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DEPARTMENT OF JUSTICE
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OPINION 13-0189

Ms. Deborah Cunningham Foshee
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Jefferson Parish
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1221 Elmwood Park Blvd., Suite 701
Jefferson, LA 70123

90 – B – 4 – PUBLIC MEETINGS – State & Local Governing Bodies

La. Const. Art. XII, §3

La. R.S. 42:14

The Jefferson Parish Council, as the governing authority of the Parish's hospital service districts, may discuss marketing strategies and strategic plans, as defined by the Enhanced Ability to Compete Act, in executive session.

Dear Ms. Cunningham Foshee:

Our office received your request for an opinion submitted on behalf of the Jefferson Parish Council ("Council") on the Open Meetings Law¹ and the Enhanced Ability to Compete Act.² In particular, the Council requests an opinion as to whether the Open Meetings Law permits the Council, as the governing authority of the Districts, to discuss and develop marketing strategies and strategic plans, as defined by the Enhanced Ability to Compete Act, in executive session.

As background, your letter states that the Council is the governing authority of the Jefferson Parish Hospital and Health Service District, Hospital Service District No. 1, and Hospital Service District No. 2 ("Districts").³ Further, Section 17-18 of the Jefferson Parish Code of Ordinances provides:

The parish council acting as governing authority of Jefferson Parish Hospital and Health Services District, Jefferson Parish Hospital Service District No. 1, and Jefferson Parish Hospital Service District No. 2 shall conduct the respective hospital service districts [sic] business at an appropriate time during the parish council meeting as indicated on the meeting agenda.

The Districts' bylaws each provide the duties of the respective districts and each provides that the Board of Directors has the authority to execute contracts and other documents deemed necessary or desirable for the orderly business operations of the district, subject to certain exceptions. One of such exceptions is that "any agreement,

¹ La. R.S. 42:11-28.

² La. R.S. 46:1071-1076.

³ See Jefferson Parish Code of Ordinances, Sec. 17-14, 17-16 and 17-17.

memorandum of understanding, and/or contract that binds the District to future action, the effect of which shall constitute a merger, sale or consolidation of the District and its property and/or equipment or that would effect a similar change in the operations of the District shall require the prior approval of the Council as the governing authority of the District."⁴

Your request letter states that the Council has availed itself of the provisions of the Enhanced Ability to Compete Act by going into executive session for discussion and development of marketing strategies and strategic plans to "maintain the viability of the Parish's community hospitals." Your letter further asserts that the Council "does not and has not voted in Executive Session on this or any other item discussed in Executive Session. All actions by the Council are taken in public." You have specifically limited your request to the question of compliance with the Open Meetings Law by the Council, rather than the Districts.

The right to observe the deliberations of public bodies, except in cases established by law, is guaranteed by La. Const. art. XII, §3. The Open Meetings Law describes and defines this constitutional right. The legislature has identified the purpose of this body of law within the statutes, instructing liberal construction:

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of this Chapter shall be construed liberally.

La. R.S. 42:12(A).

As a general principle of the Open Meetings Law, all meetings of public bodies shall be open to the public unless closed pursuant to La. R.S. 42:16-18.⁵

The legislature clearly identifies the purpose of the Enhanced Ability to Compete Act in La. R.S. 46:1071, also instructing liberal construction:

The legislature hereby finds that the market for hospital and health care services is becoming increasingly competitive. The legislature finds that hospital and other health care providers are contracting to engage in economic joint ventures or form partnerships to offer integrated health care services to the public. The legislature finds that this increasing competition is forcing hospitals and other health care providers to develop market strategies and strategic plans to effectively compete. The legislature further finds that hospital service districts are presently at a

⁴ See the Bylaws for each respective district, Part IV Board of Directors, Section H(5).

⁵ La. R.S. 42:14(A). For purposes of the Open Meetings Law, a "public body" is defined in La. R.S. 42:13(A)(3) and a "meeting" is defined in La. R.S. 42:13(A)(2).

competitive disadvantage. The legislature hereby declares that the purpose of R.S. 46:1071 through 1076 is to enhance the ability of a hospital service district to compete effectively and equally in the market for health care services. Towards this end, the provisions of R.S. 46:1071 through 1076 shall be construed liberally.

Your question specifically concerns the discussion of marketing strategies and strategic plans in executive session by the Council. These terms are specifically defined by the Enhanced Ability to Compete Act: "market strategies" means "any plan, strategy, or device developed or intended to promote, sell, or offer to sell any hospital health service" and "strategic plans" means "any plan, strategy, or device developed or intended to construct, operate, maintain a health facility or engage in providing, promoting, or selling a hospital health service."⁶ Further, of relevance to your inquiry, La. R.S. 46:1072(6) defines a "hospital service district commission" to mean "the governing authority or managing board of a hospital service district as defined herein."

The Enhanced Ability to Compete Act specifically provides for the confidentiality of market strategies or strategic plans in La. R.S. 46:1073:

A. In addition to powers and duties otherwise provided and notwithstanding any law to the contrary, a hospital service district may develop marketing strategies for its existing hospital health services or any hospital health service to be provided in the future and may develop strategic plans for the development of any future hospital health service or facility.

B. Notwithstanding the provisions of R.S. 42:11 et seq. or any other law to the contrary, a hospital service district commission may hold an executive session for the discussion and development of marketing strategies and strategic plans.

C. Notwithstanding the provisions of R.S. 44:1 et seq. or any other law to the contrary, any marketing strategy and strategic plan of a hospital service district commission and the facility owned or operated by the district shall not be public record and shall be confidential but shall be subject to court subpoena.

La. R.S. 42:17(A) enumerates the various reasons a public body may hold an executive session, none of which refer to the Enhanced Ability to Compete Act. However, La. R.S. 42:17(A)(10) allows for an executive session for "any other matters now provided for or as may be provided for by the legislature." Since the legislature provided for the confidential nature of marketing strategies and strategic plans of a hospital service district commission, it is appropriate to recognize La. R.S. 46:1073(B) as a reason for executive session under La. R.S. 42:17(A)(10). The governing authority of a hospital service district is included in the definition of a hospital service district commission.⁷ As

⁶ La. R.S. 46:1072(3)-(4).

⁷ La. R.S. 46:1072(6).

the governing authority of the Districts, this statute permits the Council, as well as the Districts, to hold an executive session for the discussion and development of marketing strategies and strategic plans. Therefore, notwithstanding the Open Meetings Law, La. R.S. 46:1073(B) permits a hospital service district commission to hold an executive session for the discussion and development of marketing strategies and strategic plans. In accord is La. Atty. Gen. Op. No. 96-371. In conclusion, it is the opinion of this office that it is permissible for the Council, as the governing authority of the Districts, to discuss marketing strategies and strategic plans, as defined by the Enhanced Ability to Complete Act, in executive session.

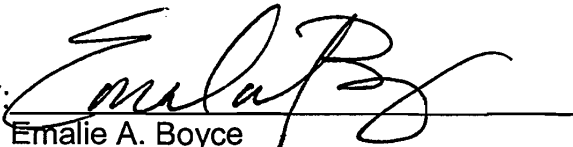
Your request provides no facts as to how the Council has determined what matters qualify as a marketing strategy or strategic plan, and we provide no opinion as to the correctness of such determination.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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JDC: EAB