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Via email: jam@cookeville-tn.gov

James Mills, City Manager
City of Cookeville
45 East Broad Street
Cookeville, TN 38501

Re: Mayor Ricky Shelton / Cookeville Regional Medical Center

Dear Mr. Mills:

Thank you for contacting our firm to investigate whether Mayor Ricky Shelton violated any applicable City of Cookeville ("Cookeville" or "the City") Charter provision or State Statutes when he applied for, interviewed, and accepted a job with the Cookeville Regional Medical Center ("CRMC"). This request arises from discussions and vote during the February 4, 2021 City Council meeting. For the reasons set forth in this letter, our investigation concludes that Mayor Shelton did not violate any applicable City Charter provision or State Statutes when he applied for, interviewed, and accepted a job with CRMC.

Scope of Investigation

Section 14.02 of Cookeville's Charter authorizes the City Council, City Manager or certain other designees "to inquire into the conduct of any office, department, agency or officer of the city and to make investigations as to municipal affairs..." In addition, § 2.05(5) authorizes the City Council to "[i]nquire into the conduct of any office, department or agency of the city and make investigations as to municipal officers."

CRMC's Private Act, § 12 provides "Cookeville City Council shall have authority to inquire into the operation of the hospital facilities and to this end [sic] empowered to have access to and examine the business records of said hospital facilities during regular business hours." In our view, § 12 is limited to actual hospital facilities (i.e. real property and perhaps personal property, equipment, fixtures, etc.). We base this conclusion on the limited scope of City Council's authority to oversee CRMC as further discussed later in this letter.

Thus, the scope of this investigation performed on behalf of the City must be limited to whether Mr. Shelton violated any City Codes or State Statutes. This investigation does not address whether Mr. Shelton, or CRMC's process to hire a Chief Strategy Officer, violated CRMC's Charter or By-Laws. That analysis, if desired, must be undertaken by CRMC or its Board.

Applicable Laws

Cookeville's Charter addresses Conflicts of Interests at § 14.05 which refers to Tenn. Code Ann. §§ 12-4-101, 6-54-107, and 6-54-108, and it incorporates those state statutory provisions "as if said code sections were copied herein verbatim."

Without including the complete statutory language in this correspondence, the following briefly summarizes the statutes which focus on contracts between a municipality and a municipal office holder (or others as it relates to § 12-4-101) for the provision of goods or services:

Tenn. Code Ann. § 12-4-101. Title 4, Chapter 12 relates to Public Contracts, and this section addresses situations where a public official has a direct, indirect, or controlling interest in a public contract.

Tenn. Code Ann. § 6-54-107. Title 6, Chapter 54 relates to Municipal Powers, and this section provides that a municipal office holder shall not contract with the city for performance of any work which is paid for by the city. The section also addresses the level of a municipal office holder's interest in the contract by again outlining direct, indirect, or controlling interests.

Tenn. Code Ann. § 6-54-108. This section requires that a municipal office holder "forfeit the amount so paid" under a contract described in § 6-54-107 if the municipal office holder unlawfully violates § 6-54-107.

The State Legislature established CRMC by the Private Acts of 1999, Chapter 49 and the legislature periodically amends the CRMC Private Act. Section 4 of the CRMC Private Act governs membership on the CRMC Board of Trustees. An April 16, 2007 amendment, Private Chapter No. 31, Senate Bill No. 2363, amended Section 4 of the Private Act to provide "one (1) trustee shall be the person who is holding the office of mayor of the City of Cookeville, or the mayor's designee from the city council..."¹ That amendment survived subsequent amendments and remains in the CRMC Private Act.

Section 13 of the Private Act prohibits any City of Cookeville employee from serving on the CRMC Board.

At least one Council member questioned whether there was an "appearance of impropriety" standard related to this investigation, and this phrase is also found in the February 4, 2021 City Council

¹ It is possible that the State Legislature amended §4 to include "or the mayor's designee" between 1999 and 2007, but the original timing of that amendment is not relevant since the language existed in Fall 2020.

Minutes. We are not aware of an “appearance of impropriety” standard that applies to conflicts of interest involving municipal officers upon which we could investigate and form a conclusion. Rule 10 of the Code of Judicial Conduct and Rule 8 of the Rules of Professional Responsibility governing attorneys address “appearance of impropriety.” Those Rules, however, do not apply to municipal office holders. As a result, the only appropriate standard for this investigation is whether a violation of City Charter or State Statute occurred.

Relationship Between the City of Cookeville and CRMC

Our understanding through various conversations with City and CRMC officials and review of multiple documents is that, as discussed above, CRMC is a community hospital established by a Private Act and overseen by an independent Board of Trustees as set forth in Section 9 of the Private Act. The City Council plays three roles related to CRMC. First, § 2.05(6) and 9.01 of the Charter authorizes City Council to “[a]ppoint the members of the Hospital Board of Trustees.” Second, CRMC must provide City Council “financial statements and other reports as may be required by said council” as set forth in § 13 of the Private Act in addition to “submit[ing] annually to the Cookeville City Council, . . . a budget . . . as required by CRMC By-Laws §3.7.11. The City of Cookeville, however, does not provide funding to CRMC. Third, the City of Cookeville actually owns the real property where CRMC operates.

The CRMC Board of Trustees hires “and define[s] the duties and establish[es] the compensation of” CRMC’s Chief Executive Officer. As a practical matter, the CEO maintains responsibility for other CRMC hires.

Facts

Our investigation included interviews with all Council members, Council attorney and CRMC Board Member Danny Rader, and CRMC General Counsel Luke Hill. We do not believe the scope of this investigation necessitated an interview with other CRMC employees or CRMC Board Members.

Slight variations existed regarding the specific timing of events, but the general timeline of events follows.

Cookeville City Council includes five Councilmembers elected to four-year terms with two term limits. Traditionally, the Mayor, as voted on by the Council, is the leading vote getter in the election. Councilmembers complete Conflict Disclosures with the State of Tennessee and complete a Statement of Intent Form, or something similar, with the State.

Mr. Shelton, as Mayor, served on the CRMC Board of Trustees until he began working for CRMC.

CRMC Chief Executive Officer Paul Korth decided in the summer of 2020 to elevate the Director of Marketing & Public Relations position which was being vacated by Melahn Finley to an Executive level position to include marketing and strategic initiatives under the title “Chief Strategy

Officer.” Mr. Korth created the position to "play a vital role for the medical center by focusing on CRMC's future strategic development and direction" according to the job posting. Mr. Korth posted the position on September 30, 2020 via CRMC's job posting site, which may also have been picked up by external sites like Indeed. The posting included an application deadline of September 30, 2020.

Mr. Shelton states that he learned of the position from his brother, a CRMC employee, and others who told him about it. He did not speak to other CRMC Board members before applying.

Ultimately, Mr. Shelton and seventeen other individuals applied for the position by submitting applications through CRMC's Human Resources website. Mr. Korth interviewed two applicants, including Mr. Shelton. He interviewed one candidate on October 7, 2020, and he interviewed Mr. Shelton on October 23, 2020.

Mr. Shelton contacted Mr. Rader on two separate occasions to determine whether his actions did not violate any City Code or State Statute. He first contacted Mr. Rader before he applied, and he contacted Mr. Rader a second time before accepting the position. Mr. Rader confirmed to Mr. Shelton that actions did not violate any City Code or State Statute.

As part of the CRMC Board's annual review of its own By-Laws, rookie Trustee Attorney Danny Rader in October 2020 discovered that the CRMC By-laws were not consistent with the CRMC Private Act related to the Mayor's service on the Board and his ability to designate another Councilmember to serve in his place. CRMC General Counsel Luke Hill reviewed the applicable governing documents and proposed via Memo dated October 23, 2020 adding "or the Mayor's designee from the city council" to Section 3.3.3 of the CRMC By-laws. The CRMC Board reviewed and approved this revision at a meeting in early December 2020.

Interestingly, CRMC By-Law 3.3.6E dated September 27, 2018 already provided:

No election or action on the part of the City Council is required to replace or name a successor Trustee when a new Mayor of Cookeville or new Chief of Staff of the Cookeville Regional Medical Center takes office. The new Mayor (or his/her designee as per 3.3.3) or new Chief of Staff shall automatically become an *ex officio voting* member with all duties, rights and responsibilities to succeed the former Mayor or former Chief of Staff, respectively.

Thus, the CRMC By-laws as recently as September 27, 2018 already included the "or his/her designee" language from the May 2011 Private Act amendment. The 2020 By-Law §3.3.3 amendment served to further clarify what already existed in both the Private Act and By-Law §3.3.6E.

Mr. Korth, on behalf of CRMC, offered the Chief Strategy Officer position to Mr. Shelton on November 4, 2020. The job offer did not require approval by the CRMC Board. Mr. Shelton accepted the position on November 6, 2020.

Prior to City Council's December 2020 Work Session, Mr. Shelton notified the other Councilmembers separately regarding his job offer from CRMC. This represents the first time other Councilmembers knew of this new position and Mr. Shelton's application, interview, and acceptance. As part of that process, Mr. Shelton asked Vice Mayor Laurin Wheaton to serve on the CRMC Board of Trustees as the Mayor's designee, and Mr. Shelton announced that appointment of Ms. Wheaton at the December 2020 City Council meeting. CRMC announced Mr. Shelton's hire the day after City Council's December 2020 Work Session, and Mr. Shelton posted the announcement on his social media as well. He began work at CRMC on January 4, 2021.

Council Members, including Mr. Shelton, confirmed that Mr. Shelton will abstain from voting on any CRMC matters in the future as long as he remains employed by CRMC.

Conclusion

Based upon the interviews we conducted, review of the City of Cookeville Charter, review of the CRMC Private Act and By-Laws, and the state statutes referenced in the Charter's Conflicts of Interest provision, we conclude Mr. Shelton's actions did not violate the City of Cookeville Charter or any state law regarding Conflicts of Interest. Specifically, Mr. Shelton's pursuit and acceptance of employment with CRMC did not involve a contract "for the performance of any work that is to be paid for out of the [City] treasury" as prohibited by Tenn. Code Ann. § 6-54-107.

Thank you again for the opportunity to assist the City with this process. If the City Council would like me to attend a public meeting to discuss these findings, please let me know. I will work with you and the Council to find a mutually agreeable date and time to do so.

With warm regards,



William J. Carver

WJC/mml