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PRIVILEGED & CONFIDENTIAL

Morrow County Health District Board
564 E. Pioneer Drive
Heppner, OR 97836

Re: *Morrow County /Morrow County Health District*
File No.: 30931

To the Morrow County Health District Board:

Recently, representatives of Morrow County have indicated they have concerns relating to the negotiation and/or acceptance of terms contained within the MCHD's recently proposed Intergovernmental Ambulance Service Contract. There has apparently been some pushback relating to perceived notice and approval procedures interfering with the County's ability to act now. I was asked to evaluate the concerns voiced by the County and provide a legal analysis concerning same. We also met with the County representatives/counsel and discussed the issues. The question presented is primarily whether the proposed MCHD Ambulance Service Agreement can legally be discussed, negotiated, and accepted by the Morrow County Board of Commissioners at this time. The short answer to this question is: Yes.

OAR 333-260-0020(8)(5) states that the Oregon Health Authority's (OHA) approval of an ASA Plan is limited to determining whether there has been compliance with the administrative rules under Chapter 333. Per OAR 333-260-0070, "The County is solely responsible for designating and administering the process of selecting an ambulance service provider." As discussed previously, the OHA has no authority over dictating what ordinances say. However, ORS 682.031(3) states that any ordinance, to the extent an ordinance is created, must comply with the ASA Plan adopted by the County. The Plan controls over the ordinance and, therefore, they should both be consistent. That said, a county Ordinance is not required. It is merely a recommendation by the OHA that one exist, hence the use of the words "When a [county] enacts an ordinance regulating ambulance services…" There is nothing in the statutes or administrative rules that ***require*** the creation of an ordinance, nor would there be, as the county governments have the exclusive power to enact their own ordinances, and the State of Oregon has no authority to compel local politicians to enact them. Ordinances of this type would be necessary in order for the Plan to have enforcement teeth that are practical. A Plan without an actual service contract, for instance, would not allow the county officials to actually sanction participants or non-participants for that matter. An ordinance would. This is why the prior Plans have referred readers back to the Morrow County nuisance statutes for purposes of enforcement.

Currently, the County and MCHD are operating under the 1998 ASA Plan, according to the Board of Commissioners. It is noteworthy that the County and MCHD could have, at any time after or before 1998, entered into a service agreement without any public input at all, pursuant to ORS 190.010, since both are public entities created for the purpose of serving the public. For that matter, this is what has happened in the past. Public notice and acceptance of alternate bids is not required when two public entities engage and contract with one another. To do otherwise would cause the system to grind to a halt. Imagine if the City of Portland had to run every intergovernmental contract through public comment. Nothing would ever get done.

Here, both the MCHD and the Board of Commissioners are all elected by the public to serve the interests of the public good. They have inherent authority to enter into contracts with one another for the betterment of the public good. Therefore, this concern raised by the County about public hearings and readings and the like is without legal merit. Only if the county wanted to contract with a private company, like AMR for ambulance leases (for instance), would this trigger various public notice and bidding obligations. In that case, ORS Chapter 279 B would be triggered along with, perhaps, ORS 137.045 which relates to the procurement of goods and services. In such instance, MCHD would have been allowed to provide its ***own bid*** and compete with AMR for the leases, if it chose to do so. To my knowledge, this has not occurred.

The county claims, too, that ORS 682.063 relates to public contracts involving ambulance services. However, that is not true. The overriding state statutes governing intergovernmental agreements must control. However, for the sake of argument, let us assume the County is accurate. Then, let us look to the statute, itself.

The only thing that ORS 682.063 would theoretically require is that the county "consider any proposal" submitted and that any governmental unit that submits a proposal meet the plan requirements. There is no time constraint there. The County has already made public announcements for months about seeking alternative services. The County has reached out to neighboring areas and also has stated numerous times that the Boardman Fire Rescue District has "shown interest." They have also announced they were prepared to lease ambulances from AMR. Finally, the County has received two proposals for the service already, but without formally requesting those proposals. So, at what point will the County determine it has met its self-imposed obligations to review proposals? The fact is, the BOCC has the proposals, have sought out alternative service providers, and they could approve the contract or negotiate the terms at any time.

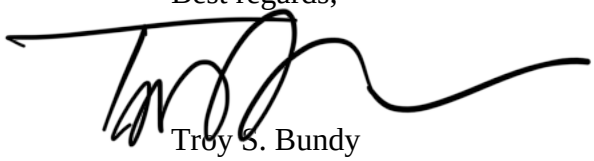
As a worst case scenario, the County could simply disavow any and all ASA Plans (as it did with the 2021 Plan), triggering ORS 682.066, which states that in cases where the County has no plan adopted, then any public district (MCHD or BRFD) could enter into an intergovernmental agreement under Chapter 190, just as I discussed above.

In summary, approval of a new ASA Plan and ordinance is not even necessary at this time. This is a self-imposed requirement asserted by the County, not the law. Chapter 190 of the Oregon Revised Statutes allows the MCHD and the County to enter into an intergovernmental agreement at any time without going through any public approval process because, frankly, the

public voted in all of the Board members of each entity. Thus, the public already voted and appointed these Board members to enter into agreements like this on its behalf and to do so expeditiously.

The County could sign the proposed agreement any time it chose to do so. This agreement is in the public good and MCHD does not attempt to profit at all by providing the service. The contract seeks to recover only the proven economic losses it incurs by providing the service. These loses are determined based upon well-recognized accounting principles that meet the United States Tax Code and all regulatory requirements imposed by the state and federal governmental regulatory agencies involved in health care and emergency services. To the extent the County wishes to negotiate any terms at all, it is free to do so. However, there is not a great deal to negotiate because the agreement accepts the County's new ASA Plan and ordinance, adopts a performance and quality assurance program, allows the County access to all financial/regulatory/safety records kept and maintained for the benefit of the ambulance service, requires MCHD to handle the operative components of the ambulance service, and assures the most cost effective method of providing emergency services in the entire county for all residents. The contract was specifically drafted to provide the County with assurance that the concerns its Board members have voiced over recent months have been heard, acknowledged, and addressed in writing. Finally, the County's chief concern about the length of the contract (5 years) can be reduced to two (2) years, if that makes the County amenable to the contract terms. This would enable the County enough time to set up alternative services, if the BOCC felt MCHD was not adequately fulfilling its obligations.

Best regards,



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cc: Emily Roberts