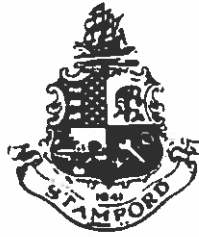


MAYOR
DANNEL P. MALLOY



SC/7
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9-12-97
Sent to: M. Nakian
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SEP 11 1997

Memorandum

To: Representative Ellen Mellis, Thirteenth District
Representative Maria Nakian, Chair, L&R
Carmen Domonkos, President, Board of Representatives

CC: Mayor Dannel P. Malloy

From: Thomas M. Cassone, Director of Legal Affairs

Date: 9/11/97

Re: Smith House Nursing Facility

This is in response to yours of September 5, 1997 regarding your concern about the role of the Board of Representatives in the development of policy for the above Nursing Facility. As you may note in the municipal legislation creating the Board of Directors, policy control "include[es] but [is] not limited to" the items listed in your memo, and incorporates by reference the provisions of Section 19-13-18t(e) of the Public Health Code, a copy of which I attach. This clearly reserves to the Board of Directors the authority to, *inter alia*, "(A) set policy;" and "(B) oversee the management and operation of the facility." [See Code Section 6-54 B.] The municipal legislation does not reserve any policy making authority or approval to the Board of Representatives.

My earlier opinion was in fact restricted to policy, and not to budgetary considerations. And while you correctly point out the Board of Representatives approves the Smith House's budget through a line item in the City's annual budget and so may control its operation in that regard, I believe that to be more of a fiscal function of your Board. Indeed, you also correctly point out that the management

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contract is subject to your review, just as I pointed out in my opinion that the Board could conceivably require policy approval by contract (just as it has the power to legislate the Board of Directors out of existence and perhaps become the "governing body").

So, I certainly did not mean to say that you did not possess the "hammer". What I intended to say is that given the current municipal legislation that created the Board of Directors, and further given the State regulatory requirement that policy be set by such a Board, that any attempt to exert control over individual policy decisions would be contrary to the current ordinance and could possibly compromise the Smith House's permit and sources of funding. Therefore, I did not recommend it.

Still, at the risk of stating the undeniable, you are the City's governing body. Before I undertake to amend the ordinance, however, (which I *do* believe would be necessary to effect the change you seek) I would appreciate your input on the level or category of policy decisions over which the Board of Representatives wishes to reacquire control. That is, is it only the eligibility of persons for care, or are there other policy areas that you would like to reserve to the Board of Representatives? I think you would agree that simply stating that "major" decisions are subject to Board of Reps' approval would be imprecise at best.

Lastly, after you advise me of the degree or quality of control that you feel is appropriate, I would like the opportunity to investigate whether or not a waiver pursuant to Public Health Code Section 19-13-18t(c) may be obtained from the Commissioner of Health of the requirement that the Board of Directors establish policy (to the specific extent you deem appropriate). I also think it would be prudent to have your researcher determine to what extent SSI benefits or other sources of funding may be compromised by this action.

If I can clarify any of the above, or can furnish additional information, please let me know. Otherwise I will anticipate hearing from you on the specific types of policy concerns over which the Board of Representatives wishes the power of review.

(e) Governing body.

(1) The facility shall have a governing body, which shall have the general responsibilities to:

(A) set policy;

(B) oversee the management and operation of the facility; and

(C) assure the financial viability of the facility.

(2) Specific responsibilities of the governing body necessary to carry out its general responsibilities shall include, but not necessarily be limited to, the following:

(A) adoption and documented annual review of written facility by-laws and budget;

(B) annual review and update of the facility's institutional plan, including anticipated needs, income and expenses;

(C) review of facility compliance with established policy;

(D) appointment of a qualified administrator;

(E) provision of a safe physical plant equipped and staffed to maintain the facility and services in accordance with any applicable local and state regulations and any federal regulations that may apply to federal programs in which the facility participates;

(F) approval of an organizational chart which establishes clear lines of responsibility and authority in all matters relating to management and maintenance of the facility and patient care;

(G) annual review of personnel policies;

(H) adoption of written policies assuring the protection of patients' rights and patient grievance procedures, a description of which shall be posted conspicuously in the facility and distributed personally to each patient;

(I) determination of the frequency of meetings of the governing body and documentation of such meetings through minutes;

(J) written confirmation of all appointments made or approved by the governing body; and

(K) adoption of a written policy concerning potential conflict of interest on the part of members of the governing body, the administration, medical and nursing staff and other employees who