March 24, 2011
Donald F. Oliver
Walker County Attorney
P.O. Box 445
LaFayette, Georgia 30728
Re: Line of Credit Documents with the Chattanooga-Hamilton County Hospital Authority d/b/a Erlanger Health System (ìErlangerî)

Dear Don:
At your request, I have reviewed the captioned line of credit documents to determine whether the Hospital Authority of Walker, Dade, and Catoosa Counties (the ìAuthorityî) and Walker and Catoosa Counties (collectively the ìCountiesî) may enter into them without violating Georgia law. The short answer is that neither the Authority nor the Counties may enter into the line of credit documents as drafted without violating Georgia law.
Delegation of the Hospital Authority's Total Discretion to a Non Profit-In the documents provided there is a wholesale delegation of the operation and expenditures of the Hospital to a non profit without any type of control by the Authority. It is true that the Appellate Courts have in recent years given great deference to Hospital Authorities in leasing to non profits, but there are limits. Never can the public Hospital Authority become subservient to the non profit. The agreements I have reviewed clearly have that result. This doctrine was best articulated in the case of *Kendall, v. Griffin-Spalding County Hospital Authority, 242 Ga. App. 821, 531 S.E2d 396 (2000)* where the Court of Appeals stated as follows:

The Authority's reliance on *Richmond County Hosp. Auth. v. Richmond County*, 255 Ga. 183, 336 S.E.2d 562 (1985), is misplaced. The court in *Richmond* approved a **hospital authority's lease** with four private corporations pursuant to the provisions of OCGA ß 31-7-75(7), which specifically approves such **leases** subject to certain conditions. **The court did not approve a complete transfer of all the hospital authority's functions and responsibilities to the private hospitals**. While the Authority is clearly permitted to delegate necessary powers and duties to its officers under OCGA ß 31-7-74, we find no authority, express or implied, that would permit the Authority to transfer the power and discretion to carry out all of its functions to a separate entity, as was done in this case. Even construing the statute liberally, we conclude that we cannot interpret it to allow these actions without resorting to ì 'subtle and forced constructions.' î *Burbridge v. Hensley*, supra, 194 Ga.App. at 524, 391 S.E.2d 5. Accordingly, we must reverse the trial court on this point. See *Tift County Hosp. Auth. v. MRS of Tifton &c.*, supra, 255 Ga. at 166(2), 335 S.E.2d 546. (emphasis supplied)

It is therefore my opinion that the documents must be restructured so as to allow the Authority to maintain final control sufficient to meet the *Kendall*

requirements.

The Line of Credit Note - The Note as written is signed by the Authority and Hutcheson Medical Center, Inc. (ìHMCî), as co-makers. HMC is the only party permitted to borrow money under the line of credit; the Authority is not permitted to make draws. The obligations of the Authority under the Note are non-recourse, payable solely from property encumbered by the Deed to Secure Debt and Security Agreement and from payments received under the Intergovernmental Agreement. Under O.C.G.A. ß 11-3-116(a), the Authority would be jointly and severally liable under the Note with HMC, which in effect makes the Authority a guarantor of a loan made to HMC. Under the Hospital Authorities Law, the Authority does not have the express power to become a co-maker on a note with another party and does not have the power to guarantee the obligations of another party. Since the legal principle known as ìDillon's Ruleî applies to the Authority, the execution of the Note by the Authority would be an ultra vires act. Furthermore, under O.C.G.A. ß 31-7-88, ìobligations of an authority other than [revenue anticipation] certificates shall be payable from general funds of an authority....î The non-recourse feature of the Note violates that code section. Under the Hospital Authorities Law, a hospital authority can issue two types of obligations: (1) revenue anticipation certificates and (2) other obligations, such as notes. Revenue anticipation certificates can only be issued to finance or refinance project costs (see O.C.G.A. ß 31-7-78(a)). Revenue anticipation certificates cannot be issued to finance working capital. Only other types of obligations, such as notes, of a hospital authority may be issued to finance working capital, and under O.C.G.A. ß 31-7-88 those other types of obligations are required to be general obligations of a hospital authority, not limited recourse obligations as the Note is drafted.

The Intergovernmental Agreement - The obligations of the Counties under the Intergovernmental Agreement (the ìIGAî) are drafted as guarantees of the obligations of the Authority and HMC to Erlanger under the Note, as well as agreements of the Counties to pay all expenses of Erlanger in collecting the Note. First, by making direct commitments in the IGA to an entity that is not a Georgia governmental entity (i.e., Erlanger), the IGA loses its character as an intergovernmental contract under the Georgia Constitution, and since the Counties' obligations under the IGA are unconditional obligations with a life of more than one year, the IGA consequently violates the debt limitation clause of the Georgia Constitution (Article IX, Section V, Paragraph I(a)). Second, and more fundamentally, even if the guarantees could only be enforced by the Authority, and not Erlanger, under the Supreme Court's decision in Nations v. Downtown Development Authority of the City of Atlanta, 255 Ga. 324 (1986), a guarantee cannot be considered as a service within the meaning of the intergovernmental contracts clause of the Georgia Constitution (Article IX, Section III, Paragraph I), and a guarantee cannot be the subject of an intergovernmental contract. Since the intergovernmental contracts clause is an

exception to the debt limitation clause of the Georgia Constitution and since the guarantee takes the IGA out of the intergovernmental contracts clause of the Georgia Constitution, the IGA violates the debt limitation clause of the Georgia Constitution and becomes an invalid obligation of the Counties.
In summary, you, as the Walker County Attorney and as counsel to the Authority, cannot give legal opinions that the above-described documents as currently drafted are valid, binding, or enforceable obligations of Walker County or the Authority. In addition, if the Authority or the Counties entered into these documents, they would violate the Georgia Constitution and the Hospital Authorities Law.

There is a way, however, to craft documents to accomplish this working capital financing in compliance with the Constitution and statutes of the State of Georgia. First, the Authority, not HMC, would borrow money from a lender and then re-loan the borrowed money to HMC for working capital purposes. The Authority clearly has the power to loan money to HMC for project costs under O.C.G.A. ß 31-7-75(8), but the Authority's power to loan money to HMC for working capital purposes is not so clear. The Authority should, however, be able to use a clause in O.C.G.A. ß 31-7-75(25) to establish the Authority's power to loan money to HMC to finance working capital. That clause authorizes the Authority ìto provide financial assistance to private not for profit organizations in the form of grants and loans, with or without interest and secured or unsecured at the discretion of such authority, for any purpose related to the provision of health or medical services or related social services to citizens.î Note that the foregoing clause precludes a loan by the Authority to HMC's for profit affiliate, Hutcheson Medical Division, Inc. Second, since the Authority does not have the power to issue revenue anticipation certificates to finance working capital, the Authority's debt to its lender would have to be evidenced by a note that is a general obligation of the Authority, to avoid violating O.C.G.A. ß 31-7-88. Because the Authority's debt has to be evidenced by a note, as opposed to a revenue anticipation certificate, it cannot be judicially validated, which means a citizen or taxpayer can challenge its validity in court at any time until after it is fully paid and the statute of limitations has run. That makes giving unqualified legal opinions a more risky endeavor. Third, the IGA can be re-drafted as a valid service agreement between the Counties and the Authority, as opposed to an invalid guarantee. The Counties would agree, in exchange for the Authority making health care services available to their citizens, to make payments to the Authority sufficient in time and amount to enable the Authority to make debt service payments on its note to its lender, to the extent that HMC does not make sufficient loan repayments to the Authority for this purpose. The Counties would agree to levy up to 7 mills of ad valorem taxes, as allowed by O.C.G.A. ß 31-7-84(b), to provide moneys to fulfill their obligations to the Authority under the IGA. The Authority can covenant with its lender that it will enforce the IGA, to the extent it does not receive sufficient loan repayments from HMC to pay debt service on the Authority's note to its lender.

Let me know if I can be of any further assistance in structuring a legal working capital financing for the Authority and the Counties to enter into to support Hutcheson Medical Center.

Very truly yours,

THE BARNES LAW GROUP, LLC
By: /s/ Roy E. Barnes
Roy E. Barnes