

BEFORE THE IOWA INSURANCE COMMISSIONER

330 Maple Street

Des Moines, Iowa 50319

IN THE MATTER OF

DISMISSAL

GUTTENBERG MUNICIPAL HOSPITAL

DIA NO: 09D0C1001

200 MAIN STREET, BOX 550

DIVISION FILE NO: 60432

GUTTENBERG, IA 52052-0550

This matter concerns a Statement of Charges that was filed by the Iowa Insurance Division (the Division) against Guttenberg Municipal Hospital on January 23, 2009. The Statement of Charges asserts that the respondent violated Iowa Code section 509A.13 by failing to continue providing group health insurance coverage to Francis Hartmann, a retired employee. The Division requested an order establishing that the Respondent was a public body under Iowa Code section 509A.18 and was responsible for continuing to cover Frances Hartmann and any other retired employees under its group health insurance program. The Division also requested that costs be assessed against the Respondent and that a \$5000 fine be imposed.

Following a telephonic contested case hearing on March 16, 2009, a Proposed Decision was entered by Administrative Law Judge, Laura E. Lockard on May 8, 2009 finding that the Respondent Hospital had not violated Iowa Code section 509A.13. The Division filed a Notice of Appeal on May 20, 2009 seeking a modification of the Administrative Law Judge's ruling and seeking to find the Guttenberg Municipal Hospital covered by Iowa Code section 509A.13 and required to continue Frances Hartmann's coverage at her own expense until she reached 65, and for such other relief as appropriate.

As the Commissioner has become aware that the original complainant in this matter, Frances Hartmann, has acquired comparable insurance coverage at a lesser price, this matter has been rendered moot. Consequently, the Proposed Decision of the Administrative Law Judge dated May 8, 2009 is a Final Decision for the purposes of this specific Matter.

Dated this 23rd day of February, 2011.

A handwritten signature in cursive script that reads "Susan E. Voss".

Susan E. Voss

Iowa Insurance Commissioner

Cc: Christina Hazelbaker (for Bob Koppin)	(Electronic mail)
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Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

In the Matter of)
) No. 09DOCID001
GUTTENBERG MUNICIPAL)
HOSPITAL,)
Respondent) **PROPOSED DECISION**

This matter concerns a Statement of Charges that was filed by the Iowa Insurance Division (the Division) against Guttenberg Municipal Hospital on January 23, 2009. The Statement of Charges asserts that the respondent violated Iowa Code section 509A.13 by failing to continue providing group health insurance coverage to Francis Hartmann, a retired employee. The Division requests an order establishing that the Respondent is a public body under Iowa Code section 509A.18 and is responsible for continuing to cover Frances Hartmann and any other retired employees under its group health insurance program. The Division also requests that costs be assessed against the Respondent and that a \$5,000 fine be imposed.

A telephonic contested case hearing was held on March 16, 2009. Attorneys John Leonhart and Phil Deats represented the Division. Attorneys Richard Kirschman and Karen Derry represented the appellant. Frances Hartmann, Kim Gau, CEO and administrator of Guttenberg Municipal Hospital, Kathleen Abba, CFO of Guttenberg Municipal Hospital, Ralph Heasley, director of reimbursement for Iowa Health Systems, and Maureen Keehnle, vice president and general counsel of the Iowa Hospital Association, testified.

The Division introduced Exhibits 1 and 2, which were admitted into the record as evidence. The Respondent introduced exhibits A through J, which were admitted as evidence.

FINDINGS OF FACT

A. Guttenberg Municipal Hospital: Background

Guttenberg Municipal Hospital (“GMH”) is a municipal hospital established pursuant to Iowa Code section 392.6. GMH is governed by a board of trustees elected in its service area. Construction of the hospital in 1958 was financed in part through \$100,000 in bonds issued by the City of Guttenberg that were to be repaid through a property tax assessment. (Stipulated Facts). The last payment that the city made from property tax revenue toward the bond issuance was in 1978. (Gau testimony).

Bonds were also issued by the city to fund improvements to GMH in 1976, 1995, and 1998. GMH is currently working on a bond issue to refinance its existing long-term debt under the 1998 bonds and to obtain additional financing for future construction. For the current bond issue, as well as for the 1976, 1995, and 1998 bond issues, the responsibility for repayment rests solely on GMH. The bond documents for the 1976,

1995, and 1998 bonds, as well as the proposed documents for the current bonds, explicitly state that the bonds will not be payable in any manner through taxation and will be payable only from revenues of GMH itself. (Exh. C, D, E, F).

GMH's budget is included in the City of Guttenberg's Basic Financial Statements that are issued annually. (Exh. 2). GMH submits its budget estimates to the city for inclusion in this document; the city has no input into the budget, nor does the city provide any feedback to GMH on the budget or funds in response to GMH's budget submission. (Abba testimony). On those occasions when the hospital has operated at a deficit in a particular fiscal year, the money it taps to cover the loss comes from GMH's own cash reserves, not from the city treasury. (Gau testimony).

GMH provides services to both patients who have private insurance or are self-pay and to patients who receive Medicaid and Medicare benefits. Approximately 60% of GMH's current patient revenue is derived from patients with Medicare or Medicaid. (Exh. G, H). All of the payments made to GMH from the Medicare or Medicaid programs are for specific services provided to patients. (Heasley testimony).

B. Frances Hartmann's Insurance Coverage

Frances Hartmann worked in the business office at GMH for over 26 years, retiring on December 31, 2007. She is 62 years old.

As an employee of GMH, Ms. Hartmann was eligible to participate in the Iowa Public Employees Retirement System (IPERS) pursuant to Iowa Code chapter 97B. (Stipulated Facts). In October, 2007, Ms. Hartmann attended a regional meeting in Dubuque regarding her retirement benefits under the IPERS program. The IPERS representative at that meeting told Ms. Hartmann that, because she was covered by IPERS, she would be eligible to continue receiving health insurance coverage under her employer's group insurance after her retirement. The coverage would not be COBRA coverage, but would be coverage as a retired employee under Iowa Code section 509A.13. Ms. Hartmann understood that she would have to pay for the continued group coverage. (Hartmann testimony).

In November, 2007, Ms. Hartmann contacted the Insurance Division with an inquiry about coverage under section 509A.13. The individual with whom Ms. Hartmann spoke told her that he believed she might be covered under section 509A.13, but that she could not do anything about it until after her retirement. (Hartmann testimony).

Ms. Hartmann turned in her resignation to GMH in early December, 2007. She spoke with the human resources department at GMH on December 20, 2007. The human resources department informed Ms. Hartmann that she could elect COBRA coverage for 18 months after her retirement date. Ms. Hartmann stated that she wished to continue coverage under section 509A.13. On December 28, 2007, GMH's human resources department sent Ms. Hartmann an e-mail indicating that coverage under section 509A.13 was denied based on the definitions contained in that section. (Hartmann testimony).

Ms. Hartmann elected to continue with insurance coverage under COBRA after her retirement. Ms. Hartmann pays 2% over the cost of employee coverage to be covered under COBRA. Ms. Hartmann's 18 months of COBRA coverage will end in June, 2009. (Hartmann testimony).

CONCLUSIONS OF LAW

Iowa law provides certain protections for public employees who receive group health insurance coverage through their employers. At issue in this appeal is the statutory mandate for employers of public employees to allow an employee who retires prior to age 65 to continue to participate in group health insurance coverage at the employee's own expense until he or she reaches age 65. Iowa Code section 509A.13 provides that:

If a governing body, a county board of supervisors, or a city council has procured for its employees accident, health, or hospitalization insurance, or a medical service plan, or has contracted with a health maintenance organization authorized to do business in this state, the governing body, county board of supervisors, or city council shall allow its employees who retired before attaining sixty-five years of age to continue participation in the group plan or under the group contract at the employee's own expense until the employee attains sixty-five years of age.

Governing body is defined as "the executive council of the state, the school boards of school districts, and the superintendent or other person in charge of an institution supported in whole or in part by public funds."¹ Institutions supported in whole or in part by public funds are referred to in the statute as "tax-supported institutions."² The crux of the dispute between the parties here is whether GMH is a governing body, and therefore required to provide ongoing group health insurance coverage to its retired employees under age 65.

The Division argues that GMH does fall under the definition of governing body, citing a number of factors it believe supports this construction: 1) GMH is a municipal hospital that was established by the city of Guttenberg and its initial construction was financed in part by \$100,000 of general obligation bonds issued by the city that were repaid by property taxes; 2) GMH's employees participate in the IPERS retirement system; 3) the city issued general revenue bonds for hospital buildings and equipment; 4) GMH's budget is included in the city of Guttenberg's annual auditor's report, which characterizes GMH as part of the city's "primary government; and 5) GMH receives reimbursement from Medicaid and Medicare for provision of patient services.

GMH argues that to qualify as a governing body an entity must currently be supported by public tax funds and urges that GMH does not fall under this definition.

¹ Iowa Code § 509A.11(1) (2009).

² Iowa Code § 509A.1 (2009).

A. *Employer Participation in IPERS*

The Division asserts that the fact that GMH's employees are covered under IPERS is evidence that the provisions of section 509A.13 should also apply to GMH's employees. The fact, however, is that the prerequisites for an employer to participate in the IPERS system are different than the prerequisites for section 509A.13.

Covered employers under IPERS are "[a]ll public employers in the state of Iowa, its cities, counties, townships, agencies, political subdivisions, instrumentalities and public schools."³ City hospitals are specifically included in the non-exhaustive listing of IPERS-covered employers.⁴ In contrast, chapter 509A includes a requirement that the institution be supported in whole or in part by public funds.

The statutory scheme that provides for continuing group health insurance coverage for public employees defines covered employers differently than does the regulatory scheme that establishes which employers must participate in the IPERS system. While there will certainly be some employers who are covered under IPERS and who also fit under chapter 509A, an employer's participation in IPERS does not conclusively establish that the employer is classified as a governing body under chapter 509A.

B. *GMH's Receipt of Medicare and Medicaid Reimbursement for Patient Services*

Although not alleged in its statement of charges, at hearing the Division asserted that GMH's receipt of Medicare and Medicaid funds for reimbursement of patient services constitutes a form of public support that brings GMH under the purview of section 509A.13.

The parties stipulated that the Medicare and Medicaid funds that GMH receives are paid in exchange for patient services provided by the hospital. In much the same manner as private insurance companies, Medicare and Medicaid reimburse health care providers for covered services provided to those patients who are covered by the programs.

The fee-for-services arrangement that GMH has with Medicare and Medicaid does not constitute public support within the meaning of chapter 509A.⁵ It is certainly true that the funds used by Medicare and Medicaid to reimburse the hospital for services are directly attributable to federal and state tax dollars. Those funds, however, are being paid on behalf of the patients receiving services. The public support is going to the patient, not to the institution. If the patient elects to go elsewhere, so too do the Medicare or Medicaid dollars.

If receipt of Medicare or Medicaid funds constituted public support for purposes of chapter 509A, many private entities – doctors, hospitals, and other health care providers – would be swept up in the provisions of chapter 509A. Likewise, if receiving tax money in exchange for providing services was enough to bring an employer under

³ 495 Iowa Administrative Code (IAC) 4.1(1).

⁴ 495 IAC 4.1(1)(d).

⁵ See *Indianapolis Convention & Visitors Ass'n, Inc. v. Indianapolis Newspapers, Inc.*, 577 N.E.2d 208, 212-13 (Ind. 1991).

chapter 509A, any private contractor providing any service to government who was paid with tax dollars would be covered. This was surely not the intent of the legislature.⁶

C. *City of Guttenberg's Relationship with and Support of GMH*

In order to get to the bottom of whether GMH is covered under chapter 509A, it is necessary to examine in depth the city of Guttenberg's relationship with the hospital, both past and present.

The parties have stipulated that the hospital was established pursuant to Iowa Code section 392.6. That section provides for election of a board of trustees for a hospital or health care facility established by a city. There are only two references in section 392.6 to funding of the hospital. First, the board of trustees that is established may accept property as a gift or bequest, sell or exchange the property at public sale, and apply the proceeds to any legitimate hospital purpose. Second, the board of trustees may establish a fund for depreciation as a separate fund and invest those funds in United States government bonds. There is nothing in the section that requires a city, state, or other governmental body to fund the hospital that is established. The section is silent as to precisely how the municipal hospital will fund its building, maintenance, equipment, and day-to-day operations.⁷

Three principal aspects of the city's relationship with GMH have been asserted by the Division as supporting the conclusion that GMH is supported in whole or part by public funds: 1) the city's issuance of general obligation bonds to fund initial construction of GMH; 2) the city's issuance of revenue bonds to fund projects related to expansion of GMH; and 3) the city's characterization of GMH as "part of the primary government" in its 2007 financial statements.

We know in this case that the city of Guttenberg assisted the hospital in obtaining \$100,000 of the necessary capital for initial construction through the issuance of general obligation bonds. These bonds were repaid by the city through a property tax assessment.

The process for issuance of general obligation bonds is contained in Iowa Code chapter 384. In short, a city may issue general obligation bonds in order to fund projects that fulfill a general corporate purpose, which includes constructing and equipping a city hospital.⁸ The bond issuance must be authorized by voters in a special election, and the bonds are payable from the levy of city property taxes.⁹

⁶ See *Sioux City Community School District v. Iowa State Board of Public Instruction*, 402 N.W.2d 739, 743 (Iowa 1987) (legislative intent behind chapter 509A was to "assure public employees that their fringe benefits, paid by employee contributions and tax funds, will be afforded the protection provided by the insurance commissioner's regulation of insurance providers").

⁷ In contrast, county hospitals must be supported, at least in part, through county tax dollars. A county's board of supervisors must levy a tax in order to fund the county hospital fund and, if revenue bonds are outstanding, may levy a tax to pay operating and maintenance expenses of the hospital. Iowa Code § 347.7 (2009).

⁸ Iowa Code §§ 384.26(1); 384.24(2)(h) (2009).

⁹ Iowa Code §§ 384.26; 384.24(1) (2009).

The city undertook this endeavor and issued \$100,000 of general obligation bonds in 1958. The city levied taxes each year sufficient to pay a specified amount of principal and interest on the bonds. The last payment that the city made to the hospital related to this initial bond issuance was in 1978.

In addition to the general obligation bond issuance undertaken in 1958, the city has issued revenue bonds on three additional occasions — in 1976, 1995, and 1998 — to fund improvement projects for the hospital. At the time of hearing, GHM was in negotiations with the city for another revenue bond issuance that would fund additional construction for the hospital.

Like general obligation bonds, a city can use revenue bonds to fund city projects, including construction, expansion, and improvement of a city hospital.¹⁰ The primary difference between revenue bonds and general obligation bonds is that, while general obligation bonds are the obligation of the city to repay, the obligation to repay revenue bonds falls to the particular city enterprise that is receiving the funds.¹¹ What that means here is that GMH is responsible for paying principal and interest on the revenue bonds that were issued in 1976, 1995, and 1998. The city has no obligation for the debt. The bond documents themselves clearly state that this is so, and the statute that enables the bond issuance makes clear that this is the case.

The revenue bond issuance does not in itself render GMH an institution that is supported in whole or in part by public funds.¹² In its hearing brief, GMH describes the city as a conduit for GMH's receipt of funds through revenue bonds. This is an accurate description of the relationship. GMH's status as a "city enterprise" is what allows it to qualify for this special form of funding, but the city itself does not incur the debt; that is the sole obligation of GMH. GMH repays, with interest, the money that it receives through the issuance of revenue bonds.

GMH's receipt of start-up capital through the issuance of general obligation bonds, however, presents a closer question. GMH does not dispute that the city paid the general obligation bonds through a property tax assessment, which qualifies as public funding. GMH does not appear to dispute that the receipt of those funds at the time would have rendered GMH a tax-supported institution had this case come up then. Instead, GMH argues that the statutory language — "supported in whole or in part by public funds" and "tax-supported institution" — refers only to institutions that are currently receiving tax funds. Because its receipt of public monies is in the past, GMH argues that it does not fall under the chapter 509A definition.

¹⁰ Iowa Code §§ 384.82(1); 384.80(12) (2009).

¹¹ Iowa Code §§ 384.24(1); 384.87 (2009).

¹² See *Blankenship v. Brazos Higher Education Authority*, 975 S.W.2d 353, 360-61 (Tex. Ct. App. 1998) (nonprofit corporation's receipt of money through revenue bond issuance does not support conclusion that the corporation is supported by public funds if principal and interest on the bonds is paid for in full by the corporation's net revenues).

In support of its position, GMH argues that the language of chapter 509A is phrased in the present tense: “supported in whole or in part by public funds” and “tax-supported institution.” I am not convinced, however, that this passive voice articulation of the requirement necessarily leads to the conclusion that the support must be current and ongoing.

Complicating the issue is that the legislature has not provided any test for determining whether an institution is “supported in whole or in part by public funds.” The words “in whole or in part” seem to open up a wide array of institutions that could be subject to chapter 509A.

The Iowa Supreme Court has offered some guidance as to the legislative intent of chapter 509A. Specifically, the Court declared that the underlying legislative intent of that chapter is “to assure public employees that their fringe benefits, paid by employee contributions and tax funds, will be afforded the protection provided by the insurance commissioner’s regulation of insurance providers.”¹³ The issue before the Court in that case, however, was not continuing coverage, but the selection of an insurance provider by an entity that clearly fell within the scope of the chapter.

Examining the totality of the circumstances in this case, I do not find that GMH is supported in whole or in part by public funds, as required by chapter 509A. GMH was established in 1958 and the sum total of the public funding it received — at least as far as the evidence in this case demonstrates — was \$100,000 in 1958 from the city’s issuance of general obligation bonds to fund initial construction. The hospital has operated continuously from its opening to the present. In fiscal year 2008, the hospital generated over \$11 million in revenue. The \$100,000 that GMH received in 1958 is a mere drop in the bucket when viewed as part of the totality of its operations from the time it opened in approximately 1960 to today.

While the facts and circumstances presented in this case lead me to this conclusion, it is not clear that the past/present distinction should be viewed as a bright-line rule for chapter 509A. A closer case would be presented if the institution in question had more recently received public funding and if the public funding represented a greater portion of the institution’s operating budget.

ORDER

Respondent Guttenberg Municipal Hospital has not violated Iowa code section 509A.13. The Division’s request for an order establishing that Respondent must provide continuing group health insurance coverage to its retired employees under section 509A.13 is denied. The Division shall take any action necessary to implement this decision.

¹³ *Sioux City Community School District*, 743 N.W.2d at 743.

Dated this 8th day of May, 2009.



Laura E. Lockard
Administrative Law Judge

cc: Christina Hazelbaker (for Philip Deats) (electronic mail)
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Eric Schwartz, Esq. (first class mail)
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NOTICE

This decision shall become a final decision unless there is an appeal to, or review on motion of, the Insurance Commissioner within 30 days from the date of the decision.¹⁴ Any adversely impacted party may make an appeal to the Commissioner within 30 days of the date of the decision. The appeal must specify:

- 1) The proposed decision or order appealed from;
- 2) The parties initiating the appeal;
- 3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- 4) The grounds for relief; and
- 5) The relief sought.

¹⁴ 191 Iowa Administrative Code (IAC) 3.27.