Corporate Division

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Grace Division

Memorandum to

Ms. Barbara Johnson Director, Libraries From Francis Helminski Attorney, Legal Affairs

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Copies to

Department

Subject

Organizational Models for Proposed Multi-Hospital Library Cooperative

Date 27 June 1984

You have described a proposed cooperative arrangement among a number of hospitals, colleges, and libraries to establish a common computerized data base. This data base would include a catalog of holdings, and subsystems on circulation, borrower lists, and serials. I understand that the system would be centered at Wayne State. You inquired about alternate patterns of organization and governance. This memo discusses briefly four possibilities:

1) incorporation; 2) partnership; 3) Wayne State owned service bureau; and

4) joint venture. The recommended form is joint venture.

1. Incorporation.

Incorporation would entail the drafting of articles of incorporation, registration with the state, promulgation of by-laws, election of a board of directors, choosing officers, and regular future meetings with minutes formally kept and annual reports to the state commerce department. Application would also have to be made to the IRS for tax-exempt status. Because of this formality, cost, and inconvenience surrounding the establishment and ongoing operation of a corporation, this option cannot be recommended. Further, the corporate form is inappropriate where the entity envisioned comprises a kind of shared service, as here, and would not have discrete employees, equipment, or real property. Of the four options, this has the least to recommend it. Any advantages realized through incorporation, such as self-governance and autonomy, can be approximated in other ways through other forms.

Partnership.

A partnership, while more appropriate than the corporate form, is too overbroad for this scheme. In a partnership, the partners combine in an ongoing business with the understanding that profits or losses will be personally shared among them. The cooperative arrangement here is not an ongoing business out to turn a profit. The joint venture form, discussed below, has all the advantages of partnership but is more suited to this type of activity. Finally, partnerships are subject to formal filing and registration requirements with the state.

3. Wayne State Owned Service Bureau.

This appears on its face an acceptable option but for the apparent lack of control the hospitals, will have over the cooperative. In addition, a Wayne State sub-

division will likely be burdened with bureaucracy, red tape, and financial anxiety, as are all things at the University. [I speak both as an attorney who has had professional contact with WSU, and as a three-degree alumnus who spent more than seven years observing the place from inside.] Concerns for efficiency, and for a share in governance, then, would seem to make this an unattractive choice.

4. Joint Venture.

This arrangement is the far preferable form for the cooperative. A joint venture is a contractual entity, and not a statutory creature as are corporations and partnerships. It is therefore free from much regulation and oversight by the state. A joint venture is informal, yet flexible. The agreement establishing the venture can be precisely tailored to the details of governance, management, administration, and other matters of concern to the group.

For tax purposes, joint ventures are treated as partnerships. The members are individually liable for their share of the venture's income. If the venturers are, as here, themselves tax exempt, then there is little concern with taxes, as the entity itself need not establish its tax exempt status, unlike a corporation.

In summary, the joint venture form is well suited to the contemplated cooperative. It affords maximum flexibility and control, while minimizing formalities and contact with the state. There is no question that a joint venture should be acceptable to the hospital administration. Harper-Grace has entered many joint ventures in the past. Due to concerns with costs and formalities, however, I do not think that the administration would look as favorably on a proposed corporate or partnership scheme. Our office could not assuage those concerns should we be asked for advice.

I hope I have provided adequate information in this brief discussion. Please do not hesitate to contact me if you have further questions about this matter.

Francis Helminski

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