Amendment to Amended and Restated Deed of Trust, dated as of December 1, 2015 (the “Piedmont Crossing Amendment”), among the Corporation, The Fidelity Company, as Deed of Trust Trustee, and the Master Trustee, amending the Amended and Restated Deed of Trust, dated as of April 1, 2005, as amended (the “Piedmont Crossing Deed of Trust”), from the Corporation to The Fidelity Company, as Deed of Trust Trustee, for the benefit of the Master Trustee, with respect to certain real property of the Corporation located in Davidson County, North Carolina; and

(k) the Fifth Amendment to Amended and Restated Deed of Trust, dated as of December 1, 2015 (the “Abernethy Laurels Amendment” and, together with the Lake Prince Amendment and the Piedmont Crossing Amendment, the “Amendments to the Deeds of Trust”), among the Corporation, The Fidelity Company, as Deed of Trust Trustee, and the Master Trustee, amending the Amended and Restated Deed of Trust, dated as of April 1, 2005, as amended (the “Abernethy Laurels Deed of Trust” and, together with the Lake Prince Deed of Trust and the Piedmont Crossing Deed of Trust, the “Deeds of Trust”), from the Corporation to The Fidelity Company, as Deed of Trust Trustee, for the benefit of the Master Trustee, with respect to certain real property of the Corporation located in Catawba County, North Carolina; and

**WHEREAS**, the Commission has determined that, taking into account the historical financial performance of the Members of the Obligated Group (as defined in the Master Indenture) and financial forecasts internally generated by the Corporation, (i) the Members of the Obligated Group are financially responsible and capable of fulfilling their respective obligations under the Master Indenture, Obligation No. 12, Supplemental Indenture No. 12, Obligation No. 13, Supplemental Indenture No. 13, the Credit Agreement and the Deeds of Trust and (ii) the Corporation is financially responsible and capable of fulfilling its obligations under the Loan Agreement; and

**WHEREAS**, the Commission has determined that the public interest will be served by the proposed financing and that, taking into account the historical financial performance of the Members of the Obligated Group and financial forecasts internally generated by the Corporation, adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Bonds;

**NOW, THEREFORE, THE EXECUTIVE COMMITTEE OF THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE, as follows:**

**Section 1. Defined Terms.** Capitalized words and terms used in this Series Resolution and not defined herein shall have the same meanings in this Series Resolution as such words and terms are given in the Trust Agreement and the Loan Agreement.

**Section 2. Authorization of Bonds.** Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of a series of revenue bonds consisting of up to \$31,570,000 aggregate principal amount of Retirement Facilities First Mortgage Revenue Bonds (United Church Homes and Services), Series 2015B (the “Bonds”), dated the date of Closing, and having a final stated maturity date of January 1, 2046.

The Bonds shall be issued as fully registered bonds, initially in denominations of \$1.00, and thereafter in denominations permitted by the provisions of the Trust Agreement. During the initial Bank-Bought Rate Period, the Bonds shall bear interest at the Bank-Bought Rate, which shall be the rate of interest per annum equal to the product of (x) 69% and (y) LIBOR plus 2.10%, calculated as provided in the Trust Agreement. Thereafter the Bonds shall bear interest as provided in the Trust Agreement. Interest on the Bonds shall be payable on each Interest Payment Date on so much of the principal amount of the Bonds as shall be advanced from time to time pursuant to the Contract of Purchase, the Trust Agreement and the Loan Agreement.

**Section 3. Redemption.** The Bonds shall be subject to extraordinary, optional and mandatory redemption at the times, upon the terms and conditions, and at the price set forth in the Trust Agreement.

**Section 4. Optional and Mandatory Tender for Purchase.** The Bonds shall be subject to optional and mandatory tender for purchase at the times, upon the terms and conditions, and at the price set forth in the Trust Agreement.

**Section 5. Use of Bond Proceeds.** The Commission hereby finds that the use of the proceeds of the Bonds for the purposes described in the preamble to this Series Resolution accomplishes the public purposes set forth in the Act. The proceeds of the Bonds shall be advanced as set forth in Section 2.10 of the Trust Agreement.

**Section 6. Authorization of Loan Agreement and Trust Agreement.** The forms, terms and provisions of the Trust Agreement and the Loan Agreement are hereby approved in all respects, and the Chairman, the Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Secretary or the Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Trust Agreement and the Loan Agreement in substantially the forms presented to this meeting, together with such changes, modifications and deletions, as they, with the advice of counsel, may deem necessary and appropriate, including, but not limited to, changes, modifications and deletions necessary to incorporate the final terms of the Bonds; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

**Section 7. Authorization of Contract of Purchase.** The form, terms and provisions of the Contract of Purchase are hereby approved in all respects and the Chairman, the Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose is hereby authorized and directed to approve, by execution and delivery, the Contract of Purchase in substantially the form presented to this meeting, together with such changes, modifications, insertions and deletions as the Chairman, the Vice Chairman or such member of the Commission, with the advice of counsel, may deem necessary and appropriate; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

**Section 8. Forms of Bonds.** The forms of the Bonds set forth in the Trust Agreement are hereby approved in all respects and the Chairman, the Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission for such purpose and the Secretary or the Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such forms of the Bonds, and to deliver to the Bond Trustee for authentication on behalf of the Commission, the Bonds in definitive form, which shall be in substantially the forms presented to this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary, appropriate and consistent with the Trust Agreement; and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

**Section 9. Approval of Other Financing Documents.** The forms, terms and provisions of Supplemental Indenture No. 12, Obligation No. 12, Supplemental Indenture No. 13,

Obligation No. 13, the Credit Agreement and the Amendments to the Deeds of Trust are hereby approved in substantially the forms presented at this meeting, together with such changes, modifications and deletions as the Chairman, the Vice Chairman or any member of the Commission designated in writing by the Chairman of the Commission, with the advice of counsel, may deem necessary and appropriate; and the execution and delivery of the Trust Agreement pursuant to Section 6 of this Series Resolution shall be conclusive evidence of the approval of Supplemental Indenture No. 12, Obligation No. 12, Supplemental Indenture No. 13, Obligation No. 13, the Credit Agreement and the Amendments to the Deeds of Trust by the Commission.

**Section 10. Purchase of Bonds.** The Commission hereby approves the action of the LGC in awarding the Bonds to the Purchaser at a price not exceeding \$31,570,000 (representing the maximum principal amount of the Bonds). Payment for the Bonds by the Purchaser from time to time shall be made at the purchase price of 100% of so much of the principal amount of the Bonds as shall be advanced from time to time pursuant to the Contract of Purchase. The Corporation will separately pay, on the date of Closing, the Purchaser a fee of \$31,570 in consideration for such purchase.

Upon their execution in the form and manner set forth in the Trust Agreement, the Bonds shall be deposited with the Bond Trustee for authentication, and the Bond Trustee is hereby authorized and directed to authenticate the Bonds upon the due and valid execution of the Trust Agreement, the Loan Agreement, Supplemental Indenture No. 12, Obligation No. 12, Supplemental Indenture No. 13, Obligation No. 13, the Credit Agreement, the Amendments to the Deeds of Trust and the Contract of Purchase by the parties thereto and thereafter the Bond Trustee shall deliver the Bonds to the Purchaser against payment therefor in accordance with and subject to the provisions of the Contract of Purchase.

**Section 11. Commission Representatives.** John A. Fagg, M.D., Chairman of the Commission, Joseph D. Crocker, Vice Chairman of the Commission, Drexdal R. Pratt, Secretary to the Commission, Christopher B. Taylor, C.P.A., Assistant Secretary to the Commission, Steven C. Lewis, Chief of the Construction Section of the Division of Health Service Regulation, Kathy C. Larrison, Auditor of the Commission, and Crystal M. Watson-Abbott, Auditor of the Commission, are each hereby appointed a Commission Representative as that term is defined in the Loan Agreement, with full power to carry out the duties set forth therein.

**Section 12. Ancillary Actions.** The Chairman, the Vice Chairman, any member of the Commission designated in writing by the Chairman of the Commission, the Secretary and the Assistant Secretary of the Commission are authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and deliver any such documents, certificates, undertakings, consents, agreements or other instruments, as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions, including the refunding of the Prior Bonds, contemplated by the Trust Agreement, the Loan Agreement, the Master Indenture, Supplemental Indenture No. 12, Obligation No. 12, Supplemental Indenture No. 13, Obligation No. 13, the Credit Agreement, the Contract of Purchase, the Amendments to the Deeds of Trust and the Deeds of Trust.

**Section 13. Professional Fees.** A comparison of the professional fees as set forth in the resolution adopted by the Commission granting preliminary approval of this financing with the actual professional fees incurred in connection with this financing is attached to this Series Resolution as Schedule 1.

**Section 14. Effective Date.** This Series Resolution shall take effect immediately upon its passage.

**Schedule 1**  
**Professional Fees**

<u>Professional</u>	<u>Preliminary Approval</u>	<u>Actual</u>
Placement Agent Fee	\$226,900	\$182,895
Borrower's Counsel	25,000	25,000
Bond Counsel	55,000	57,000
Purchaser Commitment Fee	33,050	31,570
Counsel to Purchaser	35,000	35,000

4. **Dr. Fagg asked the Executive Committee Members to look over the MCC Policy for Recusal, Disclosure and Participation and let him know if they had any changes, corrections or questions. The Policy for Recusal will be taken up at the February Meeting.**

**Medical Care Commission Policy for Recusal, Disclosure and Participation**

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The Medical Care Commission ("MCC") Policy for Recusal, Disclosure and Participation has been developed from the guidance provided in NCGS §§ 131A-22, 14-234, 138A-31 and 138A-36. The MCC is authorized to issue tax-exempt revenue bonds for the financing, refinancing, acquiring, constructing, equipping and providing of health care facilities. The MCC does not make the decision as to the selection of the banks or financial institutions ("institution") that will service the bonds. Many commissioners own varying amounts of stock in institutions from above \$10,000 to \$100,000. A commissioner's approval of a revenue bond issue would result in a financial benefit to the institution selected to service the bonds. In most, if not all cases those financial benefits would be greatly disproportionate to the total value of the institution in question. Accordingly, a commissioner's approval of a revenue bond issue would have a minimal impact, if any, upon the value of the institution and its stock. At present, a commissioner owning stock in an institution should only discuss the merits of a health care facility's plan of action with relationship to the bond proposed. A health care facility's choice of institution for servicing the bonds should not be discussed if a commissioner owns stock in an institution. Until further clarification is obtained, a commissioner owning such stock should refrain from voting on the overall bond proposal.



North Carolina Department of Health and Human Services  
The North Carolina Medical Care Commission

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Governor

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Secretary DHHS

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Drexdal Pratt, Secretary

To: Kathleen Edwards, JD  
Advice Attorney  
North Carolina Ethics Commission  
From: John A. Fagg, MD  
Chairperson  
North Carolina Medical Care Commission  
Date: March 2, 2015  
Re: Interest and Recusal

Introduction

The Medical Care Commission ("MCC") would respectfully ask that the Ethics Commission ("EC") review a previous opinion relating to conflicts of interest and the MCC. This opinion was relayed to the MCC on November 19, 2010 (Opinion attached hereto as Attachment). As stated in the November 19, 2010 opinion, if the MCC would like a determination of whether an actual conflict exists, facts would need to be provided for a specific situation. At this time, the MCC would like to provide the EC with further information so that the EC may be able to make a more concrete determination in relation to actual conflicts and the MCC.

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Applicable Law

The MCC is a commission subject the State Government Ethics Act (G.S. 138A). The MCC also has a specific statute related to conflict of interest within its Health Care Finance Act (G.S. 131A).

As noted in the November 10, 2010 opinion from the EC:

The value of a public servant's interest is just one of the criteria for determining whether the conflicts standards of G.S. 138A-36(a), 31(a), and 36(e) would require that a public servant abstain from the matter.

Once it is determined that an official action could affect a "business with which associated," the public servant must consider whether the business may incur a reasonably foreseeable financial benefit (or detriment to a business competitor) from the matter under consideration, and if so, whether that financial benefit (or detriment to a competitor) would influence or could reasonably be seen to influence the public servant's official actions. Similarly, G.S. 138A-36(e) requires that a public servant "remove himself or herself to the extent necessary" if the public servant's "impartiality might reasonably be questioned" due to a financial relationship with the business.

Although the MCC's decision to hire a bank or financial institution to handle a bond issuance would likely result in a financial benefit to that business, it is unclear whether a member's ownership of a threshold amount of securities in that business would influence the member in the award of a contract to the business. This would depend upon several factors, including the amount of financial benefit to the business relative to its overall size and worth and whether that financial benefit would impact the value of securities owned by the public servant. However, if the financial benefit to the bank or financial institution is relatively insignificant, that benefit would be unlikely to influence the MCC member in awarding a contract.

The MCC also has a Conflict of Interest statute, G.S. 131A-22, within the Health Care Finance Act which states:

If any member, officer, or employee of the Commission shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly, in any contract with the Commission, such an interest shall be disclosed to the Commission and shall be set forth in the minutes of the Commission, and the member, officer, or employee, having such an interest therein shall not participate on behalf of the Commission in authorization of any such contract.



Question

The MCC would like the Ethics Commission to review the conflict of interest pertaining to issuance of tax-exempt revenue bonds for construction of qualifying health care facilities under the State Government Ethics Act and the Health Care Finance Act. The MCC requests guidance on what would constitute an ownership interest that would create a conflict. The MCC also requests guidance as to the meaning "shall not participate" in authorization of a contract.

Background

The NC Medical Care Commission was initially created to provide a permanent state agency responsible for the maintenance of high standards in NCs hospitals, administering a medical student loan program (no longer a function of the commission) and a statewide hospital and medical care program. Over the years the function of the commission has changed to one primarily to be responsible for the following:

1. Licensure of hospitals,
2. Licensure of outpatient surgical facilities,
3. Licensure of nursing homes,
4. Licensure of adult care homes,
5. Licensure of home health agencies; home care agencies and nursing pools,
6. Licensure of hospice facilities,
7. The establishment of a statewide trauma system and the regulation of ambulances and emergency medical services personnel, and
8. Establishment and operation of a health care personnel registry.

In addition, the MCC is responsible for the governance of the issuance of tax-exempt bonds for the construction of certain health care facilities under the Health Care Facilities Finance Act. The 1975 Session of the General Assembly enacted the Health Care Finance Act (G.S. 131A), which authorizes the MCC to issue tax-exempt revenue bonds and to lend the proceeds from the

sale to finance construction and equipment projects. To be eligible, a borrower must be a non-profit or public entity and be considered a health care provider.

The MCC has two committees (an Executive Committee and the Full Committee). The Executive Committee has seven members – the Chairman, and Vice Chairman of the MCC, two who are appointed by the Chairman and three who are elected by the MCC. The Full Committee is made up of all MCC members.

As stated above, the MCC would like for you to review the conflict of interest pertaining to issuance of tax-exempt revenue bonds for construction of qualifying health care facilities. The MCC discusses in detail the validity of issuing these bonds. The discussion revolves around the need for the facility to expand/renovate, the financial viability of the facility to repay these bonds, whether the project meets requirements of G.S. 131A (Health Care Facilities Act) and historical community benefit the organization has provided.

The information the MCC receives for bond proposals includes the list of financial institutions involved in the transaction. The MCC does not involve itself in the selection of these financial institutions, does not recommend a certain financial institution, and does not approve or turn down a bond proposal based on the financial institution involved. The name of the financial institution involved is simply a matter of information received. The financial institution is not debated and not voted on (except that it is a part of the overall bond proposal).

Many of our members have stock in these institutions and are having to recuse themselves from all discussion concerning the bond proposal because of these holdings. The Executive Committee of the MCC, which meets in between scheduled meetings, can on occasion have a

majority of its members who have to recuse themselves. The recusals interfere with responsibility of the MCC to fully vet these bond proposals.

Example

As a specific example, the minutes of the Executive Committee of the MCC held on December 10, 2014 are enclosed (Minutes attached hereto as Attachment B). This meeting was called to authorize the sale of bonds up to \$16,630,000 for The United Methodist Retirement Homes Inc. and for refunding of \$12,025,000 in bonds for the same institution. You will note that 6 of the seven members of the executive committee were present, one member absent due to a death in the family. Mr. Crocker had to leave the called meeting early, leaving 5 members. Of the five remaining members, 3 had to be recused due to stock ownership leaving only Dr. Binder and Mr. Lockamy to discuss, move, second, and vote on the motion. This is not an ideal way to have to handle these important issues.

In addition there are times at the full meeting of the MCC when upwards of 7 learned members must recuse themselves from these important discussions.

Again, the MCC does not believe the financial institution chosen has an influence on the deliberations of the merits of the bond proposal. The MCC has no influence over the financial institution chosen. The MCC believes any financial benefit to an individual member would not be of significant value. Any individual bond issuance taken alone would most likely not have any significant value to the financial institution itself and certainly not filter down to a commission member.

In the example provided above, two commission members recused based on the following amounts:

Commissioner A - \$374,000 (US Bank)

Commissioner B - \$40,000 (BB&T)

Although these amounts may seem large, they represent a miniscule fraction, if any return, to the commission members. The assets of US Bank is \$384.2 billion. The total assets of BB&T is \$184.7 billion.

In a typical situation of recusal, a commissioner would have less than \$100,000 in securities in the financial institution, and the financial institution would have assets totaling upwards of \$200 billion. This estimate is using conservative numbers. The average amount the MCC authorizes for the sale of bonds is \$45.7 million. The MCC requests that the EC analyze any conflicts of interest in relation to the State Government Ethics Act and the Health Care Finance Act using these numbers because this situation would be a usable gauge for measurement of common occurrences.

#### Conclusion

The MCC believes that a commissioner's ownership of securities would not influence a commissioner in the award of a contract to a business and that the commissioners should not abstain from participation for the following reasons.

The MCC believes the value of the public servant's interest in the financial institution is so insignificant that the commissioner's benefit could not be reasonable seen to influence the public servants official action. The financial benefit to the bank or financial institution is relatively insignificant. The amount of financial benefit to the financial institution relative to its overall size and worth would create little or no financial benefit impacting the value of securities owned by the public servant. The miniscule interest along with the lack of debate or authority over the

selection of the financial institution supports that the impartiality would not be questioned due to the relationship and that benefit would be unlikely to influence the MCC member in awarding a contract.

In summary, The MCC is comprised of many diverse people representing diverse area of expertise and the MCC needs the input from all in discussing these issues. The MCC does not believe the financial institution involved has any bearing on our discussions or the decisions. The MCC is currently hampered in our discussions because of the many recusals due to stock ownership in financial institutions. We hope the Ethics Commission can give us relief in this instance.

Thank you for your consideration. If any further information is needed from the MCC for the EC to issue a decision please let me know.



**STATE ETHICS COMMISSION**  
1324 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1324

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Jane F. Finch, Vice Chair

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**CONFIDENTIAL INFORMAL ADVISORY OPINION**

April 20, 2015

John A. Fagg, M.D.  
Chairperson  
North Carolina Medical Care Commission  
2701 Mail Service Center  
Raleigh, NC 27699-2701

Re: Conflicts of Interest Arising in Connection with Stock Ownership

Dear Dr. Fagg:

This is in response to your request for an informal advisory opinion submitted on behalf of the North Carolina Medical Care Commission ("MCC"). In that request, you ask whether the State Government Ethics Act ("Ethics Act"), North Carolina General Statutes ("G.S.") Chapter 138A, restricts those MCC members who own stock in a financial institution from approving the issuance of revenue bonds in situations in which the financial institution will provide bond-related services in return for receipt of a fee. You also seek guidance regarding the breadth of any required recusal in the event that those official actions are restricted by the Act's conflict of interest provisions.

This advice is given prospectively and is based upon and limited to the facts set forth below. It represents staff's interpretation of the Ethics Act as authorized by G.S. 138A-13(c). This is not a formal advisory opinion adopted by the State Ethics Commission and thus does not confer immunity.

**I. Brief Conclusion.**

Although a member's approval of a revenue bond issue would result in a financial benefit to the financial institution(s) selected to service the bond issue, it appears that in most cases those financial benefits would be greatly disproportionate to the total value of the institution in question. Accordingly, a member's approval of a revenue bond issue would have a minimal impact, if any, upon the value of the institution and its stock. It is therefore unlikely that that stock ownership would influence the member's official actions with respect to that bond issue. Accordingly, unless the member otherwise concludes that he/she would be influenced by his/her stock ownership, the Ethics Act would not require the member's recusal.

Dr. John A. Fagg  
North Carolina Medical Care Commission  
April 20, 2015  
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**II. Facts.**

The MCC is a covered board subject to the Ethics Act. Therefore, the members of the MCC are public servants governed by the Act's conflict of interest standards. Pursuant to its statutory authority, the MCC is authorized to issue tax-exempt revenue bonds to finance construction and equipment projects for nonprofit and public hospitals, nursing homes, and continuing care facilities for the elderly.

Several MCC members own varying amounts of stock in several financial institutions. Those stock values range from a high of approximately \$85,000 to amounts over the \$10,000 threshold described below. Those financial institutions are generally valued at more than \$200 million. The average value of a bonds issuance is \$45.7 million. During the past two years the average fees earned by financial institutions servicing those bond issues for which fees were earned was .59% of the amount of the bond issue, translating to a total of \$269,630 (gross) in fees, or .13%, on average, of the institution's total value.

In 2010 the MCC requested a formal advisory opinion from the State Ethics Commission ("Commission") on the circumstances in which MCC members who owned stock in the financial institution servicing a bond must recuse themselves from taking official action with respect to the issuance of revenue bonds. In that opinion the Commission established factors to be considered in connection with weighing the degree to which a MCC member would be influenced by that stock ownership, including "the amount of financial benefit to the business relative to its overall size and worth and whether that financial benefit would impact the value of securities owned by the public servant." The Commission concluded that if the financial benefit to the bank was "relatively insignificant, that benefit would be unlikely to influence the MCC member in awarding a contract."

In the MCC's more recent request the MCC clarified that, in approving the issuance of revenue bonds, the MCC is not involved in the selection of the financial institution(s) which will service the bond issuance. Rather, the name(s) of the financial institution(s) providing those services is included along with other information about the proposed bond issuance. The MCC considers whether to approve the issuance of the revenue bonds, considering the need for the funds, the ability of the facility to repay the bonds, the community role of the facility, and other criteria established by the Health Care Facilities Act.

The MCC also notes that the Health Care Facilities Act restricts MCC members from participating in the authorization of a contract with "any firm or corporation" in which the member has an "ownership interest." G.S. 131A-22. It is unclear whether approving a bond issuance would be construed to be "participating in" the authorization of a contract with the servicing financial institution. But the Commission does not have authority to interpret that statute.

**III. Applicable Statutory Provisions.**

**A. G.S. 138A-36(a) and 138A-31(a) Conflicts Standards.**

G.S. 138A-36(a) prohibits a public servant from participating in an "official action"<sup>1</sup> if that public servant or a "person with whom the public servant is associated" may incur:

<sup>1</sup> "Official action" includes "[a]ny decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for ruling or other determination, contract, claim, controversy, investigation, charge, or rule making." G.S. 138A-3(25).

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- "A reasonably foreseeable financial benefit"
- Which would impair the public servant's "independence of judgment" or otherwise influence the public servant's participation in that official action.

"Financial benefit" includes a "direct pecuniary gain or loss" to the public servant or a "person with which the ... public servant is associated" or a "direct pecuniary loss to a business competitor" of the public servant or a person with which the public servant is associated, G.S. 138A-3(14c).

"Person with which the public servant is associated" includes a "business with which associated," defined to include a business in which the public servant or his/her immediate family owns an interest or \$10,000 or more or 5% of the business, whichever is less. G.S. 138A-3(3)c and 138A-3(27d). This would include the ownership of securities (including stock) in a particular business if the value of those securities is \$10,000 or more.

G.S. 138A-36(b) requires that a public servant who has a conflict of interest as defined in subsection 36(a):

- "Abstain from taking any verbal or written action"
- "In furtherance of the official action."

The public servant is also required to submit written "reasons for the abstention" to the employing entity.

G.S. 138A-31(a) similarly prohibits a public servant from taking an "official action" in certain circumstances where the public servant or a "business with which the public servant is associated" would derive a direct or indirect financial benefit from that action. That provision excludes circumstances where the financial benefit is "so remote, tenuous, insignificant, or speculative" that a reasonable person would conclude that the public servant's ability to perform his or her official duties would not be compromised. Subsection 31(a) does not specify the manner in which the public servant should abstain from taking official action.

**B. G.S. 138A-36(c) Conflict of Interest Standard.**

G.S. 138A-36(c) also requires that a public servant:

- "Remove himself or herself" from a "proceeding,"<sup>2</sup>
- "Considering the particular circumstances and type of proceeding involved,"
- "To the extent necessary to protect the public interest and comply with the Ethics Act,"
- If the public servant's impartiality might reasonably be questioned due to a "familial, personal, or financial relationship" with a participant in the proceeding.

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<sup>2</sup> Defined to include a "quasi-judicial" proceeding or a "quasi-legislative" proceeding.



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C. G.S. 138A-38(a)(1) Class Safe Harbor.

G.S. 138A-38(a) lists circumstances under which a public servant may take official action notwithstanding the existence of a conflict of interest. They include situations where the official action is ministerial only or where the public servant is the only person who has legal authority to take an official action. In addition, subsection 38(a)(6) provides that a public servant that abstains from an official action may be counted for purposes of establishing a quorum, but must abstain from taking further action.

G.S. 138A-38(a)(1) also allows a public servant to take an official action, notwithstanding the existence of a conflict of interest, if the financial benefit or detriment that would accrue to the public servant, a "person with which associated," or a "participant" in a proceeding:

- As a member of "a profession, occupation, or general class,"
- Is "no greater" than that which would accrue to "all members of that profession, occupation, or general class."

The Ethics Act specifically allows State agencies to adopt additional or supplemental ethics standards. G.S. 138A-41(t).

IV. Analysis.

Once it is determined that an official action could affect a "business with which associated," the public servant must consider whether that action would result in a direct pecuniary gain or loss to that business,<sup>3</sup> and if so, whether that gain or loss would influence or could reasonably be seen to influence the public servant's official actions. Similarly, G.S. 138A-36(e) requires that a public servant "remove himself or herself to the extent necessary" if the public servant's "impartiality might reasonably be questioned" due to a financial relationship with the business.

Although the MCC's decision to approve a revenue bond issuance would clearly result in a direct pecuniary gain to the servicing financial institution, it is unlikely that a member's ownership of stock at the levels described above would influence the member in taking that official action. Therefore, the Ethics Act would not restrict the member from taking that official action because of that stock ownership.

In the circumstances described, the MCC is required to consider a number of statutorily described criteria in deciding whether to issue the bond. However, the MCC does not make decisions as to the selection of the bank that will service the bond. Thus, the official action taken by each MCC member with respect to the bond's approval will be influenced by his/her individualized assessment of the statutory criteria, making it less likely that the identity of the financial institution would influence the member's decision.

In addition, the financial benefit to the institution resulting from fees received for the bond issuance is insignificant relative to the financial institution's value. In the average case described above, a member's approval of a revenue bond issue would have a minimal impact, if any, upon the value of the institution and its stock.

<sup>3</sup> Or a "direct or indirect financial benefit" under G.S. 138A-31(a).

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In general, if a conflict of interest exists that would otherwise preclude the public servant's actions, the next step would be to consider whether the G.S. 138A-38(a)(1) "class" safe harbor applies. However, subsection 38(a)(1) would be inapplicable here, since the actions taken by the MCC would apply to an individual financial institution, not a class of those businesses.

V. Closing.

Please contact me if you want to discuss this advice in more detail or have additional questions. In addition, if you would like to request a formal advisory opinion from the Commission, please request that opinion in writing and provide any additional information about your request.

Thank you for contacting the State Ethics Commission.

Sincerely yours,



Kathleen S. Edwards



OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NORTH CAROLINA

1977 N.C. AG LEXIS 92; 46 Op. Atty Gen. N.C. 219

June 9, 1977

**SYLLABUS:**

Subject:

Public Officers and Employees; Conflict of Interest; Sale of Revenue Bonds by Medical Care Commission;  
Purchase by Commission Member

**REQUESTBY:**

Requested by:  
I. O. Wilkerson, Jr., Director  
Division of Facility Services  
Department of Human Resources

**QUESTION:**

Question:

May a member of the North Carolina Medical Care Commission purchase revenue bonds issued by that commission without giving rise to a conflict of interest?

**OPINIONBY:**

Rufus L. Edmisten, Attorney General  
Marilyn Rich  
Associate Attorney

**OPINION:**

Conclusion:

Although a strict construction of the pertinent statutes does not prohibit such purchases, it is recommended that commission members refrain from purchasing bonds in order to avoid the appearance or impropriety, and the possible criminal penalty of *G.S. 14-234*.

The North Carolina conflict of interest statutes, *G.S. 14-234*, reads as follows:

"If any person appointed or elected a commissioner or director to discharge any trust wherein the State or any county, city or town may be in any manner interested shall become an undertaker, or make any contract for his own benefit, under such authority, or be in any manner concerned or interested in making such contract, or in the profits thereof, either [\*2] privately or openly, singly or jointly with another, he shall be guilty of a misdemeanor . . ."

Since the bond itself evidences a contract and since a member of the Medical Care Commission is a commissioner within the meaning of the statute, a violation of *G.S. 14-234* will be established if it appears that a commission member who purchases a bond is contracting for his own benefit.

The Health Care Facilities Finance Act, *G.S. 131A-1* through 131A-25, authorized the issuance of revenue bonds by the Medical Care Commission. The commission is given the power under *G.S. 131A-11* to issue interim receipts or temporary bonds; to set restrictions governing the disbursement and use of proceeds; to replace lost or destroyed bonds; to determine when bonds mature, whether they are redeemable before maturity, and whether they will be registered or in coupon form; to establish authentication procedures; and to determine the form and manner of execution, the denominations to be issued, and the place at which principal and interest are to be paid. *G.S. 131A-11* also imposes certain duties on the Local Government Commission, including approval of the issuance by the Medical Care Commission, fixing [\*3] the interest rate, and determining the manner of sale and price. The same section requires, however, that the sale must be approved by the Medical Care Commission. It appears, therefore, that ultimate authority over every element of a bond issue is vested in the Medical Care Commission. A commissioner who intended to purchase a bond would clearly be in a position to benefit himself by exercising the powers outlined above. He might, for example, withhold approval of an issue with a low interest rate because it would diminish the value of any bonds he intended to buy even though low-interest financing is in the best interests of the commission. This conduct would be prohibited by *G.S. 14-234*.

The Health Care Facilities Finance Act contains its own conflict of interest section. *G.S. 131A-22* provides that, in order to avoid a conflict of interest, a commission member who is interested in a contract with the commission must disclose his interest to the commission and must not participate in the commission's authorization of the contract. However, there are compelling reasons for recommending that, despite *G.S. 131A-22*, commission members should not purchase bonds issued by the [\*4] commission. The authorization of bonds, unlike the approval of ordinary purchase contracts, is a long and involved procedure which accounts for a large portion of the commission's responsibilities. Abstention from the commission's deliberations would prevent a commission member from fully performing the duties imposed on him by statute. Furthermore, even if the requirements of *G.S. 131A-22* were met, there would be the appearance of a conflict of interest and possible violation of *G.S. 14-234*.

Legal Topics:

For related research and practice materials, see the following legal topics:  
Criminal Law & ProcedureCriminal OffensesMiscellaneous OffensesAbuse of Public OfficeConflicts of InterestElementsGovernmentsLocal GovernmentsAdministrative BoardsGovernmentsLocal GovernmentsDuties & Powers

**Medical Care Commission Policy for Recusal, Disclosure and Participation**

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The Medical Care Commission ("MCC") Policy for Recusal, Disclosure and Participation has been developed from the guidance provided in NCGS §§ 131A-22, 14-234, 138A-31 and 138A-36. The MCC is authorized to issue tax-exempt revenue bonds for the financing, refinancing, acquiring, constructing, equipping and providing of health care facilities. The MCC does not make the decision as to the selection of the banks or financial institutions that will service the bonds. Many commissioners own varying amounts of stock in banks and financial institutions from above \$10,000 to \$100,000. A commissioner's approval of a revenue bond issue would result in a financial benefit to the financial institution selected to service the bond issue. In most, if not all, cases those financial benefits would be greatly disproportionate to the total value of the institution in question. Accordingly, a commissioner's approval of a revenue bond issue would have a minimal impact, if any, upon the value of the financial institution and its stock.

**NCGS § 14-234 - Public officers or employees benefiting from public contracts; exceptions**

The MCC is subject to NCGS 14-234 and a commissioner is a public official under the law. NCGS 14-234 restricts public officials or employees from benefiting from public contracts when there is self-dealing. No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law. NCGS 14-234(a)(1). Self-dealing results in a void contract and a class 1 misdemeanor. A public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract. NCGS 14-234(a1)(4).

There is a direct benefit exception if the contract is between the public agency and a bank, banking institution or savings and loan association. Under this exception, the public officer who will derive a direct benefit from the contract may not deliberate or vote on the contract or attempt to influence any other person who is involved in making or administering the contract.

A commissioner's stock in a financial institution ranging from \$10,000 to \$100,000 would not equate to more than a 10% ownership interest in an entity that is party to the contract; would not result in a direct income or commission from the contract; and would not result in the acquisition of property. A commissioner would not have a direct benefit and may deliberate and vote on the contract under NCGS 14-234. However, if the circumstances involve different facts, additional information, or result in changed outcomes an independent assessment should be conducted.

**NCGS § 138A - The Ethics Act**

The MCC is subject to the Ethics Act and an MCC commissioner is a public servant under the law. NCGS § 138A-36(a) prohibits a public servant from participating in an official action if the public servant may incur a reasonably foreseeable financial benefit which would impair the public servant's independence of judgment or otherwise influence the public servants participation in the official action. A financial benefit includes a direct pecuniary loss or gain to

the public servant or a person associated with the public servant or a direct pecuniary loss to a business competitor of the public servant or a person associated with the public servant. Person with which the public servant is associated includes a business with which the public servant or his/her immediate family owns an interest of \$10,000 or more or 5% of the business whichever is less. NCGS § 138A-3(3)(c) and NCGS § 138A-3(27d).

NCGS § 138A-36(b) requires the public servant with \$10,000 to \$100,000 of stock in the bank to abstain from taking verbal or written action in furtherance of the official action. NCGS § 138A-31(a) prohibits a public servant from taking an official action where the public servant or business with which the public servant is associated would derive a direct or indirect financial benefit from the action. Circumstances where the financial benefit is so remote, tenuous, insignificant or speculative that a reasonable person would conclude that the ability of the public servant to perform the duties would not be compromised are excluded from the provision.

A decision of the MCC to approve a bond issuance would result in a direct pecuniary gain to the servicing financial institution however it is unlikely that a commissioner's ownership of stock would influence the commissioner's vote in the official action. The Ethics Act would not restrict a commissioner from taking official action because of the stock ownership in a financial institution from above \$10,000 to \$100,000. However, if the circumstances involve different facts, additional information, or result in changed outcomes an independent assessment should be conducted.

NCGS § 131A-22 – The Health Care Finance Act Conflict of Interest

NCGS § 131A-22 states, "If any member, officer or employee of the Commission shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly, in any contract with the Commission, such interest shall be disclosed to the Commission and shall be set forth in the minutes of the Commission, and the member, officer or employee having such interest therein shall not participate on behalf of the Commission in the authorization of any such contract."

Based on NCGS §§ 131A-22, 14-234, 138A-31 and 138A-36, it is the policy of the Medical Care Commission for a member, officer, or employee of the Commission ("interested person") to abstain from participation in authorization of a contract if the interested person or interested person's associates has any interest or interest in an entity involved in a contract. An interested person will disclose the interest and recuse from voting at the start of the agenda item. An interested person may participate in the process and discussion until a motion is made to vote on the contract. At this time, the authorization process begins and the interested person shall not participate.

5. Hospital Improvements Without Tax Money Article – Dr. Fagg asked the Executive Committee to read over the attached article that Allen Robertson passed out at the Commission Meeting on November 13, 2015.

11/10/2015

21 Mar 1976, Page 34 - at Newspapers.com

News

The Daily Times-News (Burlington, North Carolina) · Sun, Mar 21, 1976 · Page 34

https://www.newspapers.com/image/53548994

Printed on Nov 10, 2015

On March 23  
Vote 'FOR' Amendment #1  
**Hospital Improvements  
Without Tax Money**

On March 23 you, as a voter, will vote on Amendment #1 to the State's Constitution which, if approved, will permit the State of North Carolina to sell revenue bonds to finance vitally needed hospital improvement and modernization projects.

No tax money is involved in this amendment, and there will be no tax increase if this amendment is approved.

Health care costs are expensive, as everybody knows, and we are not going to insult anyone's intelligence by implying that passage of Amendment #1 is going to bring down these costs. But Amendment #1 will provide a dollar savings on capital improvement projects, which can mean a lesser bite out of your pocketbook. The intent of this amendment is to help hold down the increase in hospital costs.

Passage of this amendment will help hold down hospital costs by enabling lower interest revenue bonds

to be used for building new additions to existing facilities or new hospitals to replace presently obsolete facilities; constructing hospital-owned doctors offices and clinics; and building or modernizing of laboratories, out-patient facilities and other hospital projects.

You expect quality patient care at reasonable costs. Revenue bonds will save money because of lower interest costs than conventional financing. By using revenue bonds, hospitals will save between 20 and 30 percent in interest costs. Any savings in interest costs will be passed on to patients in the form of lower hospital charges than would otherwise result from interest on conventional financing.

To illustrate how interest costs differ, examine the total cost to repay \$15 million, borrowed to build a new hospital. Using conventional financing, the total repayment will be \$41,313,000; but by using tax free revenue bonds, the total repayment will be \$35,129,250 -- a difference of \$6,183,750

saved in interest costs over the life of the bond debt.

The difference in lower interest costs represents a savings to hospitals -- a saving which will be passed on to patients in the form of lower hospital charges than would otherwise occur.

Constitutional Amendment #1, if approved, will give hospitals an alternate method of financing improvement projects. Over the past 10 years, federal and state funds available for hospital construction have steadily decreased. Presently there are no state or federal funds available, and the Hill-Hurton program has expired.

All public (city or county) and community non-profit hospitals, including church-affiliated hospitals, and some state hospitals, will be able to use revenue bonds to finance improvement projects.

Hospital projects will be reviewed by the N. C. Medical Care Commission and the N. C. Local Government Commission. Any project must be necessary and financially feasible before these commissions will issue and sell revenue bonds.

To qualify for tax free revenue bonds, the hospital borrowing the money must transfer the title to the Medical Care Commission. When the debt is repaid, the title is transferred back to the hospital. The title transfer is simply a safeguard. These institutions will still be locally directed to meet community needs.

Under provisions of the legislation permitting the sale of tax free revenue bonds, there will be numerous safeguards to guarantee that the bond debt will be repaid; but no state taxes will be used to repay the debt. If necessary, in case of default the N. C. Medical Care Commission can be empowered as a fiduciary trustee to manage a hospital until alternate management and fiscal policy changes can be made that will insure the repayment of the bond debt.

Revenue bond financing is available in many states in the nation.

In order for hospitals in North Carolina to use this means of financing hospital improvement projects, voters must approve Constitutional Amendment #1 at the March 23, 1976 Presidential Preference Primary election.

With the limited financing options presently available, revenue bonds will be an economical way to improve hospitals and maintain quality patient care at reasonable costs.


Your local community hospital  
for **Amendment #1**  
"quality hospital and patient care"

This advertisement paid by the North Carolina Hospital Association

6. **Adjournment**

There being no further business, the meeting was adjourned at 2:40 p.m.

Respectfully submitted,

  
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Christopher B. Taylor, C.P.A.  
Assistant Secretary