



## **JEFFERSON COUNTY BOARD OF HEALTH**

**Wednesday, August 12, 2015 - 5:00 p.m.  
5<sup>th</sup> Floor Board Room**

**PRESENT:** Jennifer R. Dollar, M.D., Nicole Redmond, M.D., Ph.D., MPH, Max Michael, III, M.D., and Joshua Miller, D.O.

**ABSENT:** Commissioner Jimmie Stephens and Steven Kulback, M.D.

### **OTHERS**

**PRESENT:** Mark Wilson, M.D., Carolyn Dobbs, M.D., Heather Hogue, Rodney Holmes, Haley Lewis, Judy Madison, Bryn Manzella, David Maxey, Chris Osborne, Jonathan Stanton, and Denisa Pridmore

### **Health Officer Report**

Since a quorum was not available at the beginning of the meeting, Dr. Wilson presented his Health Officer Report.

### **Public Relations**

Dr. Wilson introduced Chris Osborne, the new Public Relations Manager at JCDH.

### **Public Health Accreditation Board (PHAB)**

Dr. Wilson thanked Dr. Michael and Dr. Miller for participating in JCDH's PHAB Site Visit last week. We anticipate receiving the site visit report in about a month. The PHAB Accreditation Committee will review the site visit report and determine our accreditation status. The Accreditation Committee's next meeting is not until November. The Site Visit team gave three strengths and three opportunities for improvement at an Exit Interview.

### **Legislative Update**

Dr. Wilson noted the legislative special session has ended with Governor Robert Bentley unwilling to sign the proposed state budget. The governor is expected to call another special session before October.

### **Ebola**

Dr. Wilson reported that JCDH staff participated in the response for a potential Ebola case at UAB Hospital last week. This was a traveler from West Africa that JCDH Disease Control was monitoring. An after action review will be held to address a few communication glitches that occurred.

### **Board of Health Policy Discussions**

Dr. Wilson reminded the Board that the public health policy discussions will be an item on the September agenda. He will provide suggestions for topics they may want to consider.

### **Geographic Information Systems (GIS)**

Dr. Wilson announced that employees from Environmental Health and Management Information Systems have worked hard to get the GIS software in place. JCDH will begin using this on a small scale in Environmental Health to map health data and complaints, and eventually use in other areas such as Disease Control.

### **Electronic Medical Record (EMR)**

Dr. Wilson reported Clinical Services is having issues with the EMR. We are collaborating with other organizations in the state that use the same vendor.

### **Hepatitis C**

Dr. Wilson discussed his concern for Hepatitis C in the community. During the upcoming fiscal year, JCDH Disease Control staff will pilot universal screening for Hepatitis C in the Sexually Transmitted Disease clinic and a subset of patients in the Adult Health clinics to gather data for useful information. Cooper Green Health Services has indicated they can accept some referrals for treatment.

### **Data**

Dr. Redmond said one area the Board may want to look at is JCDH's role for facilitating the communication and data sharing across the different health systems in the county. Dr. Wilson noted in Alabama we currently do not have the ability to extract hospital diagnosis codes and discharge data. ADPH will be working with the Alabama Hospital Association and others in the next legislative session to change the law so it will allow us to get more robust data. Dr. Wilson said there may be an opportunity for the Board to make a policy statement to help support the State-wide effort.

### **Call to Order**

The meeting was called to order by Dr. Dollar, Chair, after Dr. Miller arrived and there was a quorum.

### **Minutes**

Minutes of the July 8, 2015 meeting were approved as distributed.

### **Financial Statement**

Ms. Judy Madison, Chief Accountant, discussed the July 2015 Financial Report. A motion to accept the financial report was made, seconded and approved.

### **FY 2016 Budget**

Mr. Rodney Holmes, CPA, Director of Finance and Administration, announced that Ms. Madison will be retiring at the end of September 2015. Mr. Holmes and Toni Bellina, Chief

Accountant, have prepared the proposed FY 2016 Budget for the Board's consideration. Mr. Holmes presented the following budget:

**Revenue Highlights**

The budget includes \$6,730,000 of ad valorem tax, a \$240,000 (4%) increase from fiscal year 2015. This amount is an estimate of two percent (2%) of the ad valorem taxes collected in Jefferson County for the County and its Municipalities, excluding those ad valorem taxes collected for the State of Alabama and all Boards of Education, and is the minimum percentage allowed in the funding legislation. The budget includes sales tax revenue of \$18,400,000, a 2.6% decrease from fiscal year 2015.

Net Intergovernmental Revenue of \$2,320,419 is a \$74,001 (3.1%) decrease over prior year budget. Revenues for services provided by the Department in 2016 are budgeted to be \$11,944,249. The decrease of \$277,609 (2.4%) from the 2015 budgeted amount is primarily the result of a projected decrease in clinical services private pay and third party reimbursement.

The \$1,327,752 amount budgeted for Other Revenue/Non-Operating Revenue is higher than the prior year budget by \$80,325 (6.4%) due to indirect cost and rental income.

An allocation of \$3,185,870 from fund balance is required to offset expected expenditures.

**Expenditure Highlights**

Personnel costs of \$33,331,165 are \$880,179 (2.7%) higher than those budgeted for fiscal year 2015. Salaries are 75% of personnel cost budget, with employee and retiree benefits representing 15% and 10% respectively.

Contract Services costs of \$2,383,515 are lower by \$227,970 (10.6%) than those budgeted in 2015. Materials and Supplies costs are projected to be \$6,993,610 which is a \$698,570 (9.1%) decrease from fiscal year 2015. The decrease is primarily due to a one-time furnishing expenditure for the new Western Clinic in fiscal year 2015.

The Capital Expenditure/Transfer budget of \$1,200,000 for capital asset replacement transfer reduction remains the same as fiscal year 2015.

**Capital Projects Fund**

Expenditures of \$1,536,255 are planned for fiscal year 2016. This includes funds for the completion of structural repairs to parking deck, renovation of the 3rd floor of the Guy M. Tate building, motor vehicles and a camera surveillance system upgrade.

**Special Revenue Funds**

In addition to the General Fund Budget, the Department has ten active Special Revenue Funds expected to total \$6,093,706. These funds are operated in accordance with the funding requirements of special grants and appropriations.

The General Fund, Capital Projects Fund and Special Revenue Fund budgets for fiscal year 2016 total \$51,538,251.

The Board discussed the JCDH financial information being posted on its website.

**JCDH Public Health Advised Fund**

Dr. Wilson reviewed the history of the Public Health Advised Fund whereby JCDH designates \$5 million of its funds and donates the annual earned interest to the Community Foundation of Greater Birmingham (CFGB) to administer grants for public health projects. The interest earned over the past few years has been poor and he is asking the Board's consideration of a one-time transfer of \$200,000 to the CFGB in order to support additional grants. This amount is included the FY 2016 budget if the Board approves it.

On the motion of Dr. Michael, and seconded by Dr. Miller, the following resolution was approved:

Whereas, the Jefferson County Board of Health (JCBH), on August 10, 2005, at a regularly called meeting, approved the attached Resolution (attachment 1) to establish the Public Health Community Projects Fund (PHCP Fund) and provide that earnings from the PHCP Fund be transferred to the Community Foundation of Greater Birmingham (CFGB) to manage and administer grants under CFGB Fund Policies; and,

Whereas, JCBH, on September 14, 2005, at a regularly called meeting approved the attached Resolution (attachment 2) to amend its 2005 Budget by Five Million Dollars as the portion of unrestricted General Fund net assets designated as the PHCP Fund from which earnings would generate to transfer to CFGB; and,

Whereas, CFGB and JCBH entered the attached Advised Fund Agreement (attachment 3), dated August 14, 2006, that establish the terms that CFGB will manage the Jefferson County Public Health Fund of The Community Foundation (Advised Fund) and administer grants from the Advised Fund to preserve, protect and enhance the general health and environment in Jefferson County, Alabama; and,

Whereas, the Attorney General of the State of Alabama, Honorable Troy King, on February 13, 2007 issued the attached Attorney General Opinion 2007-047 (attachment 4), concluding;

“The Jefferson County Board of Health may enter an agreement with the Community Foundation of Greater Birmingham under which, and subject to the required annual budget review and approval process, the Board will provide funds to the Community Foundation of Greater Birmingham for use in public health work projects in Jefferson County if the Board determines that the agreement will further the Board's purposes.”

Whereas, JCBH is under agreement with CFGB to manage and administer the Advised Fund; and,

Whereas, the JCBH desires to increase the funds provided to CFGB above the earnings from the PHCP Fund; and,

Whereas, the JCBH wishes to approve a one-time transfer to CFGB in the sum of Two Hundred Thousand Dollars (\$200,000.00) for use under the terms of the Advised Fund to further the public health work in Jefferson County, Alabama, if said amount is included in the Jefferson County Department of Health 2016 Budget as approved by JCBH.

NOW THEREFORE, BE IT RESOLVED, that the Jefferson County Board of Health authorizes and requests the Health Officer, Mark E. Wilson, M.D. to take necessary action to transfer to Community Foundation of Greater Birmingham the sum of Two Hundred Thousand Dollars for the Jefferson County Public Health Fund of The Community Foundation (Advised Fund) if said amount is included in the Jefferson County Department of Health 2016 budget approved by JCBH.

**Budget – Fiscal Year 2015-2016**

On the motion of Dr. Redmond, and seconded by Dr. Michael, the Fiscal Year 2015-2016 Budget was approved.

BE IT RESOLVED that the General Fund Budget of the Jefferson County Department of Health for fiscal year October 1, 2015 through September 30, 2016, in the amount of \$43,908,290 is adopted.

BE IT FURTHER RESOLVED that all Special Revenue Fund Budgets for fiscal year October 1, 2015 through September 30, 2016 are adopted.

**Transfer of Funds**

On the motion of Dr. Michael, and seconded by Dr. Redmond, the following resolution was approved:

BE IT RESOLVED that the Health Officer of the Jefferson County Department of Health is authorized to transfer funds from one category or line item to another within the General Fund and all Special Revenue Funds, as necessary, to improve Department efficiency, as long as the approved General Fund Budget is not exceeded for the fiscal year October 1, 2015 through September 30, 2016.

**Contracts**

On the motion of Dr. Redmond, and seconded by Dr. Michael, the following contracts were approved:

A new contract with Vocus, Inc. (payee) to provide Media Relations Standard Edition living news contact list and tracking, Cision News-on Demand Premium with LexisNexis, Social Media monitoring and engagement, streaming video broadcast, broadcast video download package, and PR Web Advanced Releases at a cost not to exceed \$12,945 from June 29, 2015 through June 29, 2016.

Dr. Redmond would like for Mr. Osborne to provide the plans for media strategy at some point in the future.

Renewal of a contract with Jasmine Willis (payee) to provide telephone support for breastfeeding eligible WIC participants for 12 hours per week at \$7.25 per hour; not to exceed \$5,000 from June 1, 2015 through June 1, 2016.

Renewal of a contract with Community Foundation of Greater Birmingham (payee) to manage the JCDH Public Health Advised Fund at a rate not to exceed \$18,000 from January 1, 2015 through December 31, 2015.

A new contract with Viva Health Administration for a data sharing agreement with no funds involved between parties from August 1, 2015 through August 1, 2032.

A new contract with Viva Health Administration for a space lease agreement for the Medicaid Regional Care Organization Program with no funds involved from June 1, 2015 through June 1, 2018.

**Disposition of Western Health Center (Ensley) Property**

Dr. Wilson noted the following resolution is to convey the vacant Western Health Center property in Ensley to the City of Birmingham. This is the last vacant clinic since the three western area health centers were combined at the Midfield site. On the motion of Dr. Michael, and seconded by Dr. Miller, the following resolution was approved:

**WHEREAS**, the Jefferson County Board of Health (“JCBH”) desires to convey certain real estate and improvements located on or around 1700 Avenue E, Birmingham, Alabama upon which has previously been operated the Western Health Center (the “Premises”), to the City of Birmingham, Alabama (the “City”), a copy of the proposed Real Estate Transfer Agreement to effectuate said transaction is attached hereto as Exhibit “A” (the “Agreement”); and

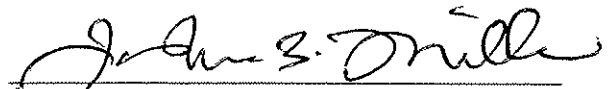
**WHEREAS**, the City has a need for the use of the Premises and desires to accept the conveyance of the Premises from JCBH pursuant to the conditions stated herein and in the Agreement; and

**WHEREAS**, JCBH no longer operates the Health Center and has determined that the Premises and the personal property located therein are surplus property; and


**WHEREAS**, the City and JCBH have determined that the real estate transfer contemplated herein will promote the public health, safety, education, commerce and general welfare of the citizens of Jefferson County, Alabama; and

**NOW THEREFORE, BE IT RESOLVED**, that JCBH hereby authorizes its Health Officer, Mark E. Wilson, M.D., to execute the attached Real Estate Transfer Agreement to convey the Premises and any other document referred to therein or that the Health Officer finds necessary to further the purposes set forth therein, in that the City’s stated intention is to use the Premises for purposes consistent with, and that tend to further, the public health purposes, programs, and services of JCBH.

The next Board of Health meeting is scheduled for Wednesday, September 9, 2015 at 5:00 p.m. in the Fifth Floor Board Room. There being no further business, the meeting adjourned at 6:16 p.m.

  
Joshua Miller, D.O., Secretary

Approved:

  
Jennifer R. Dollar, M.D., Chair

Attachments:

- Attachment 1
- Attachment 2
- Attachment 3
- Attachment 4
- Exhibit A

Attachment 1  
Adopted by the Jefferson County  
Board of Health on

August 10 20 05  
Michael S. Osteen, MD  
Health Officer

Jefferson County Board of Health  
August 10, 2005

**RESOLUTION**

BE IT RESOLVED BY THE JEFFERSON COUNTY BOARD OF HEALTH that the Board wishes to designate a portion of unrestricted General Fund net assets to establish a Public Health Community Projects Fund (PHCP Fund).

Earnings of the PHCP Fund will be transferred to the Community Foundation of Greater Birmingham (Foundation) where an Advised Fund identified as the Jefferson County Public Health (JCPH) Fund will be established. The Foundation will administer grants from the JCPH Fund in accordance with Advised Fund Policies. The Health Officer of Jefferson County will serve as advisor to the Board of Directors of the Foundation on grants to be made from this Advised Fund.



## Donor/Family Advised Fund Policies

The Community Foundation of Greater Birmingham welcomes the opportunity to partner with people who wish to be actively involved in grantmaking. The IRS allows community foundations to offer donors the opportunity to make tax-deductible gifts at the most advantageous time for them and then to recommend grants over a prolonged period of time through an advised grantmaking fund. The IRS expects that The Community Foundation will administer its advised funds in a manner that will maximize the benefits to the community and ensure effective charitable giving.

**MINIMUM FUND SIZE:** Established and maintained at \$10,000.\*

**GRANTS FROM THE FUND:** Below are guidelines and procedures for grants from the Fund:

- Grants may be recommended at any time. A grant request form is sent to donor advisors quarterly. You may copy the form or request additional copies.
- Minimum grant size is \$100, with the suggestion that any grant below \$250 be made from personal giving instead of from Fund.
- Each grant recommended is evaluated with final approval by Board of The Community Foundation.
- Grants may not be used to pay membership dues or a personal pledge. However, an advisor may indicate to a charitable institution that he or she will recommend a grant from the Fund.
- Grants may not be earmarked for a specific individual by the donor advisor.
- Grants can be made beyond the five-county greater Birmingham area; however, grants from The Community Foundation are generally made within this area.
- No goods or services (i.e. tables, tickets to events) may benefit the donor or advisors or their family members.

**ANNUAL PAYOUT REQUIREMENT:** No specific annual grant payout is required but the mission of Community Foundation is grantmaking.

**FUND RECOGNITION:** All grants are made in the name of the Fund, unless the donor requests to remain anonymous. It is also the practice of The Community Foundation to list all funds in its annual report, unless the donor requests otherwise.

**SUCCESSOR ADVISORS:** Naming successor advisors is based on the following:

1. Funds maintained at \$1 million or more in assets can have *perpetual family advisors*, with one specified contact person per generation after second generation.
2. Funds maintained at less than \$1 million in asset size can have *one generation of advisors* beyond the original donor.

**FUND MANAGEMENT:** It is important for both donors and The Community Foundation that advised funds not be considered private foundations, therefore donors may not retain control of investments, including the retention or sale of any assets contributed.

**REMAINDER PLAN:** If there has been no communication within a 12-month period from a fund's advisor, he or she will be notified by letter and then every six months thereafter. If, at the end of the second year, no response has been received, the advised fund will be converted to a named Community Fund.

\* **Non-Endowed Donor/Family Advised Funds:** Available to donors interested in establishing a nonpermanent advised fund. This status also applies to Advised Funds that fall below \$10,000. A 2% fee is assessed on non-endowed funds.

SAMPLE FUND AGREEMENT ON REVERSE SIDE

Jefferson County Board of Health  
September 14, 2005

Adopted by the Jefferson County  
Board of Health on

September 14 20 05  
Michael S. Keenan, MD  
Health Officer

RESOLUTION

BE IT RESOLVED BY THE JEFFERSON COUNTY BOARD OF HEALTH  
that the Board wishes to amend the fiscal year 2005 budget by \$5,000,000 (five million  
dollars) to a total of \$51,666,700. The budget addition will be the portion of unrestricted  
General Fund net assets designated as the Public Health Community Projects Fund  
(PHCP Fund).

**THE COMMUNITY FOUNDATION OF GREATER BIRMINGHAM**  
**Jefferson County Department of Health Advised Field of Interest Fund Agreement**  
*(Gift to CFGB Corporation)*

The Jefferson County Department of Health hereby gives to The Community Foundation of Greater Birmingham (hereinafter "The Community Foundation"), an Alabama nonprofit corporation, the following money or property:

*Approximately \$100,000*

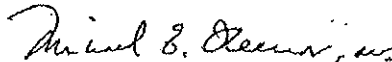
Said gift is to be administered as a component of the Community Foundation in accordance with the purposes and pursuant to the terms of the Articles of Incorporation and Bylaws of The Community Foundation as presently in effect as amended from time to time.

This gift shall be identified as the Jefferson County Public Health Fund of The Community Foundation. Grants from either principal and/or income to be made to preserve, protect, and enhance the general health and environment in Jefferson County.

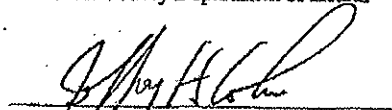
In making this gift, we do hereby appoint the Health Officer of Jefferson County, as chair of the Jefferson County Public Health Fund Advisory Committee, to serve as advisor to the Board of Directors of The Community Foundation on grants to be made from this Advised Fund.

We understand that the Board of Directors of The Community Foundation is legally vested with the final responsibility to determine what grants are to be made from this Advised Fund as it seeks to fulfill its primary purpose of meeting the charitable needs of the Greater Birmingham Area.

08/09/06  
Date

  
Michael E. Fleenor, M.D.  
Health Officer  
Jefferson County Department of Health

8/14/06  
Date

  
Jeffrey W. Cohn, M.D.  
Chair, Board of Directors  
The Community Foundation of Greater Birmingham



2007-047

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

February 13, 2007

TROY KING  
ATTORNEY GENERAL

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable David S. Maxey  
General Counsel  
Jefferson County Board of Health  
Spain & Gillon, L.L.C.  
2117 2<sup>nd</sup> Avenue North  
Birmingham, Alabama 35203

Health, County Boards of - Funds -  
Agreements - Public Purpose

The Jefferson County Board of Health ("Board") can enter an agreement with the Community Foundation of Greater Birmingham under which, and subject to the required annual budget review and approval process, the Board will provide funds to the Community Foundation of Greater Birmingham for use in public health work projects in Jefferson County if the Board determines that the agreement will further the Board's purposes.

Dear Mr. Maxey:

This opinion of the Attorney General is issued in response to your request on behalf of the Jefferson County Board of Health.

QUESTION

Can the Jefferson County Board of Health lawfully enter an agreement with the Community Foundation of Greater Birmingham under which, and subject to the required annual budget review and approval process, the Jefferson County Board of Health will provide funds to the Community Foundation of Greater Birmingham for use in public health work projects in Jefferson County?

FACTS AND ANALYSIS

Your letter of request asks whether the Jefferson County Board of Health may enter an agreement with the Community Foundation of Greater Birmingham (the "CFGB"), a nonprofit corporation, where the Board will donate funds to the CFGB to fund public health work projects in Jefferson County. Your request states that the CFGB is a private, nonprofit organization that is organized to further public endeavors within the Birmingham area. You state that the Board would like to enter an agreement with the CFGB whereby the Board would provide funds to the CFGB for use in public health work projects in Jefferson County. The CFGB would manage the funds and be advised on selection of grants by the Jefferson County Public Health Fund Advisory Committee, of which the Jefferson County Health Officer would be the chair.

The duties of county boards of health include enforcement of public health laws and general supervision over the public health work of the county. ALA. CODE § 22-3-2 (1997). Section 22-3-3 of the Code specifically provides county boards of health with the authority to "solicit, receive and hold gifts, devises and bequests of money, real estate and other things of value to be used in the support, development and carrying on of their work." *Id.*

Section 93 of the Constitution of Alabama generally prohibits the state from lending money or credit to "any individual, association, or corporation, except as may be expressly authorized by the Constitution of Alabama or amendments thereto." ALA. CONST. art. IV, § 93 (amends. 1, 12, 58). Section 94 of the Constitution is a companion to Section 93, and it prevents political subdivisions of the state from doing the same. The appellate courts of this state, however, have opined the state or a political subdivision thereof may appropriate funds to an individual, association, or corporation when the appropriation is for a "public purpose." *Slawson v. Ala. Forestry Comm'n*, 631 So. 2d 953 (Ala. 1994); *Opinion of the Justices* No. 269, 384 So. 2d 1051 (Ala. 1980).

In *Slawson*, the most recent appellate court decision addressing Sections 93 and 94, the Alabama Supreme Court held as follows:

In *Opinion of the Justices, No. 269, 384 So.2d 1051*, this court was asked whether the appropriation of state funds to nonstate agencies and organizations was for a 'public purpose' and, thus, did not violate §§ 93 and 94 of our

constitution. . . Although, we were unable to give an advisory opinion because the question asked presented a mixed question of law and fact, we did provide guidelines as to what constituted a "public purpose." Quoting *Clifford v. City of Cheyenne*, 487 P.2d 1325, 1329 (Wyo. 1971), we stated that, generally speaking, a public purpose "has for its objective, the promotion of public purpose, safety, morals, security, prosperity, contentment, and the general welfare of the community. . . ."

The paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit. The trend among the modern courts is to give the term "public purpose" a broad expansive definition. . . .

[T]he question of whether or not an appropriation was for a public purpose [is] largely within the legislative domain rather than within the domain of the courts. . . .

The legislature has, to a great extent, the right to determine the question and its determination is conclusive when it does not clearly appear to be wrong, assuming that we have a right to differ with them in their finding. . . . Taken on its face, it is our duty to assume that the Legislature acted within constitutional limits and did not make a donation, when such construction is not inconsistent with the recitals of the act.

*Slawson*, 631 So. 2d at 956.

This Office has previously opined that whether an appropriation serves a public purpose is a decision to be made by the political entity or state agency with the authority to make the appropriation. Opinion to Honorable Kathy E. Sawyer, Commissioner, Department of Mental Health and Mental Retardation, dated July 17, 2002, A.G. No. 2002-285; opinion

Honorable David S. Maxey  
Page 4

to Honorable Jimmy C. Lunsford, Mayor, City of Troy, dated February 21, 2003, A.G. No. 2003-081. This Office has also previously suggested that when a political subdivision or state agency enters an agreement with a private entity to expend funds or donate property for a public purpose, the agreement should state the public benefits as consideration. Opinion to Honorable Bobby L. Crowder, Mayor of the City of Valley, dated November 6, 1995, A.G. No. 96-00034; opinion to Honorable Jerry Lacey, Chairman of the Fayette County Commission, dated January 31, 1997, A.G. No. 97-00097.

The CFGB's articles of incorporation state that its purpose is to further public endeavors in the greater Birmingham area. Because public health work of the Board would fall under the "public endeavor" category, this purpose is consistent with the statutory duties provided by the Legislature for the county boards of health. Thus, the Board can enter an agreement with the CFGB under which the Board will provide funds to the CFGB to support public health work projects in Jefferson County if the Board determines that entering such an agreement will further a public purpose.

#### CONCLUSION

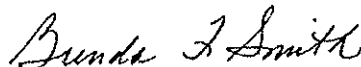
The Jefferson County Board of Health may enter an agreement with the Community Foundation of Greater Birmingham under which, and subject to the required annual budget review and approval process, the Board will provide funds to the Community Foundation of Greater Birmingham for use in public health work projects in Jefferson County if the Board determines that the agreement will further the Board's purposes.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Noel S. Barnes of my staff.

Sincerely,

TROY KING  
Attorney General

By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/NB  
217205/101396

**REAL ESTATE TRANSFER AGREEMENT**

This Real Estate Transfer Agreement (this "Agreement") is made on \_\_\_\_\_, 2015, by the Jefferson County Board of Health (the "Grantor") and by City of Birmingham, Alabama (the "Grantee").

WHEREAS, the Grantee desires to obtain from the Grantor a parcel of land (the "Property") situated, lying and being in the County of Jefferson, State of Alabama, and being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, upon which has previously been operated the Western Health Center (the "Facility"); and

WHEREAS, in return for the Grantee assuming title and responsibility for the Facility, the Grantor desires to convey the Property to the Grantee.

NOW, THEREFORE, in consideration of the mutual and reciprocal promises set forth herein, the Grantor and the Grantee contract and agree with each other as follows:

**Section 1. Property to be Transferred.** The Grantor agrees to grant and convey to the Grantee the Property together with all rights, easements and appurtenances thereto. At closing, the Grantor shall deliver to the Grantee a statutory warranty deed, duly executed in proper form for recording so as to convey to the Grantee title to the Property.

**Section 2. Consideration.** In consideration of the transfer of the Property to the Grantee, the Grantee agrees to continue to use the Property for the purpose of improving access to health care, and perhaps other services, to people living in the area. The Grantee shall take possession on the date of closing.

**Section 3. Title.** The Grantor shall convey title to the Property to the Grantee, by Quit Claim Deed. Grantee shall take title to the Property subject to utility easements and agreements with utility companies of record; zoning ordinances; taxes and assessments not delinquent; and such other easements, conditions or restrictions of record.

**Section 4. Bill of Sale.** At the Closing, Grantor shall deliver unto Grantee, a Bill of Sale transferring title to the equipment, supplies, fixtures and other personal property that is owned by the Grantor and is part of or used in connection with the operation of the Facility. The Bill of Sale shall be without warranty or representation of any kind and the personalty conveyed therein shall be conveyed "AS IS" with all faults.

**Section 5. Special Assessments.** Taxes, water assessments, and other general and special assessments of whatsoever nature, whether a lien or not, assessed or to be assessed for the year in which a transaction is finally consummated shall be prorated between the parties as of the closing date of the transaction. If such terms are not ascertainable at the time of the closing, the amount of the prior years will be used as a basis of proration.

**Section 6. Time of Essence.** Time is of the essence of this Agreement.



**Section 7. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

**Section 8. Encumbrances.** The Grantor agrees that it shall not and will not, within the period of this contract, sell, convey, mortgage, or otherwise encumber the Property, or any part thereof, or do any act or deed to diminish or encumber the title to the Property.

**Section 9. Remedies.** If the Grantor fails or refuses to perform its obligations hereunder, the Grantee may either: (a) rescind the contract and recover all amounts paid by the Grantee hereunder, and all expenses paid or incurred by the Grantee; or (b) pursue any remedy available to the Grantee, in law or equity, including an action to compel specific performance of this Agreement, or one for damages for breach, separately or alternatively. Provided, however, that any suit for damages against JCBH pursuant to this Section 9 shall be limited to a recovery of no greater than one-thousand dollars (\$1,000.00).

**Section 10. Closing Date.** The transaction shall be closed on or before \_\_\_\_\_, 2015, or at such other times as the parties may mutually agree, at the offices of Spain & Gillon, L.L.C. in Birmingham, Alabama, or at such other location as is mutually agreeable to the parties herein and upon written notice.

**Section 11. Assignment.** This Agreement may not be assigned by Grantee without the prior written consent of Grantor, which shall not be unreasonably withheld.

**Section 12. Counterparts.** This Agreement may be executed in any number of counterparts, all of which when so executed and delivered shall constitute but one and the same instrument, and each of such counterparts shall, for all purposes, be deemed to be an original.

**Section 13. Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior written or oral agreements between the parties with respect to the same. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally by course of dealing, but only by an instrument in writing signed by the party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

**Section 14. Costs.** The Grantee shall be responsible for payment of any owner's title insurance policy premium, the attorney's fees of Grantee, any recording fees, and all normal closing costs normally attributable to a Purchaser. The Grantor shall be responsible for payment of its attorney's fees and any other normal closing costs normally attributable to a Seller.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

**JEFFERSON COUNTY BOARD OF HEALTH**

By: \_\_\_\_\_

Its: \_\_\_\_\_

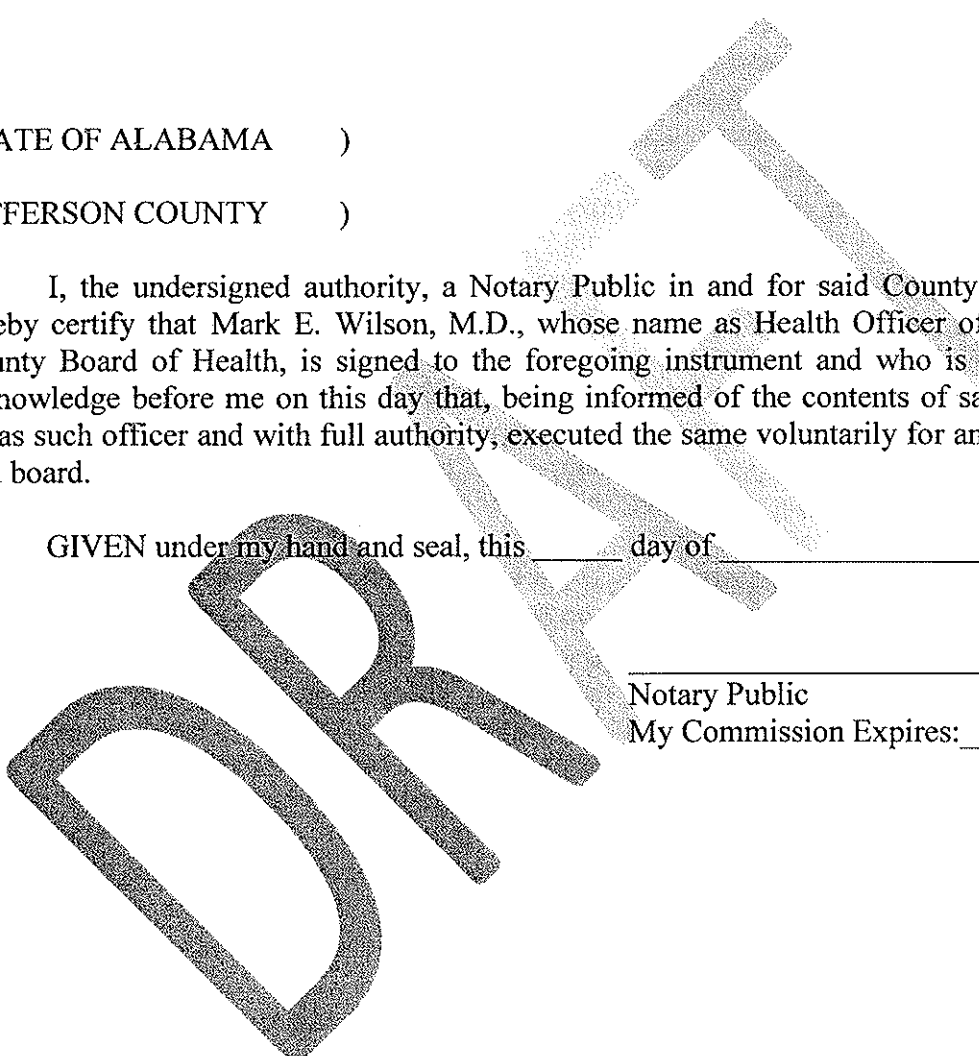
STATE OF ALABAMA     )

JEFFERSON COUNTY     )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Mark E. Wilson, M.D., whose name as Health Officer of the Jefferson County Board of Health, is signed to the foregoing instrument and who is known to me, acknowledge before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said board.

GIVEN under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



**CITY OF BIRMINGHAM, ALABAMA**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ALABAMA     )

JEFFERSON COUNTY     )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of the City of Birmingham, Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents thereof, he/she, in such capacity and with full authority, executed the same voluntarily for and as the act of the City of Birmingham, Alabama.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**

**PROPERTY DESCRIPTION**

*Lot 3-A and Lot 4-A according to the Survey of Record Map for Western Mental Health Resurvey, as recorded in Map Book 212, page 60, in the Probate Office of Jefferson County, Alabama, Birmingham Division.*