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January 17, 2012

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LAFCO
San Bernardino County

Kathleen Rollings-McDonald
Executive Officer
San Bernardino County LAFCO
215 North D Street, Suite 204
San Bernardino, CA 92415-0490

Re: Bear Valley Community Healthcare District

Dear Ms. Rollings-McDonald:

This letter is submitted in response to certain comments made in your Service Reviews for Mountain Area Healthcare Districts (the "staff report") prepared for the San Bernardino Local Agency Formation Commission ("SBLAFCO") relating to the applicability of Article XIII B of the California Constitution (the "Gann Act") and Government Code Sections 7900 et seq. to California Healthcare Districts. The staff report analyzes various options with regard to BVCHCD and the San Bernardino Mountains Healthcare District ("SBMHCD") and notes that, in your view, both districts are out of compliance with the Gann Act and the Government Code.

Historically, most local agencies comply with the Gann Act by resolution adopting changes permitted by the constitutional and statutory formula and submitting the issue to the voters on a four year cycle. In the usual case, revenues tend to be less than the appropriations limit permits and no issue arises. In the rare event that a local agency appropriates funds in excess of its Gann limit, the public has a 45 day period in which to challenge the appropriation. Should such a challenge be successful, the agency is required to refund any sums expended in excess of the Gann limit. Refunds may be processed in any way the agency determines from revenues collected in the future. If the appropriations limit is not challenged in the statutory time frame, it remains in effect and no refund is required.

These procedures apply to some, but not all, special districts in California. While we have been unable to find any court ruling on the issue of Gann Act applicability to California Healthcare Districts, in order to respond to the concerns that are expressed in the staff report with regard to compliance with the Gann Act, we have explored this

issue in a variety of contexts. We have reviewed all audit reports for BVCHCD prepared by various accounting firms from 1993 forward and all resolutions from 1976 forward and we have consulted the California Department of Finance and inquired as to whether California Healthcare Districts are subject to the Gann limit requirements and whether they received the mandatory annual reports of population and cost of living changes. Finally, we have checked with BVCHCD's current audit firm on this issue.

BVCHCD is organized under the provisions of California Health and Safety Code Sections 32000 et seq. Those provisions of law establish standards that are unique to special districts that operate hospitals. Certain provisions relating to public records and open meetings, for example, do not apply to Healthcare Districts. Unlike general special districts, Healthcare Districts are specifically limited in the amount of any tax levy. The maximum tax levy for a Healthcare District is $.20 on each $100 of property value (H&S Code Section 32202). This tax must be levied by the County on behalf of the district and may be in addition to the 1% ad valorem property tax received by the County under the provisions of Article XIII A. Thus, while it may be that the funds received from the County are a part of the 1% general ad valorem tax, in fact this is a separate tax levy. The County could levy this separately and not share any part of the 1% general ad valorem property tax with BVCHCD.

BVCHCD currently receives approximately $.166 on each $100 of property value. In the event that the maximum tax levy permitted by statute is insufficient to meet hospital needs, the board of directors may call an election to raise the tax rate for a period not to exceed five years (H&S Code Section 32203). The statutory framework also permits BVCHCD to impose special assessments or parcel taxes by election (H&S Code Section 32240). These provisions of law establish a different and independent system for administering ad valorem tax increases than is provided in the Gann Act. It therefore appears that because taxation by Healthcare Districts is specifically authorized and controlled by statute, the Gann Act simply does not apply. The purpose of the Gann Act is therefore addressed by the statute which requires voter approval of tax increases above the maximum allowed by law (H&S 32203). Thus, BVCHCD's assessment is not in fact a portion of the County's general ad valorem property tax.

The result of these inquiries and legal research are that it appears that California Healthcare Districts are not subject to the requirements of either Article XIII B or Government Code Sections 7900 et seq. but are separately regulated by special statute. This view is supported by the experience of auditors for BVCHCD in that no auditor has ever raised the question of whether the Gann Act applies or whether BVCHCD is in compliance with Gann Act mandates. As noted in the attached

correspondence from BVCHCD's auditors, review of Gann limit issues is not apparently undertaken for Healthcare Districts by audit firms anywhere in the State of California. In addition, the California Department of Finances does not now and has not in the past provided any California Healthcare District the annual population and cost of living information required by the Gann Act.

Further, in conversations with representatives from the Department of Finance, the organization that is required to provide population and cost of living change information to agencies subject to the Gann Act on an annual basis (Revenue & Taxation Code Section 2228), indicated that to the best of their knowledge, California Healthcare Districts have never been on the distribution list for such information. The Department of Finance apparently disseminates this information to affected agencies in accord with the Gann Act, but BVCHCD has never received that communication, thereby making it impossible in the past to do the calculation that is required of affected agencies by the Gann Act.

As noted in the staff report, California Healthcare Districts rely heavily on funds from patient sources, Medicare, Medical and insurance companies for their operation. While the County is required to levy a tax for BVCHCD that generates ad valorem property tax revenues, those taxes are in fact regulated by the Health & Safety Code rather than the Gann Act. The purpose of the Gann Act was to limit the expansion of government by restricting its expenditure of tax dollars. That purpose has little to do with hospital services that are funded and regulated by an entirely separate statutory framework.

Please do not hesitate to contact me if you have any further questions regarding this matter.

Sincerely,

BURKE, WILLIAMS & SORENSEN, LLP

JULIE HAYWARD BIGGS

JHB/dkc
cc: Sam Martinez, Assistant Executive Officer

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January 16, 2012

Marc Hecksel, CEO
Bear Valley Community Healthcare District
41870 Garstin Road
Big Bear Lake, CA 92315

Dear Marc:

This letter is in response to our conversation last week concerning the Gann Appropriations Limit (GAL). Here is the information I was able to obtain through research and inquiry of firm partners.

TCA Partners, LLP (TCA) has audited 28 healthcare districts in California over the past 20 years. Several of the partners at TCA were also involved in healthcare district audits while working at national accounting firms prior to joining TCA. The issue of the GAL has never come up or been questioned in an annual audit.

TCA is subject to regular peer review of its audits. A healthcare district audit has been selected as part of the peer review each time. No findings, issues or questions have been raised by the peer review professionals concerning GAL.

As TCA has been the successor auditor on various healthcare district audits over the years we have had the opportunity to review the audit workpapers and reports of several other auditing firms. We have not come across any reference or discussion of the GAL in our reviews of those workpapers and reports.

Should you require any additional information or have any questions, please feel free to contact me.

Regards,

Jerrel Tucker

Jerrel Tucker, CPA
For TCA Partners, LLP