

**CRAIG L. GARRETT**  

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**M E M O R A N D U M**

TO: ED MITCHELL, MAYOR

FROM: CRAIG L. GARRETT

DATE: SEPTEMBER 14, 2022

RE: SUMMARY OF THE HISTORY OF BLOUNT MEMORIAL HOSPITAL AND BLOUNT  
MEMORIAL HOSPITAL, INC.

At your request, I am writing to give a history of Blount Memorial Hospital and Blount Memorial Hospital, Inc. (the non-profit corporation created to operate and maintain the hospital on behalf of the County). This summary is based on records that I have reviewed which will be referenced in this Memo.

In 1942, Blount County decided to pursue having a local hospital. The first step that I can determine that was taken by the Blount County Quarterly Court (which was the predecessor to our current Blount County Board of Commissioners) was a Resolution on April 6, 1942 which authorized the County Judge (the predecessor to the County Mayor) to file an application with federal authorities seeking grant funds for the construction of a hospital in Blount County. (Copy of Resolution attached.)

After this initial Resolution, over the course of 1943, 1944 and into 1945 – the County obviously felt that the hospital project was going to happen. To obtain legal authority to build, construct and operate a hospital, the County then sought the intervention of the legislature. As a result thereof, a Private Act was passed on February 9, 1945 (copy attached). This Private Act authorized Blount County, Tennessee to build, purchase, own, operate and maintain a non-profit general hospital in said County. The Private Act further provided that acting through the Quarterly Court, the County had the authority to either accept legal title to such hospital to be operated by some non-profit corporation, organized for such purpose or to own such hospital and turn over the maintenance and operation thereof to such non-profit or to own, maintain and operate such hospital under the supervision of said Quarterly Court. (See Section 1 of the Private Act of 1945, Chapter 187 – copy attached.)

At the May 1945 term of the Quarterly Court, a reference is contained in the minutes that outlines the requirements of a grant which the United States agreed to provide to Blount County. Of interest is that the grant was for the sum of \$201,500 to aid in the financing, acquisition and construction of the hospital. The minutes reflect that the grant of \$201,500 was to be applied to the estimated cost of \$403,000 which included buying the necessary land, building and equipment to construct and operate the hospital. It is noted in the agreement that there shall be no agency of the federal government that would exercise supervision or control that would affect Blount County's administration in the maintenance and operation of the hospital. (See May term document attached.) Attached to

this same document is the July 19, 1945 Resolution of the Quarterly Court that authorized the County Judge to accept the grant, issue bids and begin construction of the hospital.

It appears that pursuant to the above Resolution, the hospital was built. There is a January 7, 1946 Resolution of the Quarterly Court wherein Blount County agreed to bind itself to appropriate for a period of five (5) years – up to \$12,000 annually to the hospital to defer any losses of the hospital. The introductory paragraph of this Resolution state that the hospital is being constructed and that Blount County, the City of Alcoa and the City of Maryville have agreed to operate and maintain said hospital through a non-profit corporation organized by said governmental agencies. I am not sure if Maryville and Alcoa also passed resolutions to help defer operating costs, but that is possible.

Five (5) days later on January 12, 1946, the original Charter of Blount Memorial Hospital, Inc. was filed with the State and this Charter contains several relevant provisions (copy attached). The first is that Blount Memorial Hospital, Inc. was a non-profit corporation created “for the purpose of leasing, operating and/or maintaining a general non-profit hospital to be operated in Blount County, Tennessee”. The Charter goes forward (as basic charters do) and provided the powers of the corporation, which are general in nature. It should be noted that the Charter made clear that this was a non-profit corporation and it was done for the general welfare of society – not for individual profit.

The Charter also made provision for the original Board of Directors of the corporation and provided that four (4) directors would be appointed by the Blount County Quarterly Court and that two (2) commissioners each would be appointed by the City of Alcoa and the City of Maryville and one (1) Board member would be appointed by the Board of Directors of Maryville College. The Charter provided terms for these Board members and provided that the non-profit corporation would create by-laws and a mechanism to reelect and appoint Board members thereunder. Of note, the Charter contains some interesting requirements. One was that the Board of Directors shall not, at any time, incur any obligation unless the money for such expenditure is either in the treasury or has been bona fide pledged for such purpose. The Charter also provides that the corporation shall not have any power to issue notes, currency, deal in currency, coin, buy or sell products or engage in any kind of trading operation. Finally, the Charter provided that the Charter may be modified, amended or the corporation may be dissolved upon the affirmative vote of all of the governmental agencies selecting the term of the Board of Directors, which vote shall be evidenced by the Resolution duly adopted by the agencies.

The Charter of Blount Memorial Hospital, Inc. has been amended several times. Of note, the Charter was amended in 1984. In 1984, it was amended to change the way the Board members were appointed in a significant manner. The appointment power still stayed with the governmental agencies, but the amendment created a nominating committee and future Board members had to be recommended to the governmental agencies by the nominating committee. The amendment provided that in the event the governmental body declines the nominee selected by the nominating committee, then the nominating committee reconvenes and submits another nominee. (1984 Charter amendment attached hereto.)

The Charter was amended again in 1992 and changed the stated purpose of the corporation as follows. The original Charter stated that the purpose of the corporation was “leasing, operating or maintaining a general non-profit hospital to be operated in Blount County, Tennessee”. This amendment changed the language to read that the purpose was “leasing, operating and/or maintaining a general non-profit hospital and associated related programs and facilities”. As can be seen, the change simply added “and associated related programs and facilities”.

Questions have arisen over the years as to the nature of the legal relationship between Blount County and the hospital. These questions have arisen in a couple of areas. One was in the area of tort liability. It was clearly established by case law and it was always the position of both the hospital and Blount County, that Blount

Memorial Hospital was a quasi-governmental entity operating under the purview of Blount County, Tennessee and as such, received the protection provided under the Tennessee Governmental Tort Liability Act.

The second issue dealt with the issue of hospital debt. The hospital has used the full faith and credit of the County to obtain bonds and this required a review of the legal relationship of the hospital and Blount County. In 2014, Mark Mamantov (the attorney who operates as bond counsel for Blount County and a member of the law firm of Bass, Berry & Sims) reviewed this legal relationship at a time that Blount County and the hospital were addressing financing through general obligation refunding bonds. Mr. Mamantov noted, among other things, that the hospital was built by Blount County pursuant to a Private Act which gave the County the authority to build, purchase, own and/or operate and maintain a general non-profit hospital. The opinion noted that the non-profit entity Blount Memorial Hospital, Inc. was created in January 1946 to operate and maintain the hospital for Blount County. His opinion further noted that the legal title to the primary land and improvement buildings composing the hospital were in the name of the County. It is further stated that there had never been any type of formal written agreement between the County and the non-profit regarding the lease, maintenance and operation of the hospital facility. Mr. Mamantov concluded that based on the Private Act and other factors involved, that it was his opinion that the County owned the hospital and that the non-profit corporation operated the hospital on behalf of Blount County. He described the relationship as that of principal and agent, with the County being the principal and the non-profit being our agent. He further concluded that as the owner of owner of the hospital, the revenues generated by the hospital belong to Blount County and that those revenues could be committed to the payment of these general obligation bonds. (Letter of Attorney Mark Mamantov of June 20, 2014 attached.)

The issue was visited again on October 4, 2018 by another Memorandum written by bond counsel, Mark Mamantov at a time that a restructuring of the general obligation refunding bond was in progress. Mr. Mamantov confirmed the legal nature of the relationship between the hospital and the non-profit corporation again as principal and agent and basically confirmed his previous opinion. (Letter of Attorney Mark Mamantov of October 4, 2018 attached.)

At that time, the hospital was asked to also address the nature of the legal relationship between Blount County, Tennessee and Blount Memorial Hospital, Inc. and the hospital requested that the law firm of Hunter, Smith & Davis and specifically, Attorney William Argabrite, review this relationship. Mr. Argabrite issued a letter of January 25, 2019 wherein he recited the history of the Private Act, the resolutions of the Quarterly Court and the Charter of Blount Memorial Hospital, Inc. (and amendments thereto) and he opined and agreed with the opinion of Attorney Mamantov as to the legal nature of the relationship between Blount County and Blount Memorial Hospital, Inc. (copy attached without attachments). On page 2 of his letter, he states "in this regard, we agree with Bass, Berry & Sims conclusion that the relationship between Blount County and Blount Memorial can be characterized as a principal agent relationship". He further indicates that it was his opinion that the hospital was being operated pursuant to Section 2 of the Private Act of the legislature, which allowed the County to "own the hospital and turn over the maintenance and operation of the hospital to a non-profit agency organized specially for this purpose". Finally, Mr. Argabrite concluded that he agreed with Mr. Mamantov's opinion and it was his opinion that the hospital's revenues could be pledged to fund the bond refinance in question.

Based on the above history and the legal opinions that have been provided and relied upon, it is quite clear that Blount County, Tennessee owns Blount Memorial Hospital and all of its assets and that Blount Memorial Hospital, Inc. (the non-profit) is merely acting as the County's agent to operate and maintain the hospital facilities.

SCHOOL RESOLUTION.

Will A. McTeer, Chairman of the County Board of School Supervisors presented the following Resolution, which upon motion was passed by unanimous vote of the Court. Said resolution is in the words and figures following, to-wit:

RESOLUTION

WHEREAS it appears that the United States Government is anticipating erecting certain buildings for School purposes in Blount County, Tennessee, and that said Government requires the land on which the buildings are located to be conveyed to it, be it therefore resolved that this regular quarterly County Court of Blount County, Tennessee at session assembled, on this April 6th, 1942, does hereby authorize, empower and direct the Blount County, Tennessee, Board of School Supervisors, and the County Judge and County Court Clerk, to execute, acknowledge and deliver any and all conveyances in connection with any School Buildings in this County, and to make any releases therefor, as recommended by the County Board of School Supervisors.

HOSPITAL.

Homer A. Goddard, Attorney introduced a Resolution authorizing the County to file an application with the proper Federal Authorities seeking funds for the construction of a Hospital in Blount County which Resolution was duly passed by unanimous vote of the Court. Said Resolution is in the words and figures following, to-wit:

A RESOLUTION AUTHORIZING THE COUNTY OF BLOUNT TO FILE AN APPLICATION WITH THE PROPER FEDERAL AUTHORITIES SEEKING FUNDS FOR THE CONSTRUCTION OF A HOSPITAL IN BLOUNT COUNTY, TENNESSEE.

BE IT RESOLVED BY THE COUNTY COURT OF BLOUNT COUNTY IN QUARTERLY SESSION ASSEMBLED ON THIS THE 6TH DAY OF APRIL, 1942 as follows:

SECTION 1. That there is hereby authorized to be filed by the County of Blount an application with the proper Federal Agencies seeking a grant for funds for the construction of a hospital in Blount County, Tennessee.

SECTION 2. That the County Judge is authorized to appoint a committee to two with himself who shall prepare said application and do all things necessary and proper in connection thereto and take all steps necessary to prepare said application in accordance with the rules and regulations of the agencies of the United States Government and to this end shall make reasonable expenditures if necessary in the hiring of an architect for the preparation of plans for said building.

SECTION 3. It is specifically understood and agreed that the filing of the application or the granting of the same shall not commit Blount County to the appropriation of any funds until it accepts the grant of the United States Government should one be made.

Thereupon the County Judge appointed A.D. Huddleston and Joe C. Gamble as members of said Committee.



✓  
ROAD MACHINERY -

## APPROPRIATION ROADS.

The Court Committee with the Highway Commission, since the last meeting of the Court have purchased Road Machinery from Martin Machinery and Supply Company, which has not been paid for and there being no funds in the Highway Account to pay for same was brought to the attention of the Court.

Thereupon O W. Brumfiel, Esq. moved that this bill of \$11,327.69 be paid by an appropriation out of the regular County Funds, said motion was duly seconded and upon roll call carried by unanimous vote of the Court.

✓  
REGIONAL LIBRARY.

Upon motion of J.H. Gate, Esq. the following resolution was passed by unanimous vote of all the members of the Court present.

January 7, 1946

Be it resolved the Blount County Quarterly Court, assembled January 7, 1946, approve the payment of four hundred (\$400.00) dollars to the Blount County Library Board (Regional Library) paid out by L.M. Ross on June 27, 1945. This money was paid out of the 1944-45 budget.

L.M. Ross, Supt.

✓  
APPROPRIATION - \$12,000.00 for  
BLOUNT MEMORIAL HOSPITAL.

Upon motion of Homer A. Goddard, Atty. which was duly seconded by T.H. Brown, Esq. and after considerable discussion the following resolution appropriating an amount not exceeding \$12,000.00 annually for a period of five (5) years to the Blount Memorial Hospital was passed by unanimous vote of the members of the Court upon roll call, all of the Justices of the Peace voting "Aye." Said resolution is in the words and figures following, to-wit:

A RESOLUTION PROVIDING FOR THE APPROPRIATION OF A SUM OF MONEY NOT EXCEEDING TWELVE THOUSAND (\$12,000.00) DOLLARS ANNUALLY FOR A PERIOD OF FIVE YEARS TO BE USED TO SUPPORT AND MAINTAIN BLOUNT MEMORIAL HOSPITAL WITH REFERENCE TO OPERATING LOSSES.

WHEREAS, there is being constructed in the County of Blount a hospital to be known as Blount Memorial Hospital; and

WHEREAS, the County of Blount, the City of Alcoa and the City of Maryville have agreed to operate and maintain said hospital through a non profit corporation organized by said governmental agencies; and

WHEREAS, it is contemplated that it will be necessary to make annual contributions for the support and maintenance of said hospital with reference to operating losses.

NOW, THEREFORE, in consideration of the mutual agreements and appropriations by the County of Blount, the City of Alcoa, and the City of Maryville, be it resolved by the Quarterly County Court of Blount County, Tennessee as follows:

years, sixty (60%) per cent of the operating losses not exceeding Twelve Thousand (\$12,000.00) Dollars for the support and maintenance of said hospital with reference to said operating losses.

2. That it will place in its Appropriation Resolution each year said sum of money and, the same, or such parts thereof as may be required, will be paid to said corporation operating said hospital for the purposes herein set out.

Adopted this the 7th. day of January, 1946.

#### MEMORIAL BUILDING.

The Memorial Building Committee presented the following report which was unanimously approved by the Court. Said report is in the words and figures following, to-wit:

Jan. 7, 1946

TO THE HONORABLE COUNTY COURT OF BLOUNT COUNTY:

We have made considerable progress on preliminary studies for the building and have consulted with the various interested Organizations and Departments regarding allocation of space, location and plan arrangement. It appears that those who will occupy the building are well pleased with our work to date and that only minor details remain to be decided. The situation in the building industry is still unsettled and for this reason it has not been advisable to proceed with great haste in completing plans, specifications and seeking bids from constructors immediately after the first of the year however we desire to start on the working drawings in order that final plans and costs may be presented to the Court at the April session and funds appropriated for the erection of the building.

Respectfully submitted,

Shirley C. Spence.

#### SUPERINTENDENT OF SCHOOLS - L.M. ROSS, BUDGET REPORTS.

L.M. Ross, Superintendent of Public Instruction, presented his reports covering Budget Expenditures in the Elementary Schools and High Schools for the period beginning July 1, 1945 and ending December 31, 1945, and upon motion of Harry Edmondson, Esq. said reports were approved and ordered of record, same being in the words and figures following, to-wit:

#### BUDGET REPORT

I, L.M. Ross, Superintendent of Public Instruction, respectfully submit the following report covering expenditures out of the Budget for a period beginning July 1, 1945 and ending December 31, 1945.

#### ELEMENTARY

General Control	
Amount Appropriated	\$13,350.00
Amount Expended	4,819.85
Balance December 31, 1945	\$ 8,530.15
Instruction	
Amount Appropriated	\$223,000.00

SPECIAL SESSION - QUARTERLY COUNTY COURT  
MONDAY MAY 28th. 1945STATE OF TENNESSEE,  
BLOUNT COUNTY.

Quarterly County Court convened on this May 28th. 1945, at 9:00 o'clock, A.M. in Special Session pursuant to the call of the Chairman and County Court Clerk, which was mailed to each member of the County Court and published in The Maryville Times, more than five days in accordance with the Statute.

There appeared W.E. Carringer, High Sheriff for Blount County, who duly opened said Special Call Session of the Quarterly Court as provided by law, there being present and presiding the Honorable Geo. D. Roberts, Judge of Blount County, and the following Justices of the Peace for said County, to-wit: Baldwin, Boring, Brown, B.C.; Brown, T.H.; Bryant, Harley; Bryant, J.R.; Campbell, Cate, Clabough, DeLozier, Edmondson, Everett, Garner, Griffiths, Ed; Griffiths, Mike; Henry, Hunt, Huakey, Jaffries, Jenkins, Kincer, Law, Martin, Murphy, Peery, A.T.; Peery, W.W.; Reed, Shirley, Spence, Spurgeon, Sterling, Tulloch, Walker, Waters and Williams, when the following proceedings were had, to-wit:

## HOSPITAL GRANT -

The matter of the offer of the United States of America to grant Blount County \$201,500 to aid in the financing the acquisition and construction of Public Works consisting of Hospital Facilities were brought to the attention of the Court, same being in the words and figures following:

UNITED STATES OF AMERICA  
FEDERAL WORKS AGENCY  
BUREAU OF COMMUNITY FACILITIES  
WASHINGTON 25

## GRANT AGREEMENT

Project No. Tenn. 40-280-N

Dated May 3, 1945.

County of Blount,  
Maryville, Tennessee.

Subject to the terms and conditions (FWA Form No. W-100, dated April 1, 1945) attached hereto and made a part hereof, the United States of America hereby offers to make you a Grant of \$201,500 to aid in financing the acquisition and construction of public works consisting of Hospital Facilities, including necessary land and necessary equipment (herein called the "Project"), at the presently estimated cost to you of \$403,000: Provided, however, that if the actual cost to you of the project upon completion, as determined by the Commissioner of Community Facilities, is less than the presently estimated cost specified above, the grant shall be reduced to an amount which bears the same ratio to said actual cost as the amount of the grant specified herein bears to the said estimated cost.

It is hereby agreed that if the cost of the project should exceed the estimated cost specified above you shall provide, in addition to such other funds as may be otherwise necessary to defray the cost, funds sufficient to defray such overrun in the cost.

Nothing herein shall be construed as vesting in any Department or Agency of the United States power to exercise any supervision or control over such

MAY TERM 1945

facilities, nor shall any of the provisions hereof be construed as prescribing or affecting your administration or personnel in the maintenance and operation of such facilities.

This agreement shall take effect upon your accepting it in accordance with the applicable legal requirements for the formation of the contract.

United States of America

Federal Works Administrator,,

By: George H. Field,  
Commissioner

The terms and conditions under which the Grant is offered are as follows:

FEDERAL WORKS AGENCY

BUREAU OF COMMUNITY FACILITIES

#### TERMS AND CONDITIONS

Constituting part of the agreement providing for the financing and construction of Non-Federal War Public Works under the Lanham Act, as amended,

##### 1. DEFINITIONS. - As used in these Terms and Conditions:

"Government" means the United States of America; "Applicant" means the local public or private agency that has applied to the Government for financial aid under the Lanham Act, as amended; "Application" means the document or documents, including all amendments and communications, filed with the Government by the Applicant in support of its request for such financial aid; "Project" means the particular public works which the Government has agreed to aid in financing under the Agreement; "Agreement" means the contract between the Government and the Applicant pertaining to the granting of aid for the Project and includes both these Terms and Conditions and the contract instrument or instruments of which these Terms and Conditions constitute a part; and "Bonds" means the bonds or other obligations, if any, which the Government may have agreed to purchase under the Agreement.

2. CONDITIONS OF GOVERNMENT'S OBLIGATION. - The Government may elect to terminate all or any of its obligations under the Agreement and, at its option, to pay to the Applicant only part of the amount of federal aid stated in the Agreement or to recover any and all funds advanced or paid under the Agreement by the Government to the Applicant:

(a) Representations. - If any representation of the Applicant in its Application or in any document submitted to the Government by the Applicant shall be incorrect or incomplete in any material respect;

(b) Financial Condition. - If, in case the Government has offered to purchase Bonds, the financial condition of the Applicant shall have changed unfavorably in a material degree from its condition as theretofore represented to the Government;

(c) Financing of Project. - If the Applicant will not be able, in the opinion of the Government, or fails to provide when needed, or to demonstrate to the satisfaction of the Government that it can and will provide when needed, funds sufficient, with the funds made available by the Government under the Agreement, to pay the cost of the Project, or if, in case the Government has offered to purchase Bonds, the Applicant shall not furnish a bond transcript satisfactory to the Government showing that the Bonds are valid and binding obligations:



Capital Outlay  
Amount Appropriated  
Amount Expended  
Balance June 30, 1945

\$ 2,000.00  
1,272.83  
\$ 727.17

Total Budget  
Amount Appropriated  
Amount Expended  
Balance June 30, 1945

\$125,400.59  
121,871.57  
\$ 3,529.02

L.M. Rose.

#### MEMORIAL HOSPITAL RESOLUTIONS.

J. G. Gamble, Attorney, presented a Resolution authorizing the County Judge to sign and execute on behalf of the County, advertisements and contracts necessary to expedite the construction of a Memorial Hospital for Blount County, and moved that same be adopted. Thereupon the Court unanimously approved such Resolution, which is in words and figures following:

A Resolution authorizing the County Judge of Blount County, Tennessee to sign and execute in behalf of said County all advertisements for bids for the construction of a Hospital in Blount County, Tennessee, and to sign and execute on behalf of said County all contracts let, or to be let, for the construction thereof, and to ratify the action of the said County Judge in signing and executing all such advertisements and contracts heretofore made.

Be it resolved by the County Court of Blount County, Tennessee in Quarterly Session assembled on this the 2nd. day of July, 1945, as follows:

Section 1. That the County Judge of Blount County, Tennessee is hereby authorized to sign and execute in behalf of said county all advertisements for bids for the construction of a hospital in Blount County, Tennessee.

Section 2. That said County Judge is hereby authorized to sign and execute in behalf of said county all contracts heretofore let or to be let for the construction of said hospital, pursuant to the offer of the United States Government through its Federal Works Agency and the acceptance thereof made by resolution of this County Court.

Section 3. That the action of said County Judge in signing and executing advertisements for bids heretofore made, and in signing and executing contracts heretofore made in connection with the construction of said hospital be and the same is hereby ratified and confirmed.

Section 4. That nothing herein contained shall authorize said County Judge to sign and execute contracts for sums which in the aggregate will be in excess of the money contained in the "Blount County Hospital Fund" received from subscriptions, donations, contributions and from the Federal Works Agency of the Federal Government.

#### BUDGET RESOLUTION.

Will A. McTeer, Attorney, and a member of the Budget Committee for Blount County, presented the following Resolution fixing the budget for the year beginning July 1, 1945 and ending June 30, 1946, and moved the adoption of same. After due consideration and discussion, same was unanimously adopted by the Court upon a roll-call, all of the Justices voting "Aye". Said Resolution appropriating funds for all the departments of the County for the ensuing year,

## Chapter VIII - Health

### Authorization to Operate Hospital

#### Private Acts of 1945 Chapter 187

**SECTION 1.** That Blount County, Tennessee is hereby authorized and empowered to build, purchase, own and/or operate and maintain a non-profit general hospital in said County, acting by and through its Quarterly County Court, with authority to either accept the legal title to such hospital to be operated by some non-profit corporation, organized for such purpose, or to own such hospital and turn over the maintenance and operation thereof to such non-profit corporation, or to own, maintain and operate such hospital under the supervision of said Quarterly County Court.

**SEC. 2.** That the County of Blount, acting by and through its Quarterly County Court, be, and it is hereby authorized and empowered, without the necessity of a referendum election therefor, to borrow money, not exceeding Two Hundred Thousand (\$200,000.00) Dollars, and to issue and sell bonds therefor, or to execute and deliver any other evidences of said indebtedness that may be necessary or required for the purpose of obtaining any monies or funds available from the Federal Government, or from or through any of its agencies, bureaus or departments, by virtue of any Act of Congress theretofore or hereafter enacted, or for the purpose of matching or supplementing any monies or funds available or provided by the Federal Government, or from or through any of its agencies, bureaus or departments; said funds to be used and applied in acquiring land for non-profit hospital purposes and/or erecting a hospital building or buildings thereon.

**SEC. 3.** That said bonds shall bear interest at a rate not exceeding four (4) per cent per annum, and shall mature in not more than fifty (50) years from their date or dates of issue, and the interest thereon shall be payable semiannually in lawful money of the United States of America. Said bonds may be either serial or term bonds, as the Quarterly County Court of said County may elect, and if serial bonds they shall begin to mature not later than five (5) years after their date or dates of issuance. Subject to the restrictions contained in this Act the Quarterly County Court of said County may fix the rate of interest on said bonds, their maturity and form, and the method of issuing and selling the same, but said bonds shall be sold for not less than par and accrued interest. Said bonds shall be in such denominations and such forms as shall be directed by the proper resolution or resolutions of the Quarterly County Court of said County, and shall be sold in such manner as may be directed by said Quarterly County Court, subject to the provisions of this Act; provided, however, that said Quarterly County Court may sell such bonds at such time or times and in such lot or lots as it shall determine, and shall not be required to sell all the bonds at any one time or to any one bidder.

**SEC. 4.** That said bonds or other evidences of indebtedness that may be determined by said Quarterly County Court shall be the general obligation of the County of Blount, and the full faith and credit of said County shall be pledged to the payment of said bonds or other evidences of indebtedness and interest as may be determined and provided by said Quarterly County Court, and to the levy and collection of such taxes for that purpose. It shall be the duty of the Quarterly County Court of said County annually to levy a tax on the taxable property of said County for the purpose of paying interest on said bonds or other evidences of indebtedness, and also for the purpose of creating a sinking fund for the redemption of said bonds or other evidences of indebtedness.

**SEC. 5.** That any bonds issued under the provisions of this Act shall be exempt from all State, County and Municipal Taxes, and it shall be so stated on the face of said bonds.

**SEC. 6.** That the funds borrowed or the proceeds from the sale of any of said bonds or other evidences of indebtedness, as herein provided shall be turned over to the County Trustee and he shall keep the same separate and apart from any monies in his hands, and he shall pay the same out on warrants drawn by the County Judge of said County.

**SEC. 7.** That said funds or any part thereof shall be appropriated and disbursed by and under the supervision of the County Judge of said County, and shall be used for the purpose hereinbefore explained in this Act.

**SEC. 8.** That if any section or part of this Act for any reason be held unconstitutional or invalid, the same shall not effect the constitutionality or validity of the remaining parts or sections thereof, but the same shall remain in full force and effect as if the unconstitutional or invalid part had been omitted.

**SEC. 9.** That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

**SEC. 10.** That this Act take effect from and after its passage, the public welfare requiring it.

Passed: February 9, 1945.

County aforesaid, the within named incorporators BEN H. TESTERMAN, J. C. BARCOCK, AND IRENE P. AULT, WITH WHOM I am personally acquainted and who acknowledged that they executed the within application for charter of incorporation for the purposes therein contained.

WITNESS my hand and official seal this the 15th day of DECEMBER, 1945.

My Notarial Commission Expires: April 10th, 1947.

(SEAL)

A. G. Wilson, Notary Public

STATE OF TENNESSEE  
DEPARTMENT OF STATE

I, Joe C. Carr, Secretary of State of State of Tennessee, do hereby certify that the annexed Instrument with Certificate of acknowledgment was filed in my office and recorded on the 17th day of December 1945, in Corporation Record Book VOLUME 24, page 89.

In Testimony Whereof, I have hereunto subscribed my Official Signature and by order of the Governor affixed the Great Seal of the State of Tennessee at the Department in the City of Nashville, this 17th day of December A.D. 1945.

(SEAL)

Joe C. Carr, Secretary of State

Received for record the 21 day of Dec. 1945, at 1:10 o'clock P.M. and recorded the 22 day of Dec. 1945.

COMPARE!

R. C. Parkins, Register,

By Irene E. Everett D.R.

STATE OF TENNESSEE  
CHARTER OF INCORPORATION

BE IT KNOWN, That we, George D. Roberts, A.D. Huddleston, J.C. Gamble, O.L. Brumfield, V.J. Hulquist, James W. King, J.T. Trotter, E.C. Brown and Homer A. Goddard, are hereby constituted a body politic under the name and style of

BLOUNT MEMORIAL HOSPITAL, INCORPORATED

THE principal office of which shall be in Blount County, Tennessee, for the purpose of leasing, operating and or maintaining a general non-profit hospital to be operated in Blount County, Tennessee.

The general powers of said corporation shall be, to sue and be sued by the corporate name; to have and use a common seal, which it may alter at pleasure; if no common seal, then the signature of the name of the corporation by and duly authorized officers shall be legal and binding; to purchase and hold or receive by gift, bequest or devise, personal property and real estate, and also to accept any real estate or personal property in payment or in part payment of any debt due to the corporation, and sell the same; to establish by-laws, and make all rules and regulation not inconsistent with the laws and Constitution deemed expedient for the management of corporate affairs, and to select such subordinate officers and agent in addition to a President, Vice President and Secretary and or Treasurer, as the business of the corporation may require, designate the name of the office and fix the compensation of such officers and agents.

The first Board of Directors of said Corporation shall be composed of the nine incorporators in this Charter, but who will within a reasonable time after the granting and

3/52



recording of this Charter meet for the purpose of organization.

The first permanent Board of Directors shall be selected within ninety days after the granting of the Charter and shall be composed of nine (9) members, who shall have been residents of Blount County, Tennessee for at least three years next before their election, and who shall be persons of business experience and moral integrity, and who shall be freeholders in Blount County, and which directors shall receive no compensation for their services as such. Four of the members of said first permanent Board of Directors shall be such persons who shall be elected by the Quarterly County Court of Blount County, Tennessee; two of the members thereof shall be such persons as are elected by the Board of Commissioners of the City of Alcoa, and who shall be residents of the City of Alcoa; two of the members thereof shall be such persons as are elected by the Board of Commissioners of the City of Maryville and, one of such members shall be such person as is elected by the Board of Directors of Maryville College. The eventual term of the members of said Board of Directors shall be three years, but in order that the terms of said members shall not all expire simultaneously, it is provided hereunder that two of such persons as are elected by the Quarterly County Court, and the <sup>one</sup> person elected by the Directors of Maryville College shall serve for a term of one year; one of such persons elected by the Quarterly County Court, one of the persons elected by the Board of Commissioners of the City of Alcoa, and one of the persons elected by the Board of Commissioners of the City of Maryville shall serve for a term of two years and one of the persons elected by the Quarterly County Court, one of the persons elected by the Board of Commissioners of the City of Maryville, and one of the persons elected by the Board of Commissioners of the City of Alcoa shall serve for a term of three years.

At the expiration of the first terms of the first permanent Board of Directors, in the manner hereinabove set out, the members to be selected by the agencies above provided, shall be elected by such respective agencies for a term of three years each. In the event of a vacancy in the Board of Directors such vacancy shall be filled by the agency originally selecting such members.

Evidence of the election of the members by the different agencies as above provided, shall be by certified copy of a minute or resolution of such agencies.

Within a convenient time after the selection of the first permanent Board of Directors, such Board shall meet and elect a President, Vice President, Secretary and/or Treasurer, all of which, except the Secretary and/or Treasurer, shall be members of said Board, and the said Secretary and/or Treasurer may or may not be members of such Board, and shall select such other officers and/or agent as may be provided for by the bylaws adopted by said Board of Directors. In all meetings of said Board a majority of the members shall constitute a quorum for the transaction of business, and the result of any vote shall be determined by the vote of a majority of the votes cast. The regular meetings and special meetings of said Board of Directors shall be held when, and in the manner provided by the bylaws, and the Board of Directors shall keep a record of all of its proceedings. The Board of Directors shall not at any time incur any obligations unless the money for such expenditures is either in the treasury or has been bona fide pledged for such purpose. There shall be an annual audit of the books of the corporation by some recognized and competent auditing firm, a copy of which audit shall be furnished to the agencies selecting the Board of Directors.

The general welfare of society, not individual profit, is the object for which this charter is granted, and hence neither the directors nor the agencies selecting them are stockholders in the legal sense of the term, and no dividends or profits shall be divided among them.



This charter may be modified or amended, or the corporation may at any time be voluntarily dissolved upon the affirmative vote of all the governmental agencies selecting the permanent Board of Directors, which vote shall be evidenced by resolution duly adopted by all of such agencies.

A violation of any of the provisions of this charter shall subject the corporation to dissolution at the at the instance of the State.

The means, assets, income or other property of the corporation shall not be employed directly or indirectly for any other purpose whatever than to accomplish the legitimate objects of its creation, and by no implication shall it possess the power to issue notes or currency, deal in currency, notes or coin, buy or sell products, or engage in any kind of trading operation.

We, the undersigned, hereby apply to the State of Tennessee by virtue of the laws of the land for a Charter of Incorporation for the purpose and with the powers declared in the foregoing instrument.

This 12th day of January, 1946.

George D. Roberts

A.D.Huddleston

J.C.Gamble

O.W. Brumfiel

V.J.Hultquist

Jas. W. King

J.T.Trotter

E.C.Brown

Homer A. Goddard

STATE OF FLORIDA )  
                  ) SS.  
COUNTY OF MANATEE )

Personally appeared before me, the undersigned authority, J.T.Trotter, who acknowledged that he executed the foregoing application for Charter of Incorporation for the purpose therein expressed.

Witness my hand and seal at office in Bradenton, Florida on this the 12th day of January, 1946

(SEAL)

Helen Shepard  
Notary Public

My Commission expires March 20, 1948.

STATE OF TENNESSEE )  
                  ) SS.  
BLOUNT COUNTY )

Personally appeared before me, the undersigned authority, George D. Roberts, A.D.Huddleston, J.C.Gamble, O.W.Brumfield, V.J. Hultquist, James W. King, E.C. Brown and Homer A. Goddard, who acknowledged that they executed the foregoing application for Charter of Incorporation for the purpose therein expressed.

Witness my hand and seal at office in Maryville, Tennessee on this the 21st day of January, 1946.

(SEAL)

Billie M. White, Notary Public

My commission expires July 15, 1946.

Received for record the 4th day of February 1946 at 10:45 o'clock A.M.

R.C.Parkins, Register

STATE OF TENNESSEE  
DEPARTMENT OF STATE

I, JOE C. CARR, Secretary of State of the State of Tennessee, do hereby certify that the annexed Instrument with Certificate of Acknowledgment was filed in my office and recorded on the 22nd day of January 1946 in Corporation Record Book MISCELLANEOUS A-3 page

In Testimony Whereof, I have hereunto subscribed my Official Signature and by order of the Governor affixed the Great Seal of the State of Tennessee at the Department in the City of Nashville, this 22nd day of January A.D. 1946.

(SEAL)

Joe C. Carr  
Secretary of State

Received for record the 4th day of February 1946 at 10:45 o'clock A.M.

R. C. Perkins, Register

By Frederick E. Smith D.R.

THIS INSTRUMENT WAS FILED FOR RECORD IN THE  
FIRST TENNESSEE PUBLIC RECORDS  
MARYVILLE, TENNESSEE

AMENDMENT TO THE CHARTER OF INCORPORATION OF  
BLOUNT MEMORIAL HOSPITAL, INCORPORATED

KNOW ALL MEN BY THESE PRESENTS THAT WHEREAS, at a regular meeting of the Directors of Blount Memorial Hospital, Incorporated, held on the 23rd day of October, 1984, at Blount Memorial Hospital in Maryville, Blount County, Tennessee, the following resolution was adopted by affirmative vote of a majority of the Director of Blount Memorial Hospital, Incorporated, to-wit:

"RESOLUTION

BE IT RESOLVED by the Board of Directors of Blount Memorial Hospital, Incorporated, in regular session assembled on this 23rd day of October, 1984, that the Charter of Blount Memorial Hospital, Incorporated, be amended as follows:

That the following paragraph of the Charter of Incorporation of Blount Memorial Hospital, Incorporated, be stricken:

'At the expiration of the first terms of the first permanent Board of Directors, in the manner hereinabove set out, the members to be selected by the agencies above provided, shall be elected by such respective agencies for a term of three years each. In the event of a vacancy in the Board of Directors such vacancy shall be filled by the agency originally selecting such members.'

and that there be substituted in lieu thereof the following:

'As the terms of the present Board of Directors expire, the members of the Board of Directors to be selected by the agencies above provided shall be elected by such respective agencies for a term of three (3) years each in the manner hereinafter provided.

That in the event of a vacancy in the Board of Directors, such vacancy shall be filled by the agency originally selecting such member in the manner hereinafter provided.

All Directors of Blount Memorial Hospital, Incorporated, shall be nominated by a Nominating Committee as hereinafter designated, which nominations shall be made to the respective electing bodies on or before the 1st day of January of each year.

1923 OCT 11 10:10

In the event of a vacancy in the Board of Directors, the Nominating Committee, as hereinafter provided, shall nominate to the respective electing bodies a Director to serve the unexpired term and which nomination shall be made within thirty (30) days after the occurrence of the vacancy.

The Nominating Committee shall be composed of seven (7) members, one (1) of whom shall be the President of the Board of Directors of Blount Memorial Hospital, Incorporated; of the remaining six (6) members, one shall be selected by the President or Chief Executive Officer of each of the following organizations: Blount County Medical Society, the largest industrial employer of Blount County, the largest labor union in Blount County, Blount County Farm Bureau; Blount County Chamber of Commerce; one of the following financial institutions: First Tennessee Bank, Maryville, First Federal Savings & Loan Association of Maryville, Blount National Bank of Maryville, Citizens Bank of Blount County, and American Fidelity Bank, or the successor of any of said financial institutions herein named, who shall serve a term of one (1) year on a rotating basis in the order named. All members of the Nominating Committee shall be residents of Blount County, Tennessee.

The President of the Board of Directors of Blount Memorial Hospital, Incorporated, shall be the permanent Chairman of the Nominating Committee and shall annually convene the Nominating Committee for the purpose of making nominations to the respective electing bodies and shall also convene the Nominating Committee to nominate any vacancies which may occur in the Board of Directors of Blount Memorial Hospital, Incorporated. The Chairman shall be obligated to convene the Nominating Committee into session upon the request of four (4) members of the Nominating Committee.

In the event the Nominating Committee should fail or refuse to nominate a Director by the time herein specified, the electing body shall be free to select and elect a Director by nominations from the floor or by nomination by a standing Committee of the electing body and without reference to the Nominating Committee herein created.

In the event the electing body should decline to elect the person nominated by the Nominating Committee, the Nominating Committee shall immediately be reconvened and shall submit a new nomination to the electing body within thirty (30) days after the nominee has been turned down by the electing body.

1984 OCT 25 10 30 TO

All provisions of the original charter of incorporation not inconsistent herewith shall remain in full force and effect.'

BE IT FURTHER RESOLVED that the President and Secretary of Blount Memorial Hospital, Incorporated, are hereby authorized and directed to apply for and obtain an amendment to the Charter of Incorporation of Blount Memorial Hospital, Incorporated, as hereinabove set out."

WHEREAS, the Charter of Blount Memorial Hospital, Incorporated, provides that the charter may be amended upon the affirmative vote of all of the governmental agencies selecting the permanent Board of Directors, which vote shall be evidenced by resolution duly adopted by all of such agencies; and

WHEREAS, the governmental agencies electing the permanent Board of Directors are the Legislative Body of Blount County, Tennessee, the City Council of the City of Maryville and the City Commission of the City of Alcoa; and

WHEREAS, each governmental agency has adopted a similar resolution to that hereinabove, as evidenced by certified copies of the resolutions attached hereto of each of the governmental agencies.

NOW THEREFORE, for and in consideration of the premises and in accordance with the Board of Directors and the concurring resolutions of all three of the governmental agencies electing the permanent Board of Directors, we, the undersigned, do hereby certify that we are the duly elected and constituted President and Secretary, respectively, of Blount Memorial Hospital, Incorporated, and we further certify that the resolution hereinabove set out was duly and regularly passed by a majority of the Board of Directors held on the 23rd day of October, 1984, and we hereby apply to the State of Tennessee, pursuant to the general laws the State, for an amendment to the Charter of Incorporation of Blount Memorial Hospital, Incorporated, for the



purposes set out and expressed in said resolution hereinbefore  
set out.

IN WITNESS WHEREOF, we have set our hands and seals  
on the 23rd day of October, 1984.

Edwin J. John  
President, Blount Memorial  
Hospital, Incorporated

James E. [illegible]  
Secretary, Blount Memorial  
Hospital, Incorporated

900 New Walland Highway  
Maryville, Tennessee 37801

1992 MAR 27 11:10:13  
J. W. HILL  
SECRETARY OF STATE

THIS INSTRUMENT WAS PREPARED BY ARTHUR R. GODDARD  
JAMES H. HUSSEL HAS BEEN  
APPROVED BY THE SECRETARY

AMENDMENT TO THE CHARTER OF INCORPORATION OF  
BLOUNT MEMORIAL HOSPITAL, INCORPORATED

70

KNOW ALL MEN BY THESE PRESENTS, THAT WHEREAS, at a regular meeting of the Board of Directors of Blount Memorial Hospital, Incorporated, held on the 24th day of March, 1992, at Blount Memorial Hospital in Maryville, Blount County, Tennessee, the following resolution was adopted by the affirmative vote of a majority of the Directors of Blount Memorial Hospital, Incorporated, to-wit:

"RESOLUTION

BE IT RESOLVED by the Board of Directors of Blount Memorial Hospital, Incorporated, in regular session assembled on this the 24th day of March, 1992, that the Charter of Blount Memorial Hospital, Incorporated, be amended as follows:

By striking that portion of the first paragraph of the Charter of Incorporation appearing after the words

'BLOUNT MEMORIAL HOSPITAL, INCORPORATED' and inserting in lieu thereof the following: 'the principal office of which shall be in Blount County, Tennessee, for the purpose of leasing; operating and/or maintaining a general non-profit hospital and associated and related programs and facilities.'

All provisions of the original charter of incorporation, as heretofore amended, not inconsistent herewith shall remain in full force and effect.

BE IT FURTHER RESOLVED that the President and Secretary of Blount Memorial Hospital, Incorporated, are hereby authorized and directed to apply for and obtain an amendment to the Charter of Incorporation of Blount Memorial Hospital, Incorporated, as hereinabove set out."

93 MAY 27 11:10:18

SECRETARY OF STATE

WHEREAS, the governmental agencies electing the permanent Board of Directors are the Legislative Body of Blount County, Tennessee, the City Council of the City of Maryville, and the City Commission of the City of Alcoa; and

WHEREAS, each governmental agency has adopted a similar resolution to that hereinabove, as evidenced by certified copies of the resolutions attached hereto of each of the governmental agencies.

NOW THEREFORE, for and in consideration of the premises and in accordance with the resolution of the Board of Directors and the concurring resolutions of all three of the governmental agencies electing the permanent Board of Directors, we, the undersigned, do hereby certify that we are the duly elected and constituted President and Secretary, respectively, of Blount Memorial Hospital, Incorporated, and we further certify that the resolution hereinabove set out was duly and regularly passed by a majority of the Board of Directors held on the 24th day of March, 1992, and we hereby apply to the State of Tennessee, pursuant to the general laws of the State, for an amendment to the Charter of Incorporation of Blount Memorial Hospital, Incorporated, for the purposes set out and expressed in said resolution hereinbefore set out.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the 25 day of May, 1993.

*Robert P. Redwine*  
President, Blount Memorial  
Hospital, Incorporated  
*Mark M. Dawson*

**BASS BERRY & SIMS**

G. Mark Mamantov  
mmamantov@bassberry.com  
(665) 521-0365

June 20, 2014

Mr. Randy Vineyard  
Director of Accounts and Budgets  
341 Court Street  
Maryville, Tennessee 37804

Re: Blount Memorial Hospital

Dear Randy:

Blount County, Tennessee (the "County") issued its General Obligation Refunding Bonds, Series 2013A (the "Bonds") on December 9, 2013. Pursuant to the resolution authorizing the Bonds, the County pledged the full faith and credit of the County to the repayment of the Bonds, and further provided that the Bonds are additionally payable from, but not secured by, revenues derived from the operations of the Blount Memorial Hospital (the "Hospital Facility").

Pursuant to Chapter 187 of 1945 Private Acts of the State of Tennessee (the "Private Act"), the County was authorized by the State Legislature to build, purchase, own and/or operate and maintain a non-profit general hospital. The Private Act gave the County the authority to own and operate the hospital facility in one of three ways (1) to accept legal title to such hospital to be operated by some non-profit corporation organized for such purpose, (2) to own such hospital and turn over the maintenance and operation thereof to such non-profit corporation or (3) to own maintain and operate such hospital under the supervision of the Quarterly County Court. The records from the period are not exactly clear as to which option was chosen, however, the non-profit entity Blount Memorial Hospital, Inc. (the "Corporation") was created by filing of its charter (the "Charter") on January 22, 1946 for the purpose of leasing, operating and/or maintaining a general non-profit hospital.

The legal title to the primary land and improvements buildings comprising the Hospital Facility is in the name of the County. From our conversations with officials at the County and the Corporation and with the law firm that represents the Corporation (and also was involved in the initial creation of the Corporation in 1946), it appears that there is not currently, and likely never has been, a formal, written agreement between the County and the Corporation regarding the lease, maintenance or operation of the Hospital Facility.

In the absence of any formal agreement to the contrary, and given that the Private Act designates the County as the owner of the Hospital Facility and the real property records reflect the same, we think the best interpretation of the relationship between the County and the Corporation is that of principal and agent. As such, our interpretation is that the County is the legal owner of the Hospital Facility and therefore of the revenues generated by the Hospital Facility (the "Facility Revenues") and, as permitted by the Private Act, the County has entrusted operation, management and maintenance of the Hospital Facilities to the Corporation, but the County has not ceded ownership of the Hospital Facility or the Facility Revenues to the Corporation, nor do we see that the County has the legal authority to do so.

June 20, 2014  
Page 2

Consequently, the County does not need to have an agreement with the Corporation to use the Facility Revenues for repayment of the Bonds because the Facility Revenues legally belong to the County. In other words, the Corporation could not refuse the use the Facility Revenues in the manner directed by the County because the Corporation is merely the agent of the County with respect to the Hospital Facility and the Facility Revenues.

Sincerely,

A handwritten signature in dark ink, appearing to be 'G. Mark Mamantov', followed by a horizontal line extending to the right.

G. Mark Mamantov

GMM:ds

cc: Ms. Susan Gennoe (via e-mail – [sgennoe@blounttn.org](mailto:sgennoe@blounttn.org))

13226738.1



BASS BERRY ♦ SIMS llc

1700 Riverview Tower  
900 S. Gay Street  
Knoxville, TN 37902  
(865) 521-8200

M E M O R A N D U M

TO: Ed Mitchell, County Mayor  
Randy Vineyard, Director of Accounts and Budgets

FROM: G. Mark Mamantov

DATE: October 4, 2018

RE: Legal Issues Relating to Restructuring of General Obligation Refunding Bond,  
Series 2013A

Blount County, Tennessee (the "County") issued its General Obligation Refunding Bond, Series 2013A (the "Bond") on December 9, 2013. The Bond refinanced debt that was originally incurred to finance improvements to Blount Memorial Hospital (the "Hospital"). The Bond was originally purchased by JPMorgan Chase Bank ("JPMorgan") and is still held by a trust affiliated with JPMorgan. Like most bonds of this type held by banks, the Bond is subject to mandatory purchase, which is essentially the same as an early maturity date, on December 30, 2019. The Bond is secured by a pledge of the full faith and credit of the County and is additionally payable from, but not secured by, revenues derived from the operations of the Hospital. The Bond bears interest at a variable rate based upon LIBOR plus a "spread" tied to the County's public bond rating. The County has assumed certain interest rate swap agreements (the "Swap Agreements") relating to the Bond that were originally entered into by a public building authority on behalf of the County. The Swap Agreements may be terminated by the County, but the cost of terminating the Swap Agreements remains substantial.

Blount Memorial Hospital, Inc. ("BMH"), a separate non-profit corporation, operates the Hospital on behalf of the County. It is our understanding that the administration and board of directors of BMH are exploring alternatives for refinancing the Bond in anticipation of the mandatory purchase that is scheduled for next year. It is further our understanding that BMH has proposed that the Bond be financed through debt incurred by BMH, and not the County, that would be payable only from the revenues of the Hospital and that would not be secured by the credit of the County. You have asked me to provide our analysis as to whether this was legally permissible under Tennessee law and, if not, what alternatives were available to permit such a financing.

The County was originally authorized to construct the Hospital pursuant to Chapter 187 of 1945 Private Acts of the State of Tennessee (the "Private Act"). Under the Private Act, the

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County was authorized by the State Legislature to build, purchase, own and/or operate and maintain a non-profit general hospital. The Private Act gave the County the authority to own and operate the Hospital in one of three ways: (1) to accept legal title to the Hospital to be operated by some non-profit corporation organized for such purpose, (2) to own the Hospital and turn over the maintenance and operation thereof to such non-profit corporation or (3) to own, maintain and operate the Hospital under the supervision of the Quarterly County Court (now County Commission). We have never been able to locate any public records from the time frame when the Hospital was created that stipulated which alternative under the Private Act was chosen by the County. We have spoken in the past with the lawyers that were involved with the creation of the Hospital, and they also were unaware of any formal action taken to select an alternative. It is clear, however, that BMH was formed in 1946 for the purpose of leasing, operating and/or maintaining a general non-profit hospital and that BMH has been engaged with the operations of the Hospital since that time. However, we have never been able to locate any formal, written agreement between the County and the BMH regarding the lease, maintenance or operation of the Hospital Facility. It is our understanding that legal title to the primary land and improvements buildings comprising the Hospital has remained with the County, although it is our understanding that recent ancillary facilities to the Hospital have been titled in the name of BMH.

Given the lack of clarity as to the legal relationship of the County and BMH, our interpretation of that legal relationship, as we have opined to the County in the past, is that the County is the legal owner of the Hospital and that BMH is operating the Hospital as the County's agent. As permitted by the Private Act, the County has entrusted operation, management and maintenance of the Hospital Facilities to the Corporation, but the County has not ceded legal ownership of the Hospital or revenues from the Hospital to BMH. Because of the lack of clarity in this relationship, however, we have had both the County and BMH agree that Hospital revenues would be applied to pay debt relating to the Hospital, including the Bond, in past transactions.

It is important to note that if BMH was not acting as agent for the County and was actually the owner of the Hospital and its revenues, the County would not have been able to use general obligation debt to finance improvements to the Hospital. The Tennessee Constitution does not permit the County to guaranty the debt of a private entity, including a non-profit private entity. Because we have always viewed BMH as a quasi-governmental, non-profit entity acting under the Private Act as the manager, and not the owner, of the Hospital, we have been, and would continue to be, comfortable with the issuance of general obligation debt by the County for purposes relating to the Hospital.

It is my understanding that the County administration would be supportive of refinancing the Bond in a manner that did not require the backing of such refinancing with the County's full faith and credit. You asked me to summarize how such a refinancing could be accomplished from a legal perspective. There are at least four ways to achieve this goal, which are discussed below.

The first approach, and the simplest to accomplish quickly, is for the County to issue refunding debt that is only secured by the revenues of the Hospital. The County clearly has the authority under existing State statutes to undertake this type of financing. If our firm acted as bond counsel for this financing, we would require BMH to acknowledge and agree to the pledge of the revenues to avoid any ambiguity as to whether the revenues have been properly pledged, as we have required in the past. Because the debt would not be secured by the full faith and credit of the County, the debt would likely bear a higher interest rate than debt secured by the County's credit, but it is my understanding that BMH has obtained some preliminary quotes for refinancing secured by the Hospital's revenues that are reasonable.

The second alternative would be to request the State Legislature to amend and restate the Private Act in the next legislative session. The earliest this could be accomplished would likely be March of next year, and it would take a concerted effort of the County and BMH, working with your local legislators, to accomplish that goal. The Private Act could be amended and restated so that BMH is essentially reconstituted as a hospital authority, and not just as a non-profit operator, so that BMH would control the Hospital as a governmental instrumentality of the County but could independently act, as to financing matters, separately from the County. Such an amendment of the Private Act would need to be approved by County Commission. If such an amendment to the Private Act was adopted, BMH, as reconstituted, would then have the legal authority to refinance the Bond on its own without further County approval. There are other hospital authorities in the State created by private act that could serve as a model for this approach.

A third approach would be to request the State Legislature to amend the Metropolitan Hospital Authority Act (Title 7, Chapter 57, Parts 1-4 of the Tennessee Code Annotated) to permit a county with a population over 100,000 to form a hospital authority under general law. At this point, this Act only permits counties with a city with a population in excess of 200,000 to form such a hospital authority. This Act generally provides for the creation of an independent hospital authority to own and operate a public hospital, which authority is governed by a board of trustees. The existing board of directors of BMH could become the board of trustees of a new hospital authority if the statutory amendments so provided. Under this general statute, the new hospital authority would clearly have the legal right to issue revenue debt relating to the Hospital. However, this Act, unless amended, still provides that such revenue debt would need to be approved by County Commission.

A fourth approach, which would not involve the County, is for BMH to retain other bond counsel that would be willing to opine that BMH could refinance the Bond and pledge the revenues of the Hospital to the payment of the debt without County Commission approval. It is my understanding that BMH may be obtaining its own counsel to evaluate whether such an approach is feasible. A plausible argument can be made that BMH has such legal authority exists based upon the Private Act and the Private Hospital Authority Act of 1996 (Title 7, Chapter 57, Part 6 of the Tennessee Code Annotated). However, the standard of practice for a bond counsel firm to issue an opinion as to a matter such as this is for the firm to conclude that the legal authority for such a bond financing exists beyond any reasonable doubt. Given the lack

of clarity of the law in this area, it would be difficult for a firm to render such an opinion, but if a reputable firm is willing to render that opinion for BMH, then the County's involvement in the refinancing would not be required.

It is also very important to note that any refinancing would need of the Bond would need to address the status of the Swap Agreements. Under Tennessee's guidelines relating to interest rate swap agreements, the County could not have an outstanding interest rate swap agreement that was not directly related to outstanding debt of the County. Therefore, if the existing Bond was refinanced through a separate hospital authority or directly by BMH (in other words, options two through four discussed above), the County would no longer have any debt associated with the Swap Agreements, so that approach would not be permissible. Theoretically, the Swap Agreements could be assigned to and assumed by a hospital authority or BMS, but it is unlikely that the swap counterparty would agree to such an approach given the difference in credit strength between the County and an entity that just operated the hospital. So, in the second, third and fourth options discussed above, the Swap Agreements would likely need to be terminated. If the first approach was used, the Swap Agreements could remain in place, but the County would remain liable for the payments under such Swap Agreements, and that liability would not be limited to Hospital revenues.

The legal questions relating to the refinancing of the Bond highlight the need to clarify, in any event, the legal relationship of the County and BMH. It is in both parties' best interest to bring clarity to that legal relationship so that the Hospital can operate effectively in an increasingly competitive and regulated market. Addressing these issues will be very complicated, as well as time consuming, but as the challenges of this potential refinancing demonstrate, it would be best to resolve these matters ahead of time so that the legal status of the Hospital does not create an impediment to financing and other business transactions..

GMM:hkf



# Series 2013A Debt Refinancing Alternatives

	Current Capital Structure	Alternative #1: Blount County Issues Revenue Bonds	Alternative #2: Health, Educational, and Housing Facility Board of the County of Blount Issues Revenue Bonds
Series 2013A Structure	General Obligation Refunding Bonds	Hospital Revenue Refunding Bonds	Hospital Revenue Refunding Bonds
Issuing Authority	Blount County	Blount County (current Issuer)	Health, Educational, and Housing Facility Board of the County of Blount (would need to be established)
Future Issuing Authority	Blount County	Blount County	Health, Educational, and Housing Facility Board of the County of Blount
Debt Security	Unlimited ad valorem taxes to be levied on all taxable property in the County; additionally payable from, but not secured by, operations of the Hospital	Gross Revenues of Hospital Pledge, does not constitute debt of Blount County	Gross Revenues of Hospital Pledge, does not constitute debt of Blount County
Bank Provider	JP Morgan Chase	Pinnacle Bank	Pinnacle Bank*
Bank Tenor	3 years 12/30/2019	11 years 6/1/2029	11 years* 6/1/2029
Bank Pricing	67% of 1mLIBOR + 43bps Based on current rates: 1.98%	Variable Rate: 70% of 1mLIBOR + 95bps Fixed Rate: 3.97% Weighted avg based on current rates: 2.97%	Variable Rate: 70% of 1mLIBOR + 95bps* Fixed Rate: 3.97%* Weighted avg based on current rates: 2.97%
Debt Mix (with swap)	3% fixed / 76% syn fixed / 21% variable	29% fixed / 71 syn fixed / 0% variable	29% fixed / 71 syn fixed / 0% variable

Alternative #1 reflects Series 2014 Structure

Alternative #2 is possible through newly create issuing authority



S. Morris Hadden  
William C. Bovender  
William C. Argabrite  
Jimmie Carpenter Miller  
Mark S. Dessauer  
Gregory K. Haden  
Michael L. Forrester  
Stephen M. Darden  
Edward J. Webb, Jr.  
James N. L. Humphreys  
Suzanne Sweet Cook  
Michael S. Lattler  
Scott T. Powers

Respond to:  
Kingsport Office  
William C. Argabrite  
423-378-8829  
argabrite@hsdlaw.com

BMHOS-95315

**HUNTER · SMITH · DAVIS**  
SINCE 1916 LCP

Kingsport Office  
1212 North Eastman Road  
P.O. Box 3740  
Kingsport, TN 37664  
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Leslie Tentler Ridings  
Christopher D. Owens  
Chad W. Whitfield  
Jason A. Creech  
Meredith Bates Humbert  
Joseph B. Harvey  
Rachel Ralston Mancil  
Caroline Ross Williams  
Marcy E. Walker  
Matthew F. Bettis  
Sarah E. Blessing  
Teresa Mahan Lesnak \*  
Michael A. Eastridge \*  
Jeannette Smith Tysinger\*

\*Of Counsel

[www.hsdlaw.com](http://www.hsdlaw.com)

January 25, 2019

Donald Heinemann  
Chief Executive Officer and Administrator  
Blount Memorial Hospital  
907 East Lamar Alexander Parkway  
Maryville, Tennessee 37804

Re: Legal relationship between Blount Memorial Hospital, Incorporated and  
Blount County, Tennessee

Dear Mr. Heinemann:

This letter is provided in response to your request that we review the legal relationship between Blount Memorial Hospital, Incorporated ("Blount Memorial") and Blount County, Tennessee. In performing our work we have reviewed the corporate Charter of Blount Memorial and various amendments to the corporate Charter. We have also reviewed information related to the resolutions and actions of the Blount County Commission (originally known as the Quarterly County Court) in the formation of Blount Memorial as well as a letter from Bass Berry & Sims dated June 20, 2014 and a memorandum from Bass Berry & Sims dated October 4, 2018.

**Background**

We understand that the impetus for our review relates to questions raised by Blount County regarding the County's liability for certain bond debt supporting the operations of Blount Memorial. As noted in the Bass Berry & Sims October 4, 2018 memorandum, we understand that Blount Memorial is exploring options available to refinance a Series 2013A bond issue which has a mandatory purchase obligation effective December 30, 2019. The 2013A Bonds were issued by Blount County and are secured by a pledge of the full faith and credit of Blount County. We also understand that Blount County entered into a swap agreement between with Deutsche Bank pursuant to which Blount County hedged its interest rate risk under the 2013A Bonds. We further understand that Blount County has expressed interest in the possibility that Blount Memorial would be able to refund this bond debt in a manner which would remove the financial liability of Blount County. To that end, the Bass Berry & Sims memorandum dated October 4, 2018 identifies 4 possible approaches to achieving that goal.

### Analysis

Blount Memorial was created pursuant to a Private Act of the Tennessee Legislature passed on February 9, 1945. Pursuant to that Private Act, the State of Tennessee authorized Blount County to build, purchase, and own/or operate a non-profit general hospital in one of three ways: (1) to accept legal title to the hospital with the hospital to be operated by a non-profit organization organized specifically for that purpose; (2) to own the hospital and turn over the maintenance and operation of the hospital to a non-profit corporation organized specifically for that purpose; or (3) to own, maintain and operate the hospital under the supervision of the County Commission. Attached is a copy of the Private Act under Tab 1.

The Blount Memorial Charter specifically authorizes the formation of the nonprofit corporation for "the leasing, operating and/or maintaining of a general non-profit hospital." We understand that there has never been a formal lease agreement between Blount County and Blount Memorial. Accordingly, the traditional landlord-tenant relationship does not exist. In this regard, we agree with Bass Berry & Sims's conclusion that the relationship between Blount County and Blount Memorial can be characterized as a principal-agent relationship. Based upon the information which we have reviewed, it is our opinion that the legal relationship between Blount County and Blount Memorial is pursuant to Option 2 under the Private Act. In support of this opinion, we note the following:

(1) Option 2 requires the creation of a non-profit organization organized specifically for the purpose of operating and maintaining the hospital for the County. On January 7, 1946, the Quarterly County Court adopted a Resolution approving the proposed corporate Charter for Blount Memorial. The Blount Memorial Charter approved by the Quarterly County Court specifically states that the corporation is formed for "the leasing, operating and/or maintaining of a general non-profit hospital." Attached is a copy of this Resolution under Tab 2.

(2) Also on January 7, 1946, the Quarterly County Court adopted a resolution approving the appropriation of \$12,000 per year for period of five (5) years to support the operations of Blount Memorial. Consistent with Option 2, this Resolution specifically states that "the County of Blount, the City of Alcoa and the City of Maryville have agreed to operate and maintain said hospital through a non profit corporation organized by said governmental agencies:..." Attached is a copy of this Resolution under Tab 3.

(3) The Blount Memorial Charter was signed on January 12, 1946, five (5) days after the Resolutions were approved by the Quarterly County Court. One of the signers of the Charter was Geo. D. Roberts, the Blount County Judge. The Charter was filed with the Tennessee Secretary of State on January 22, 1946. Attached is a copy of the Charter as originally filed in 1946 under Tab 4.

(4) The January 7, 1946 Resolutions are part of Blount County's official records as certified by the Clerk of the County Court (See the County Clerk's Certificate dated March 5, 1985 attached to each Resolution).

(5) Over a period of some 70 years, Blount County and the Cities of Maryville and Alcoa have consistently recognized and reaffirmed Blount Memorial's authority to operate and manage the hospital without direct supervision by the County. On August 20, 1984, Blount County approved an Amendment to Blount Memorial's Charter regarding the election of members of Blount Memorial's Board of Directors and the procedure for filling vacancies. The Cities of Maryville and Alcoa also approved this Charter amendment and it was filed with the Tennessee Secretary of State on October 24, 1984. Attached is a copy of this Charter amendment which includes the approving Resolutions of Blount County, Maryville, and Alcoa under Tab 5.

On April 19, 1993, Blount County approved another amendment to Blount Memorial's Charter such that the stated purpose of the nonprofit corporation was expanded to read "... for the purpose of leasing, operating and/or maintaining a general non-profit hospital *and associated programs and facilities.*" (new language in italics). The Cities of Maryville and Alcoa also approved this Charter amendment and it was filed with the Tennessee Secretary of State on May 27, 1993. Attached is a copy of this Charter amendment which includes the approving Resolutions of Blount County, Maryville, and Alcoa under Tab 6.

(7) Option 2 specifically contemplates that the operation and maintenance of the hospital will be "turned over" to the non-profit corporation. We interpret "turned over" to evidence a clear intention to delegate authority and responsibility to Blount Memorial. Consistent with this delegation of authority and responsibility, Blount Memorial has engaged in the full range of management, administrative and operational activities including but not limited to the appointment and administration of physician medical staff, the hiring of management and staff personnel, the implementation and administration of employee benefit programs, federal and state regulatory compliance, financial accounting and reporting, contracts with vendors and third party suppliers, the structuring of payments and reimbursements with Medicare, TennCare, and other governmental payor programs, the structuring of payments and reimbursements from insurance companies and other non-governmental payor programs, and the management and acquisition of real property, equipment and other property as needed for hospital services and operations.

(8) Consistent with its delegated authority and responsibility under Option 2, Blount Memorial has invoked the Tennessee Governmental Tort Liability Act in defending itself from negligence claims. Case law confirms the applicability of the Tennessee Governmental Tort Liability Act, T.C.A. 29-20-101 *et seq.*, to protect and limit Blount Memorial's liability in tort situations. The liability protections of the Tennessee Governmental Tort Liability are only available to cities, counties and their instrumentalities.

(9) Blount Memorial is chartered as a nonprofit corporation but has not obtained status as a 501(c)(3) entity under the Internal Revenue Code. This is consistent with Blount Memorial's status as a quasi-governmental entity and an instrumentality of Blount County under Option 2 of the Private Act.

If there is a desire to explore a different legal structure between Blount County and Blount Memorial, those discussions should involve the three governmental entities, Blount County, the City of Maryville, and the City of Alcoa, as well as the Blount Memorial Board of Directors. The Blount Memorial Charter is clear that major corporate governance decisions such as amendments to the Blount Memorial Charter or the

Don Heinemann  
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dissolution of the corporation require the approval of all governmental entities and the approval of the Blount Memorial Board of Directors.

#### **Bond Financing Options**

Based upon our research, we believe it is feasible for Blount Memorial to obtain tax-exempt bond financing without invoking a general obligation liability of Blount County. Revenue bonds can be issued by Blount County which are secured by a pledge of Blount Memorial's revenues and assets but which do not represent the general obligation of Blount County. While we would defer to bond counsel on these issues, we believe that the County could act as the financing vehicle for Blount Memorial without making a general obligation commitment of its taxing power and without undertaking financial liability for the bond debt.

The first refunding approach identified in the Bass Berry & Sims October 4, 2018 memorandum is consistent with our assessment. Under that approach, Blount County would refinance the Series 2013A Bonds by issuing revenue refunding bonds secured only by the revenues of Blount Memorial. Upon completion of the refunding, the 2013A Bonds would be satisfied and Blount County would have no legal liability for the payment of the 2019 bond issue. In addition, it is our understanding that Blount County's issuance of bonds under this approach would not require a settlement of, or trigger a termination of, the swap contract previously undertaken in connection with the 2013A Bonds, thereby avoiding the payment of a swap termination fee which we understand to be approximately \$8.2 million at this time.

We will be glad to discuss this further.

Very truly yours,

HUNTER, SMITH & DAVIS, LLP



William C. Argabrite

Enclosures as stated



**Blount Memorial**  
Hospital

907 East Lamar Alexander Parkway  
Maryville, Tennessee 37804  
865-983-7211  
[blountmemorial.org](http://blountmemorial.org)

*Robert Redwine*  
*President of the Board*

*David Pesterfield*  
*Vice President of the Board*

*Don Heinemann*  
*Chief Executive Officer*

**Medical Staff**

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*Dr. Jane Souther*  
*Chief of Staff*

*Dr. Daniel Hunter*  
*Vice Chief of Staff*

January 25, 2019

SENT VIA U.S. MAIL AND E-MAIL [emitchell@blounttn.org](mailto:emitchell@blounttn.org) [rfrench@blounttn.org](mailto:rfrench@blounttn.org)

The Honorable Ed Mitchell  
Mayor of Blount County  
341 Court Street  
Maryville, TN 37804

The Honorable Ron French  
Chairman  
Blount County Board of Commissioners  
359 Court Street  
Maryville, TN 37804-5906

Dear Mayor Mitchell and Commissioner French:

This letter is in response to the questions raised regarding the legal relationship between Blount Memorial Hospital, Incorporated and Blount County as it relates to the issuance of hospital bonds. We requested a comprehensive legal review and opinion from attorney William C. Argabrite with the law firm of Hunter, Smith & Davis, LLP in Kingsport, Tennessee. Please find enclosed his analysis and opinion letter as well as attachments and supporting documents.

In summary, the enclosed legal opinion concludes:

- 1.) the legal relationship between Blount Memorial Hospital, Incorporated and Blount County was properly authorized and clearly defined; and
- 2.) agrees with the Bass Berry & Sims recommendation that the County can refinance the 2013A general obligation bonds by issuing revenue refunding bonds secured only by the revenues of Blount Memorial. Upon completion of the refinancing of the 2013A bonds, Blount County and the taxpayers would have no legal liability for the payment of the new 2019 revenue bond issue; and

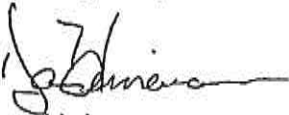


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- 3.) If there is a desire to explore a different legal structure between Blount County and Blount Memorial, those discussions should involve the three governmental entities, Blount County, the City of Maryville, and the City of Alcoa, as well as representatives of the Blount Memorial Board of Directors, since any Charter change requires approval by these entities. It isn't practical that this process could be completed prior to the deadline to refinance the 2013A bonds and should be considered a separate matter.

In closing, I am available to meet at your convenience to discuss the enclosed documents as well as discussing a plan for the refinancing of the 2013A Bonds which are due to expire at the end of this year. As always, thank you for your service to our community, and I look forward to meeting with you soon.

Best regards,



Don Heinemann  
Chief Executive Officer

DH:cmm

Enclosures

cc: Blount County Board of Commissioners  
BMH Board of Directors  
Rob Goddard, Esq.  
G. Mark Mamantov, Esq.  
Mayor Tom Taylor, Maryville  
Greg McClain, City Manager of Maryville  
Mayor Clint Abbott, Alcoa  
Mark Johnson, City Manager of Alcoa  
Senator Art Swann  
Representative Bob Ramsey  
Representative Jerome Moon