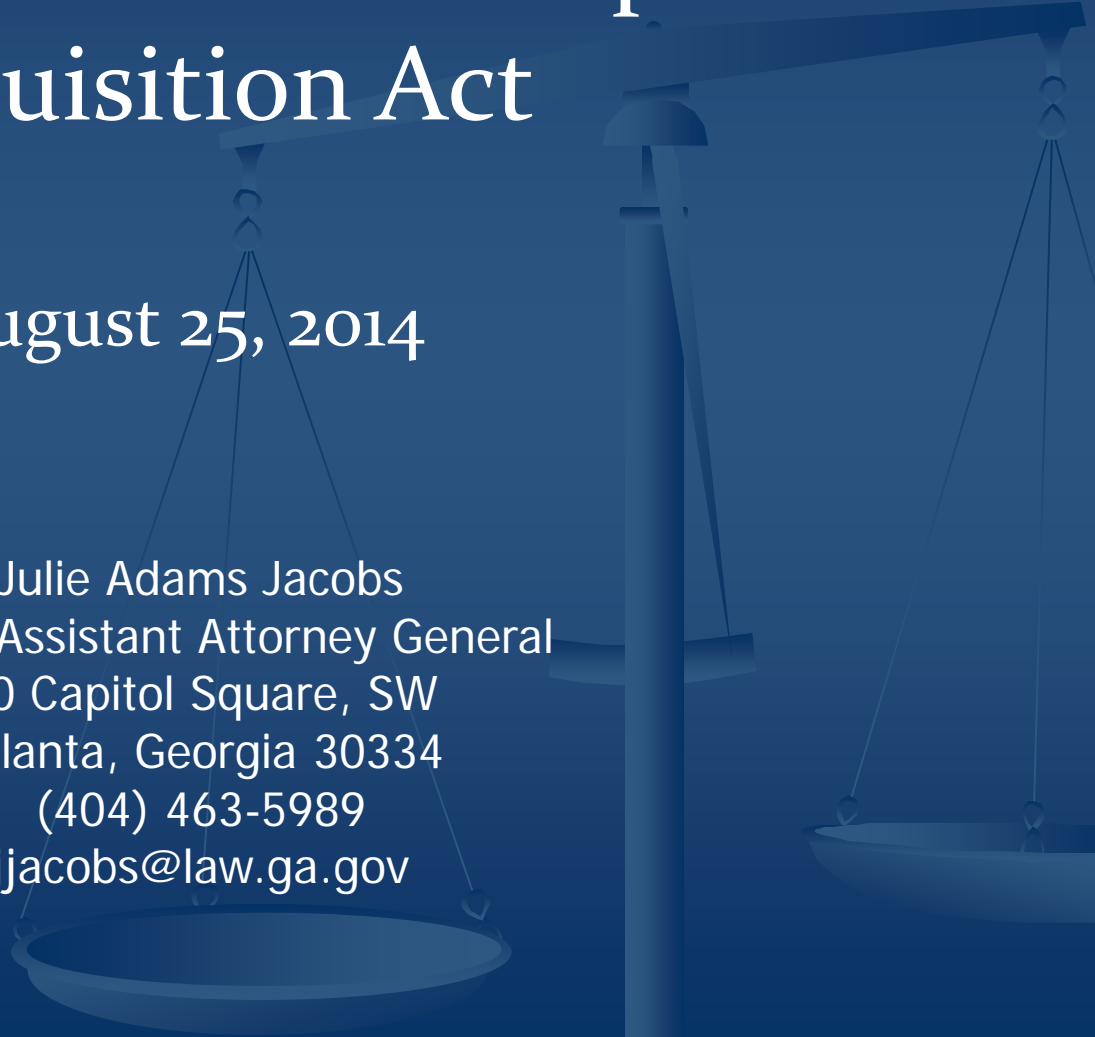


The Georgia Attorney General's Role Related to the Hospital Acquisition Act



August 25, 2014

Julie Adams Jacobs
Senior Assistant Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 463-5989
jjacobs@law.ga.gov



Organized into 5 Legal Divisions

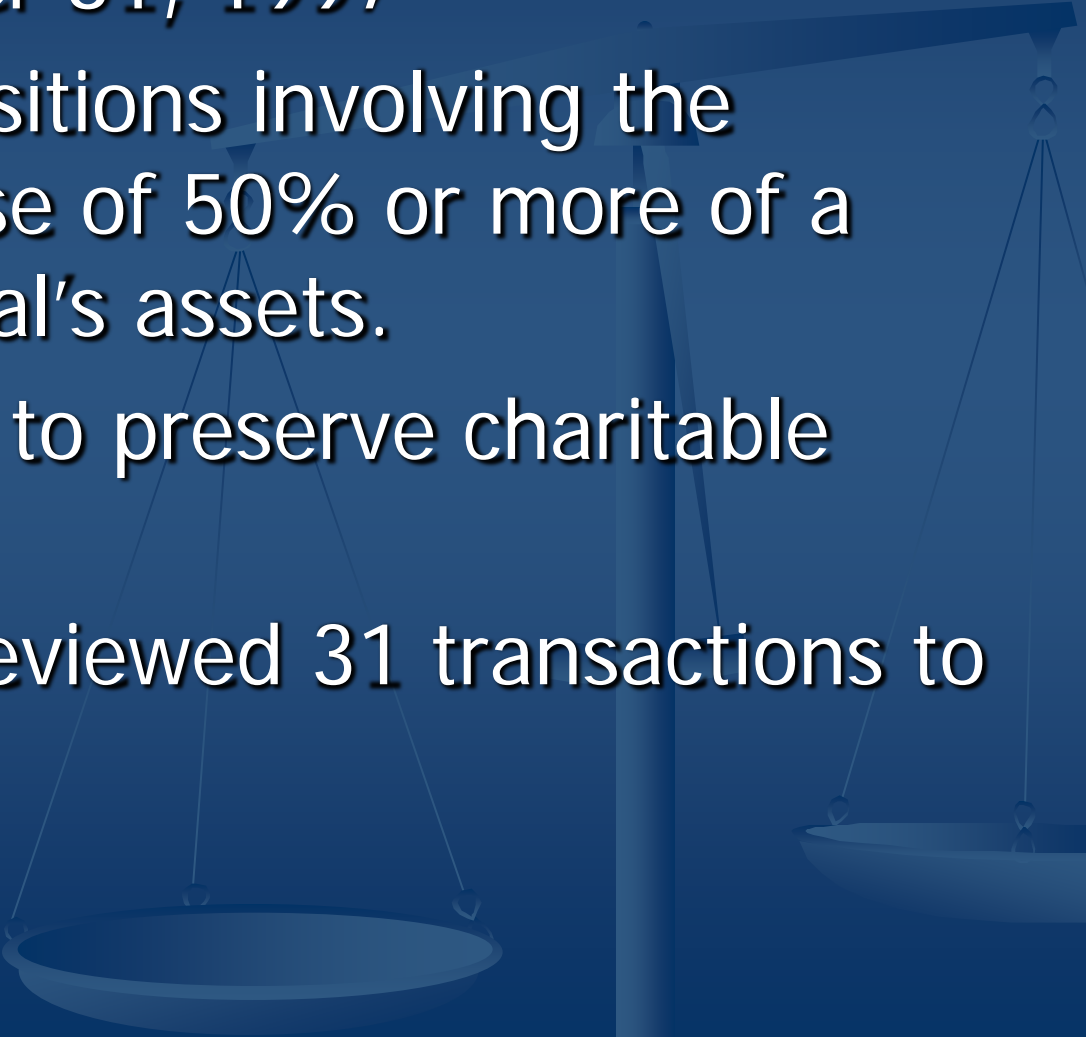
❑ Commercial Transactions and Litigation Division

Business and Finance Section

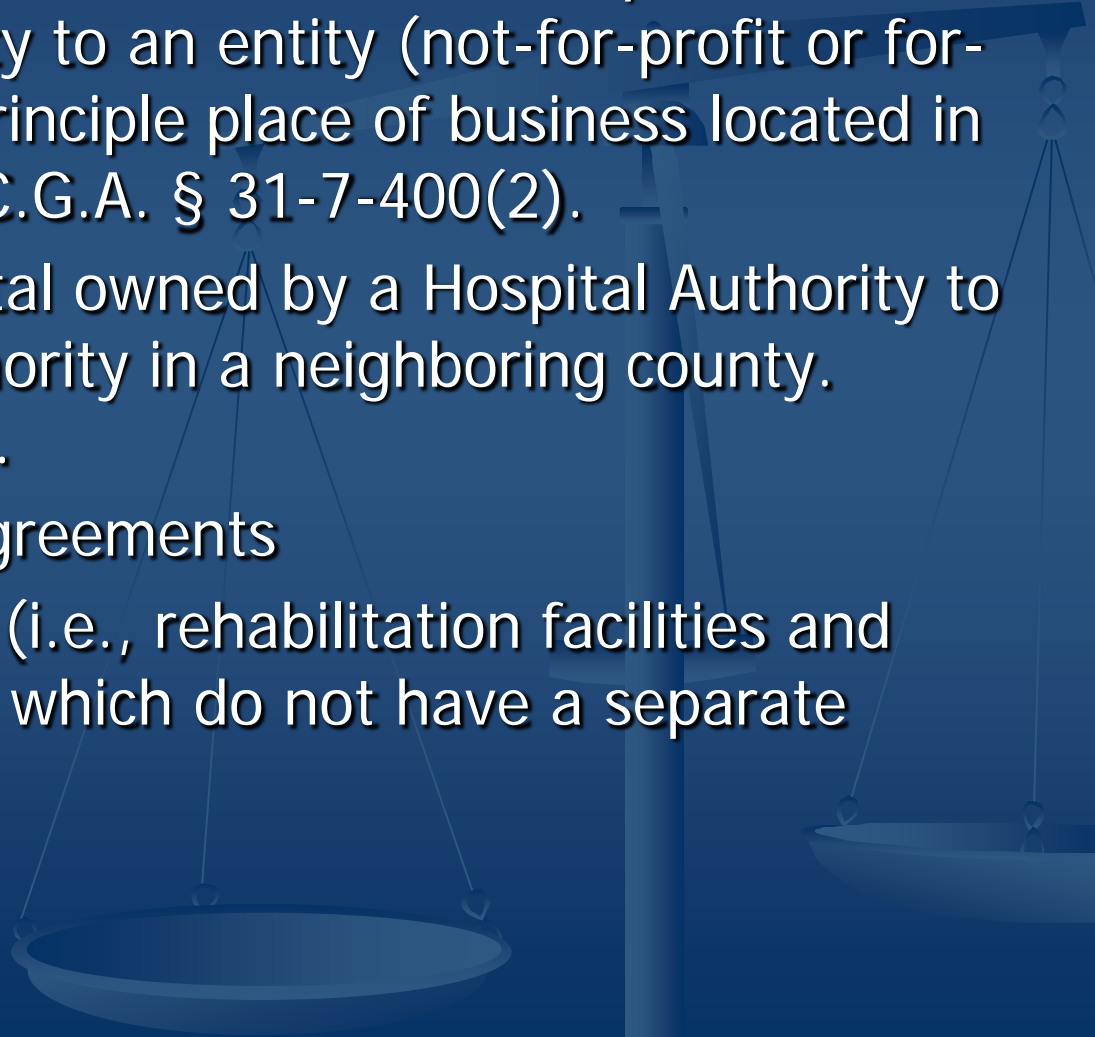
Provides guidance and litigation for all state government in the following areas: contracts, bond finance, lottery operations, bankruptcy, procurement, budget and general business matters. The regulatory practice includes civil enforcement of the law regulating mortgage lenders and brokers, the Georgia Securities Act, charitable trusts, hospital acquisitions and alcoholic beverages.

Hospital Acquisition Act

O.C.G.A. § 31-7-400 *et. seq.*

- Effective October 31, 1997
 - Applies to acquisitions involving the purchase or lease of 50% or more of a nonprofit hospital's assets.
 - Ultimate Goal is to preserve charitable assets
 - Our office has reviewed 31 transactions to date.
- 

The Act Does Not Apply to:

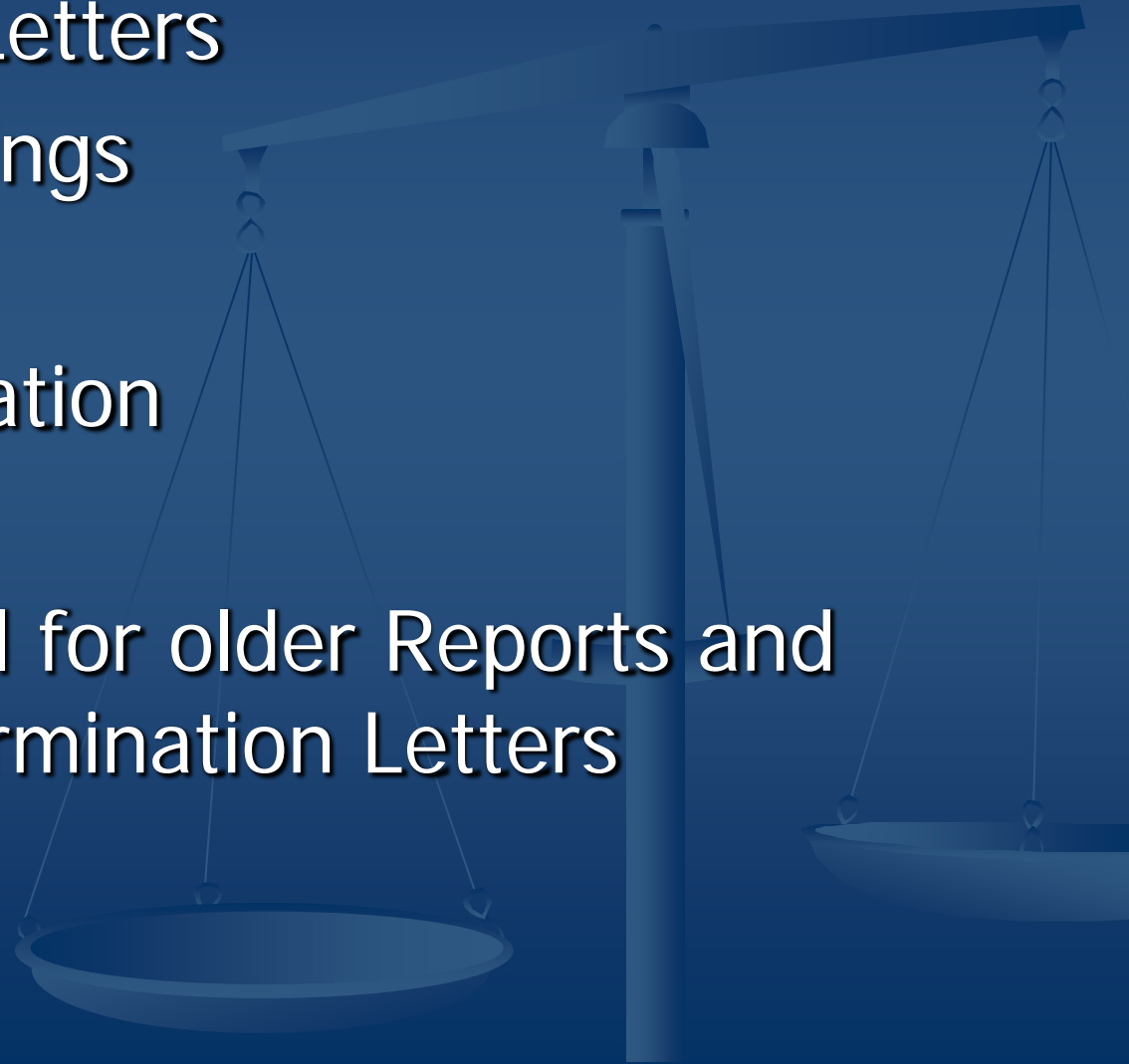
- Restructuring Transactions – lease of a hospital owned by a hospital authority to an entity (not-for-profit or for-profit) which has a principle place of business located in the same county. O.C.G.A. § 31-7-400(2).
 - Sale/lease of a hospital owned by a Hospital Authority to another hospital authority in a neighboring county. O.C.G.A. § 31-7-89.1.
 - Most Management Agreements
 - Stand-alone facilities (i.e., rehabilitation facilities and psychiatric hospitals) which do not have a separate hospital permit.
- 

Information on the website:

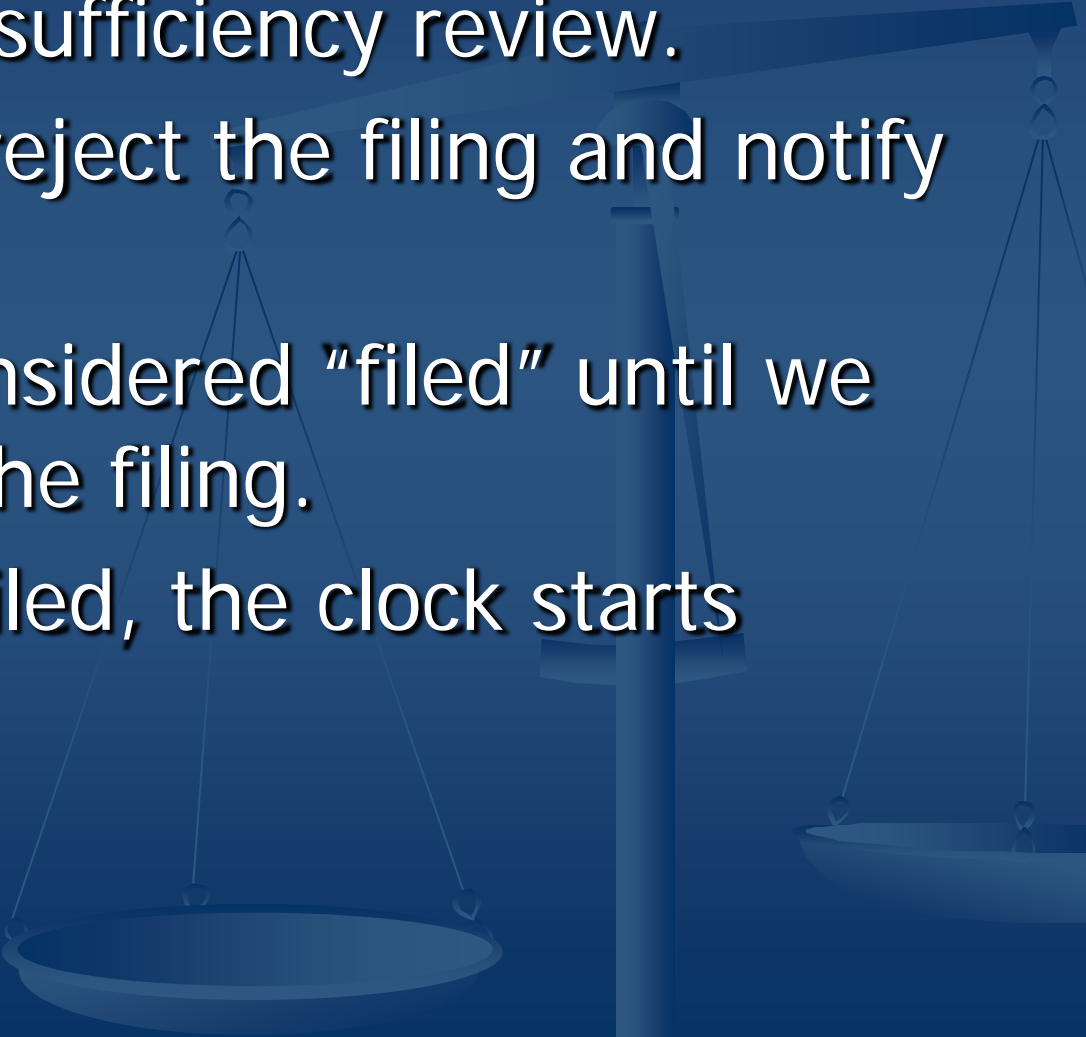
<http://law.ga.gov>

- Determination Letters
- Reports of Findings
- Notice Forms
- General Information

Give us a call for older Reports and
Determination Letters



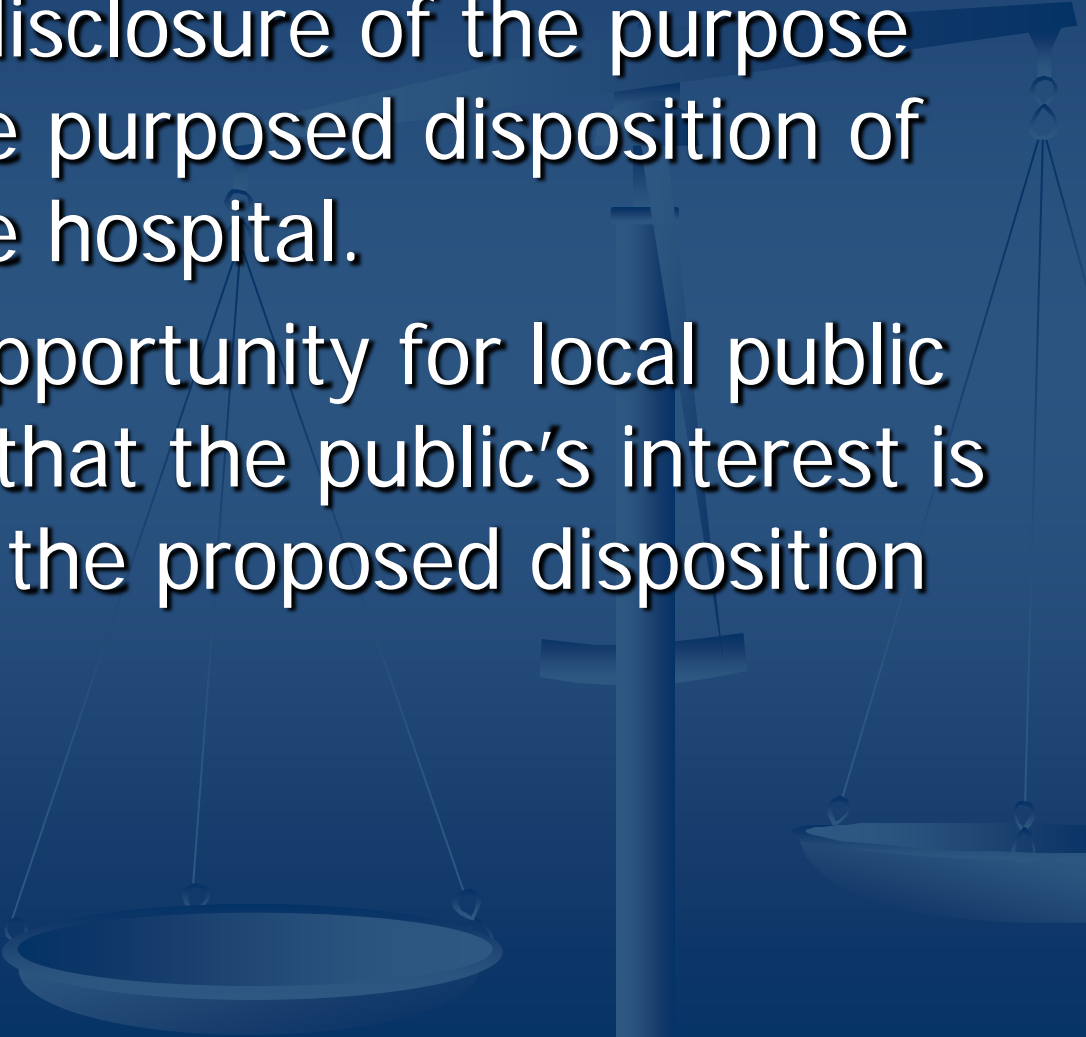
What Happens After Notice Filing?

- We'll conduct a sufficiency review.
 - We'll accept or reject the filing and notify the parties.
 - Notice is not considered "filed" until we have accepted the filing.
 - Once Notice is filed, the clock starts running.
- 

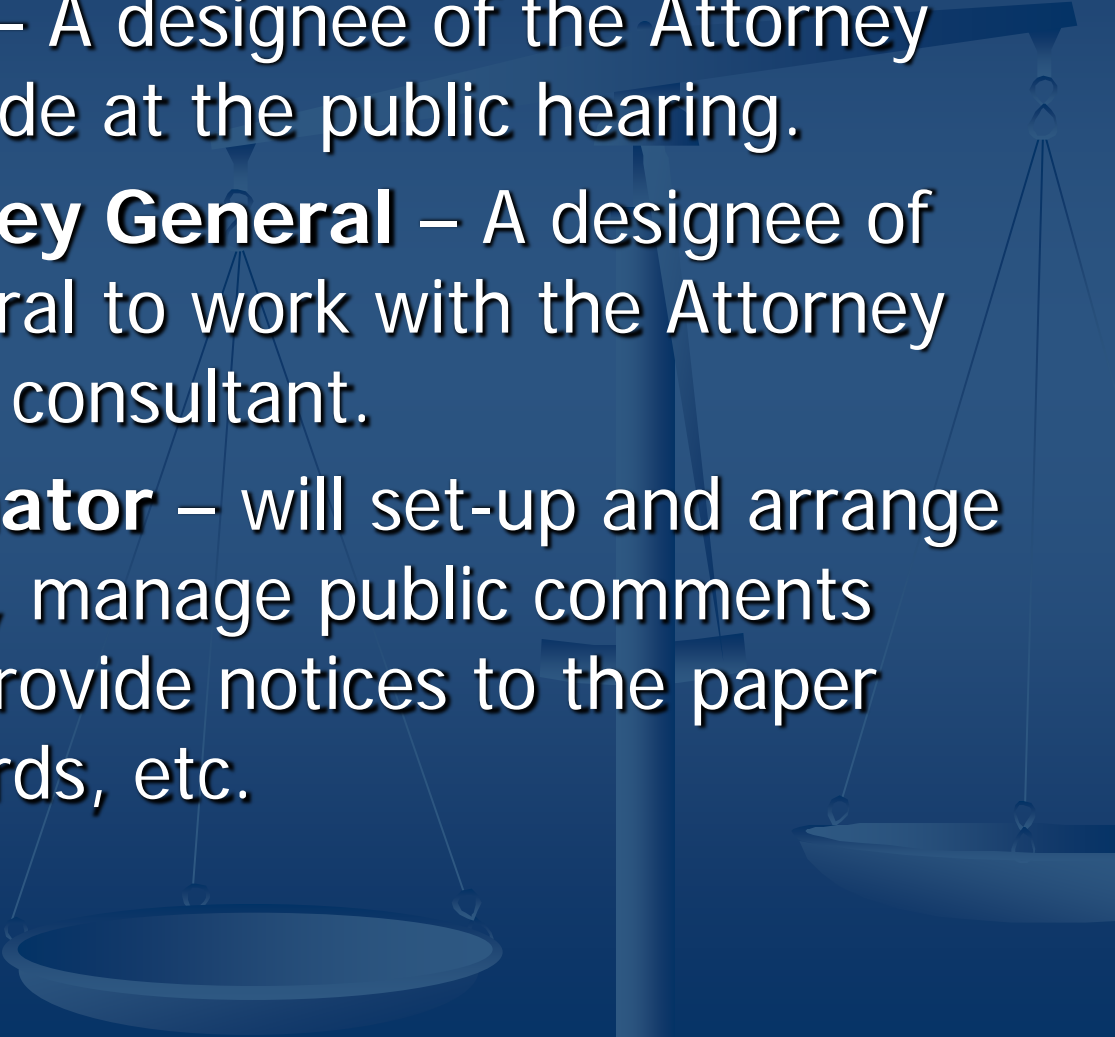
Time Line

- The filing of the Notice triggers time requirements:
 - Must give AG at least **90 days notice** of the proposed transaction prior to consummation
 - AG must publish notice of transaction in county newspaper within **10 days** of Notice filing.
 - AG must conduct a public hearing within **60 days** after receipt of the Notice
 - AG must issue Report of Findings within **30 days** of the public hearing
 - *AG can extend time by 30 days if we find that there has been a failure of the parties to disclose or respond to subpoenas or other process*

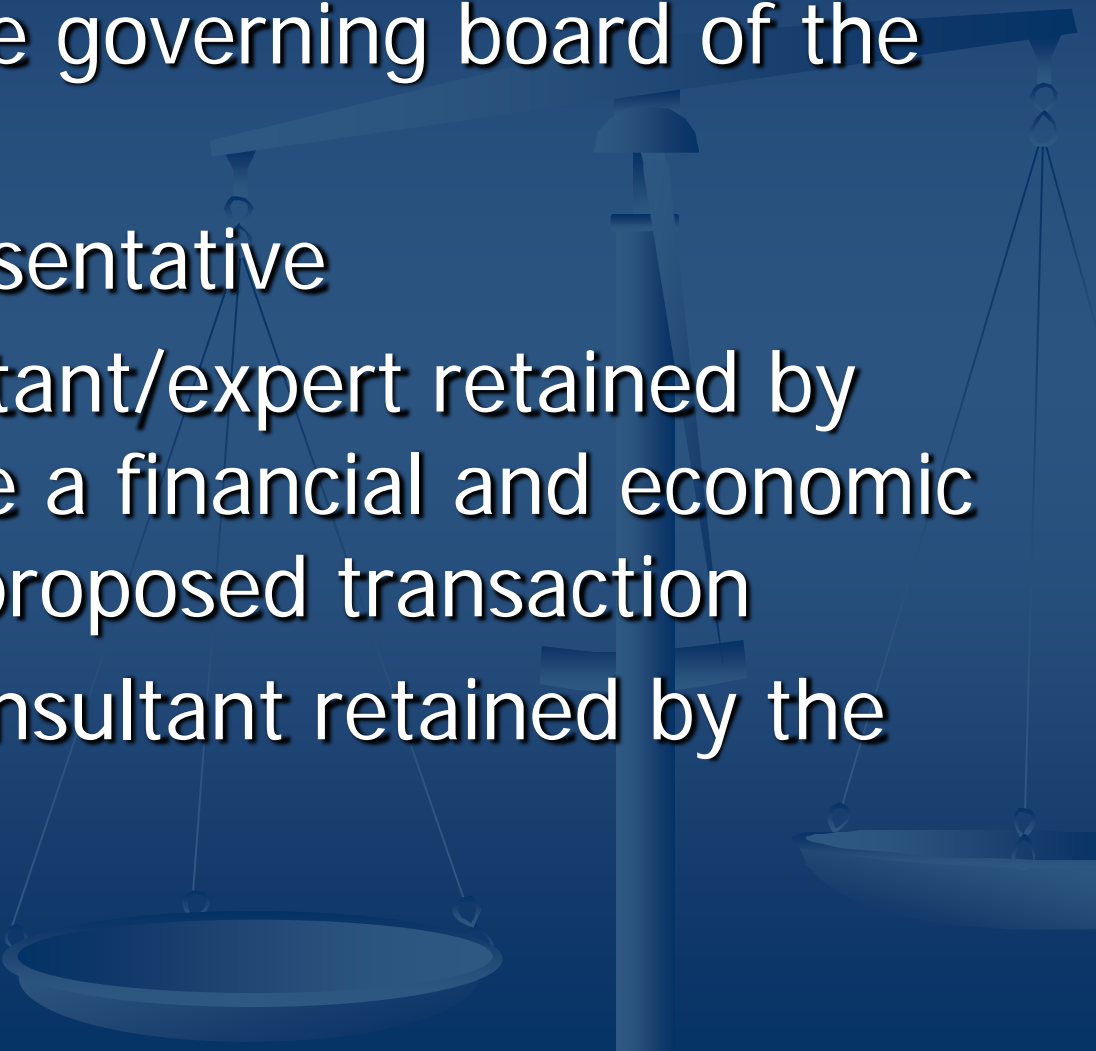
Public Hearing - Purpose

- To provide full disclosure of the purpose and terms of the proposed disposition of the assets of the hospital.
 - To provide an opportunity for local public input to ensure that the public's interest is protected when the proposed disposition is completed.
- 

The Public Hearing

- **Hearing Officer** – A designee of the Attorney General shall preside at the public hearing.
 - **Assistant Attorney General** – A designee of the Attorney General to work with the Attorney General's financial consultant.
 - **Hearing Coordinator** – will set-up and arrange the public hearing, manage public comments prior to hearing, provide notices to the paper and maintain records, etc.
- 

Who should provide testimony at the hearing?

- A member of the governing board of the Seller
 - Purchaser representative
 - Financial consultant/expert retained by Seller to prepare a financial and economic analysis of the proposed transaction
 - Independent consultant retained by the AG
- 

The Public Hearing: Review Factors

- To satisfy the AG's concerns that the parties have exhausted the necessary due diligence, **Seller** should be prepared to address:
 - Why is the Hospital being sold?
 - Alternatives considered, process, use of expert assistance
 - How did the Seller choose the Buyer?
 - Bid or RFP?
 - What will the Seller do with the proceeds from sale?
 - Proceeds must remain in charitable domain

Review Factors - Con't

- **Buyer** - What will the buyer do with the hospital after the sale?
 - Strategic Plan
 - What plans does the buyer have for the continuation of indigent and charitable care?
 - Same level of services?
 - Must keep the hospital open with 24 hour ER
 - Address employee retention

Review Factors – Con't

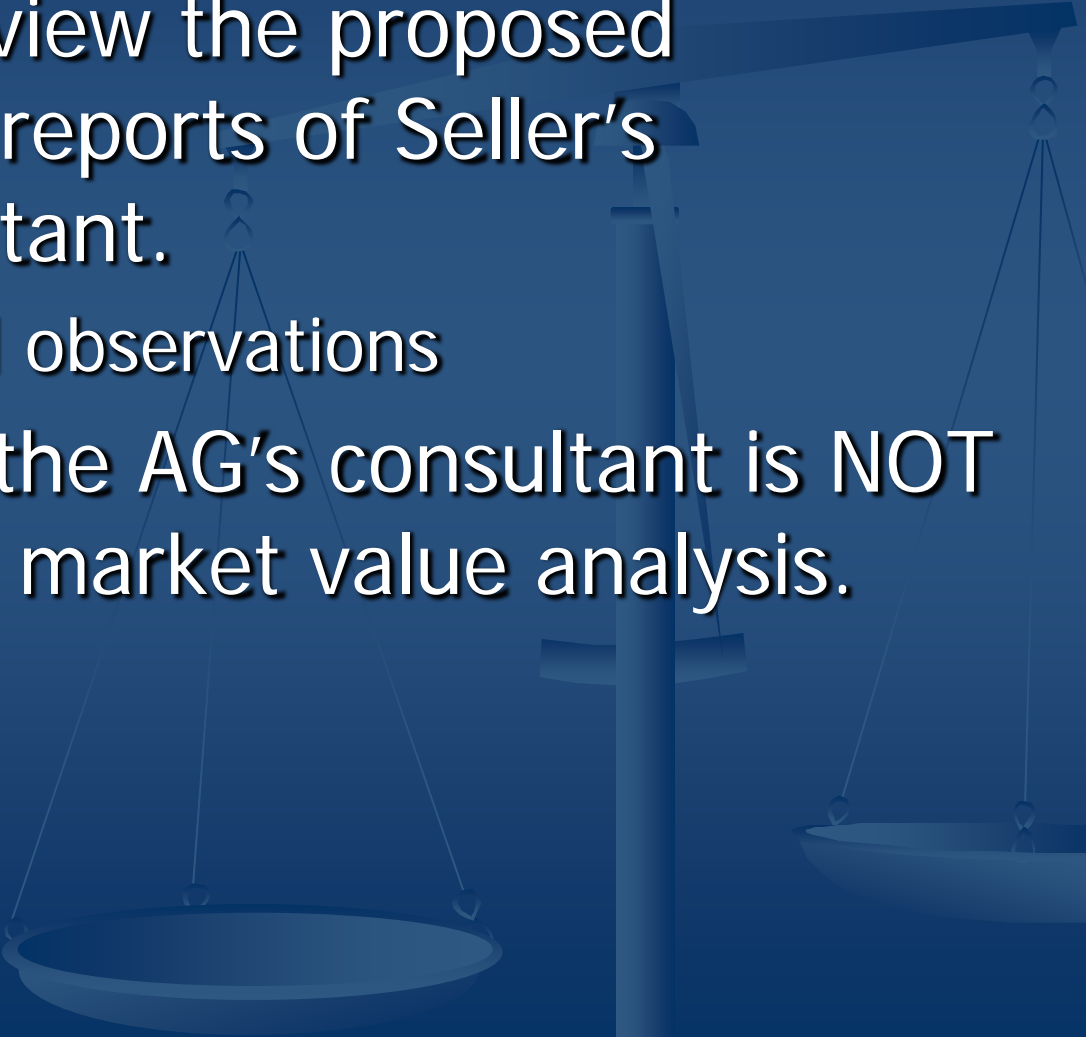
■ Seller's Valuation Consultant

■ Prepare a financial and economic analysis

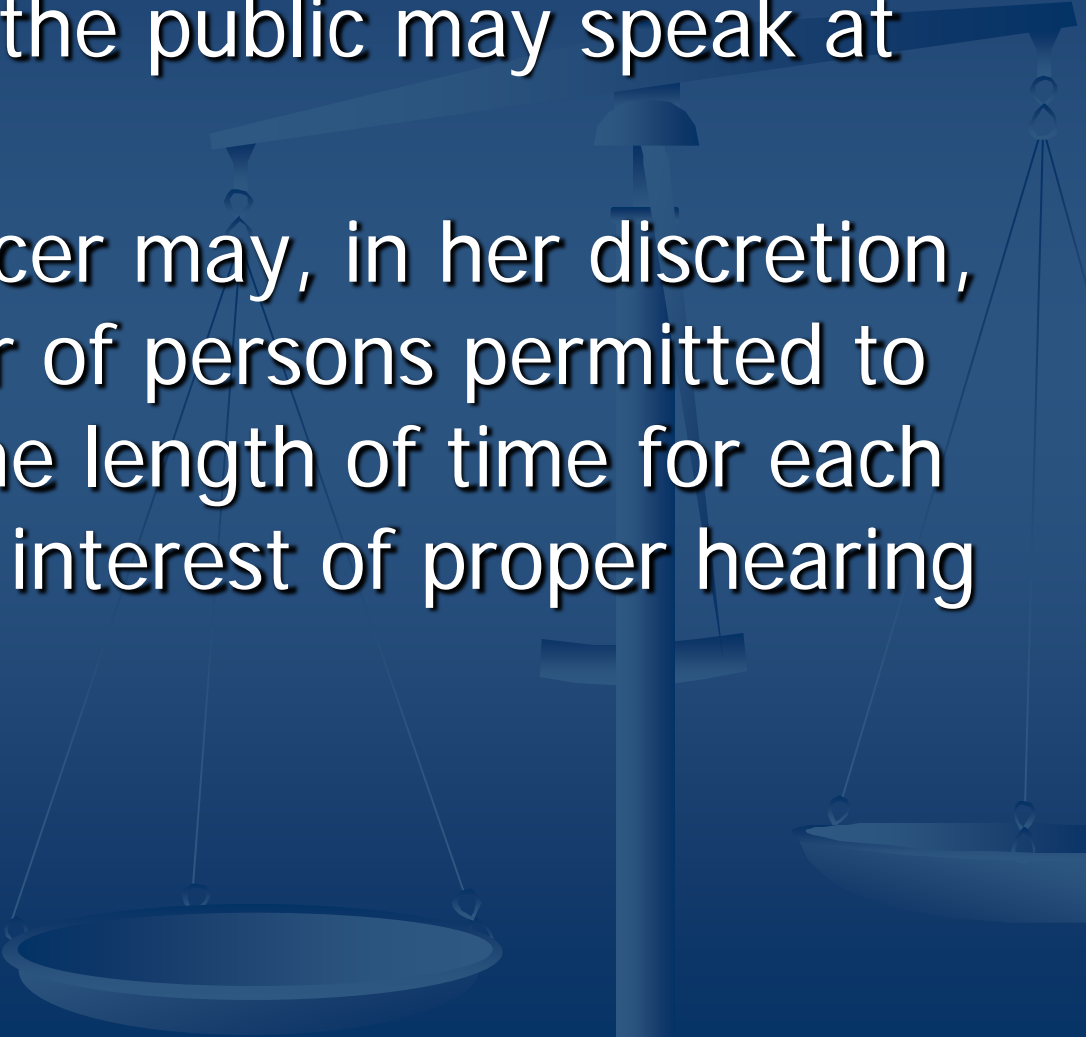
- Value of hospital as a "going concern"
- Whether the consideration matches or exceeds that value
 - When not paid in money, need value of consideration
- Nonprofit to nonprofit – will receive an enforceable commitment for fair and reasonable benefits for its assets.

We do not require a fairness opinion.

What is the Purpose of the AG's Independent Valuation Consultant?

- Purpose is to review the proposed transaction and reports of Seller's valuation consultant.
 - calculations and observations
 - The purpose of the AG's consultant is NOT to provide a fair market value analysis.
- 

Public Comment

- Any member of the public may speak at the hearing
 - The hearing officer may, in her discretion, limit the number of persons permitted to comment and the length of time for each comment in the interest of proper hearing administration
- 

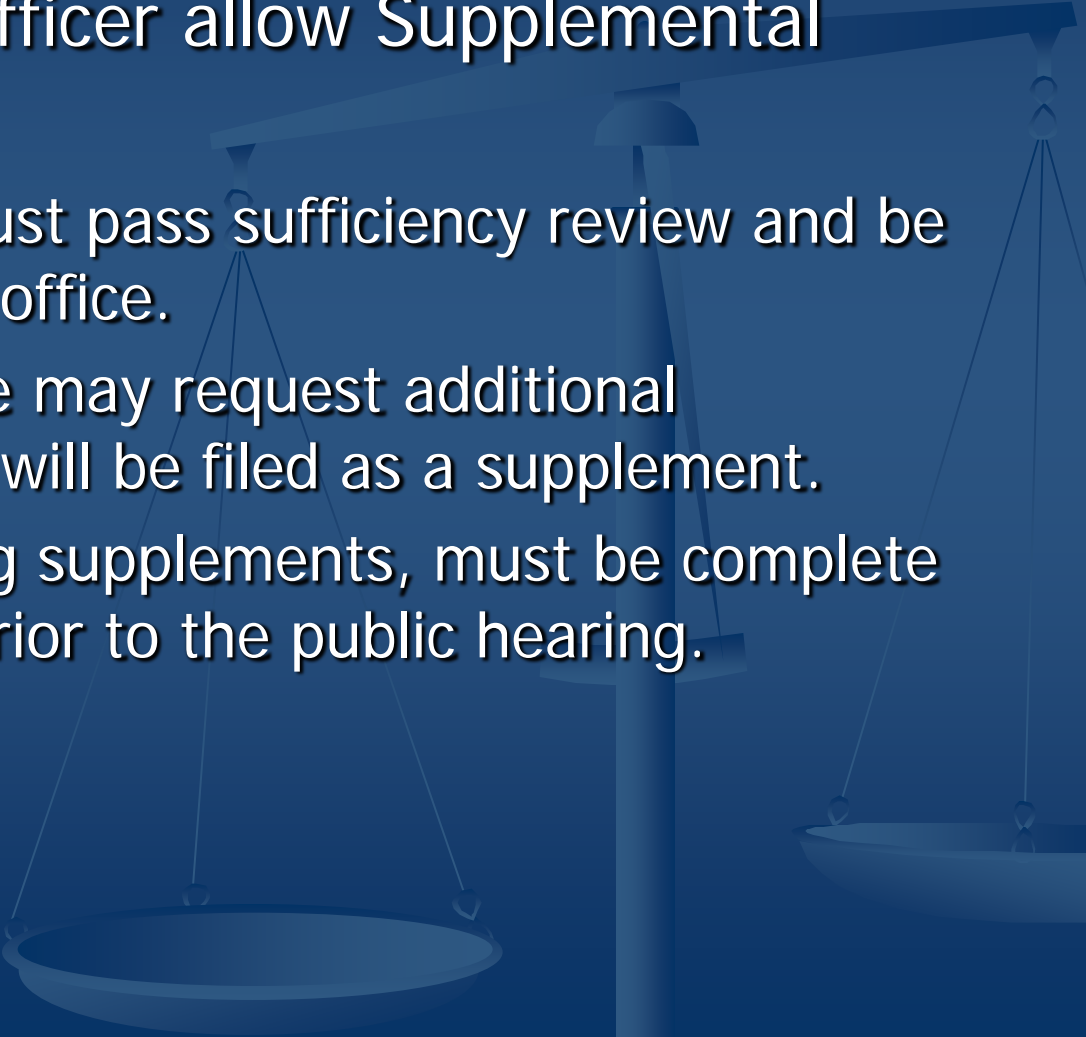
Frequently Asked Questions:

- Is community benefit a factor in determining value in a not-for-profit to not-for-profit transaction?
 - In a sale to a nonprofit, the seller should receive “an enforceable commitment for fair and reasonable community benefits for its assets.”
 - The use of the word “for” implies an exchange.
 - Therefore, the assets to be sold must be valued so that there is some way to measure the fair and reasonable community benefits.
 - Where the seller receives the going concern value of the hospital assets to be sold, the charitable investment in the hospital is not diminished.
 - Parties should submit a valuation of the Hospital with its Notice since the value of the Hospital aids in determining whether the Community is receiving a benefit for its assets.

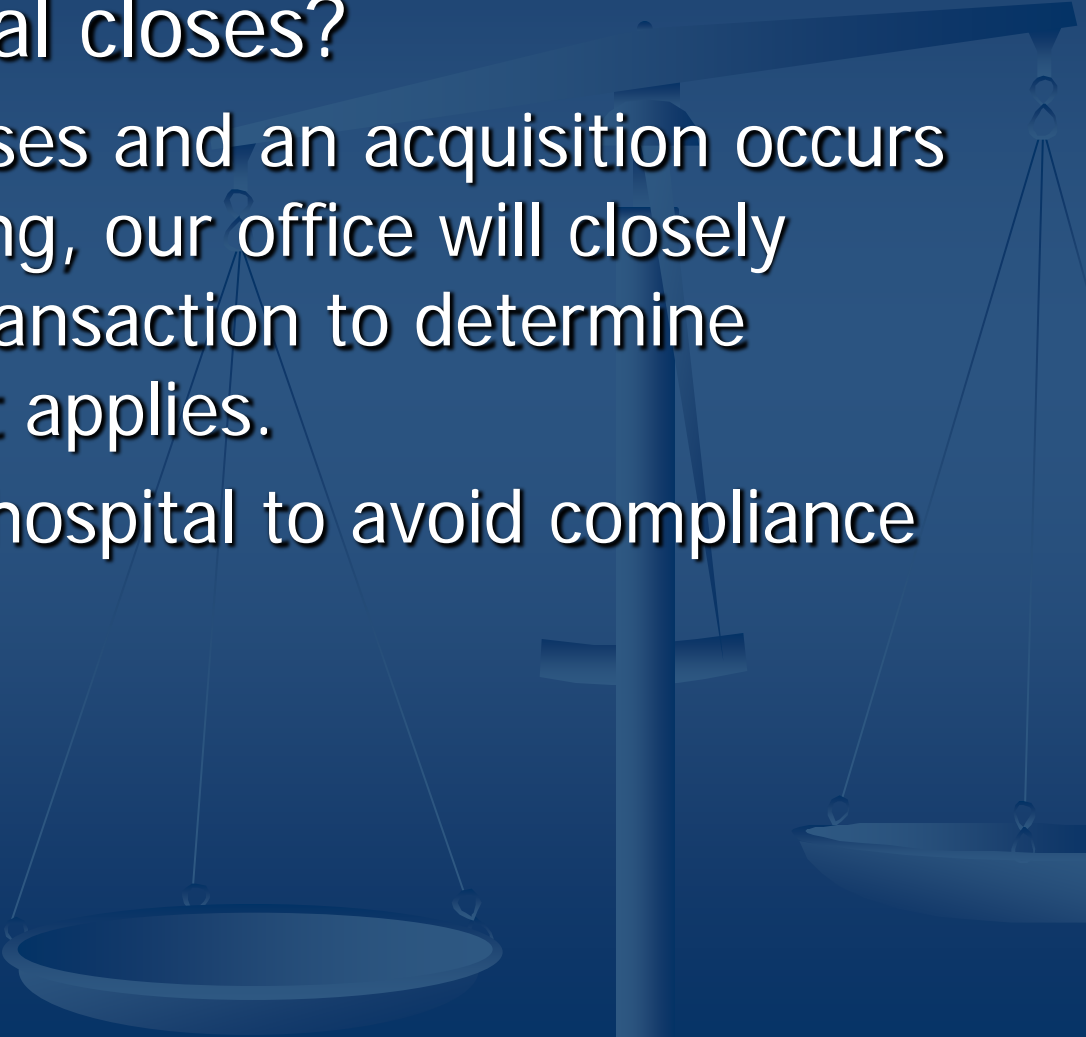
FAQ – Continued

- Can the parties to a transaction sign a Purchase and Sale Agreement prior to submitting the Notice filing?
 - No, the agreements should not be signed prior to AG approval.
 - See Sparks v. Hosp. Auth. Of City of Bremen and Haralson Co., 241 Ga. App. 485 (1999) and Turpin v. Rabun Co. Bd. of Commissioners, 245 Ga. App. 190 (2000).
 - Some parties have entered into a good faith side agreement.

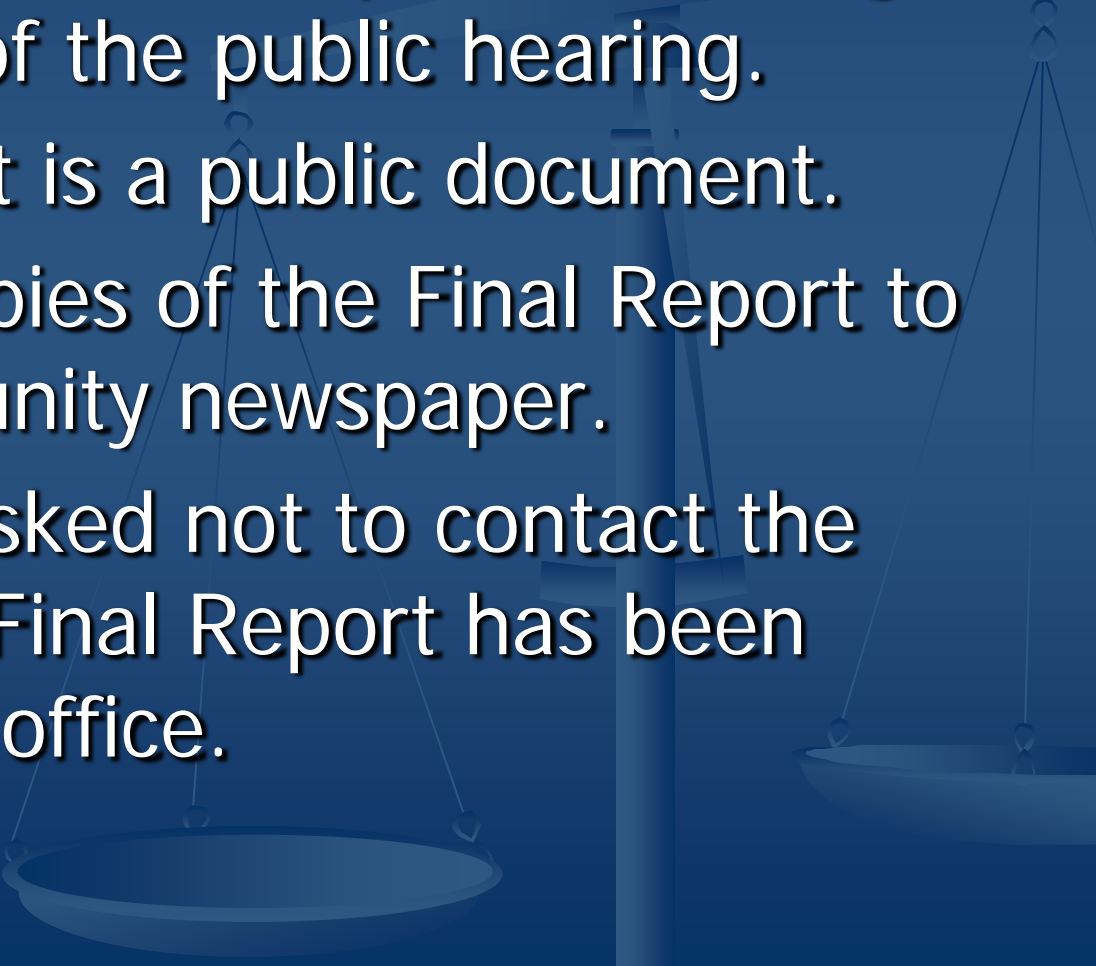
FAQ - Continued

- Will the Hearing Officer allow Supplemental Filings? Yes.
 - The initial filing must pass sufficiency review and be "accepted" by our office.
 - Once accepted, we may request additional information which will be filed as a supplement.
 - All filings, including supplements, must be complete at least 2 weeks prior to the public hearing.
- 

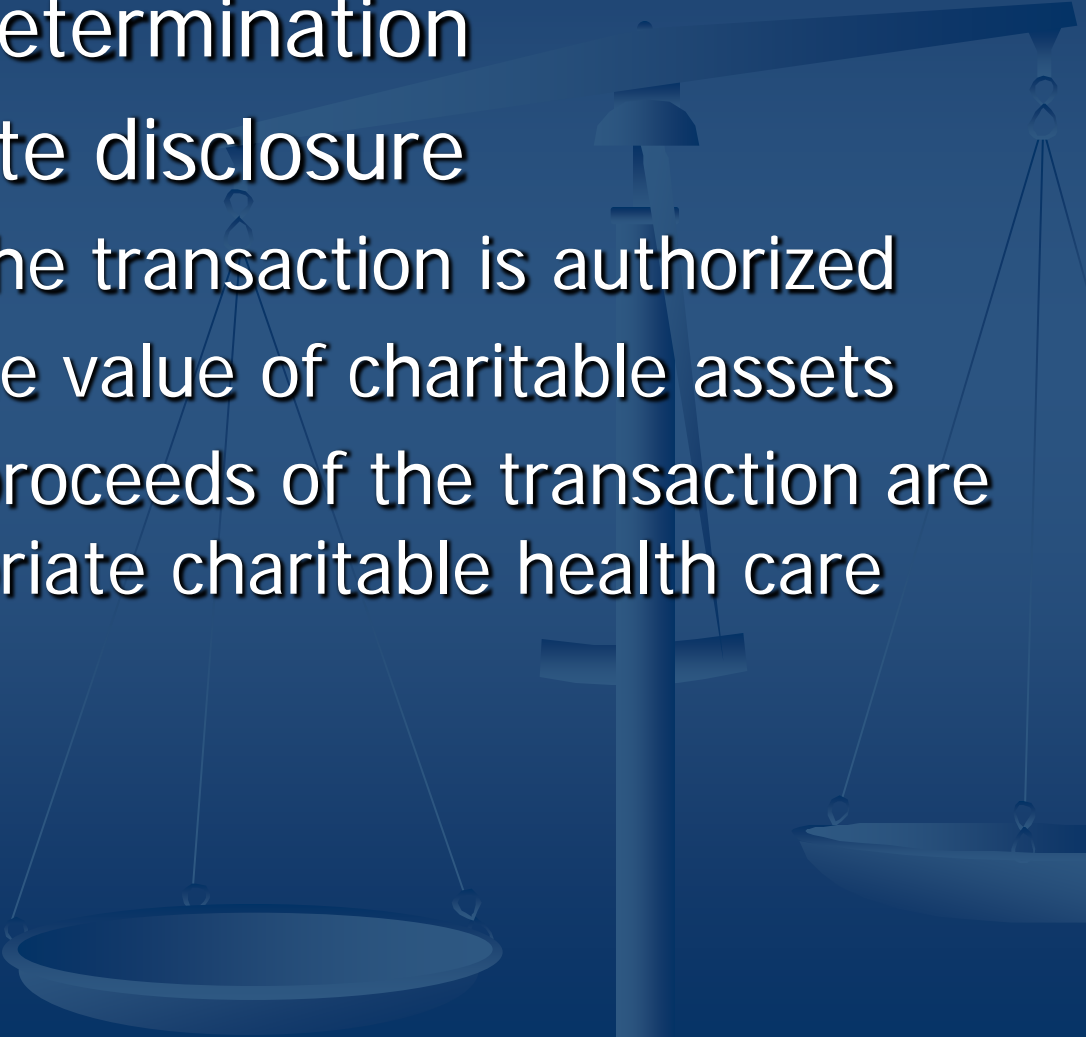
FAQ – Continued

- What if a hospital closes?
 - If a hospital closes and an acquisition occurs soon after closing, our office will closely scrutinize the transaction to determine whether the Act applies.
 - Cannot close a hospital to avoid compliance with the Act.
- 

The Final Report of Findings

- We will issue the Final Report of Findings within 30 days of the public hearing.
 - The Final Report is a public document.
 - We will send copies of the Final Report to the local community newspaper.
 - Parties will be asked not to contact the media until the Final Report has been released by our office.
- 

What is the Standard for Approval?

- Public interest determination
 - Must be adequate disclosure
 - To insure that the transaction is authorized
 - To safeguard the value of charitable assets
 - To insure that proceeds of the transaction are used for appropriate charitable health care purposes.
- 

How much will this cost?

- Our office pays for the general costs of the public hearing, including publication costs.
 - Now, pursuant to O.C.G.A. § 31-7-402(c), parties to transaction must directly pay the costs of the financial experts retained by the AG.
 - Old law required parties pay \$50,000 with Notice.
- Parties (Buyer and/or Seller) are responsible for costs associated with preparing the Notice.
 - Financial consultants retained by Seller

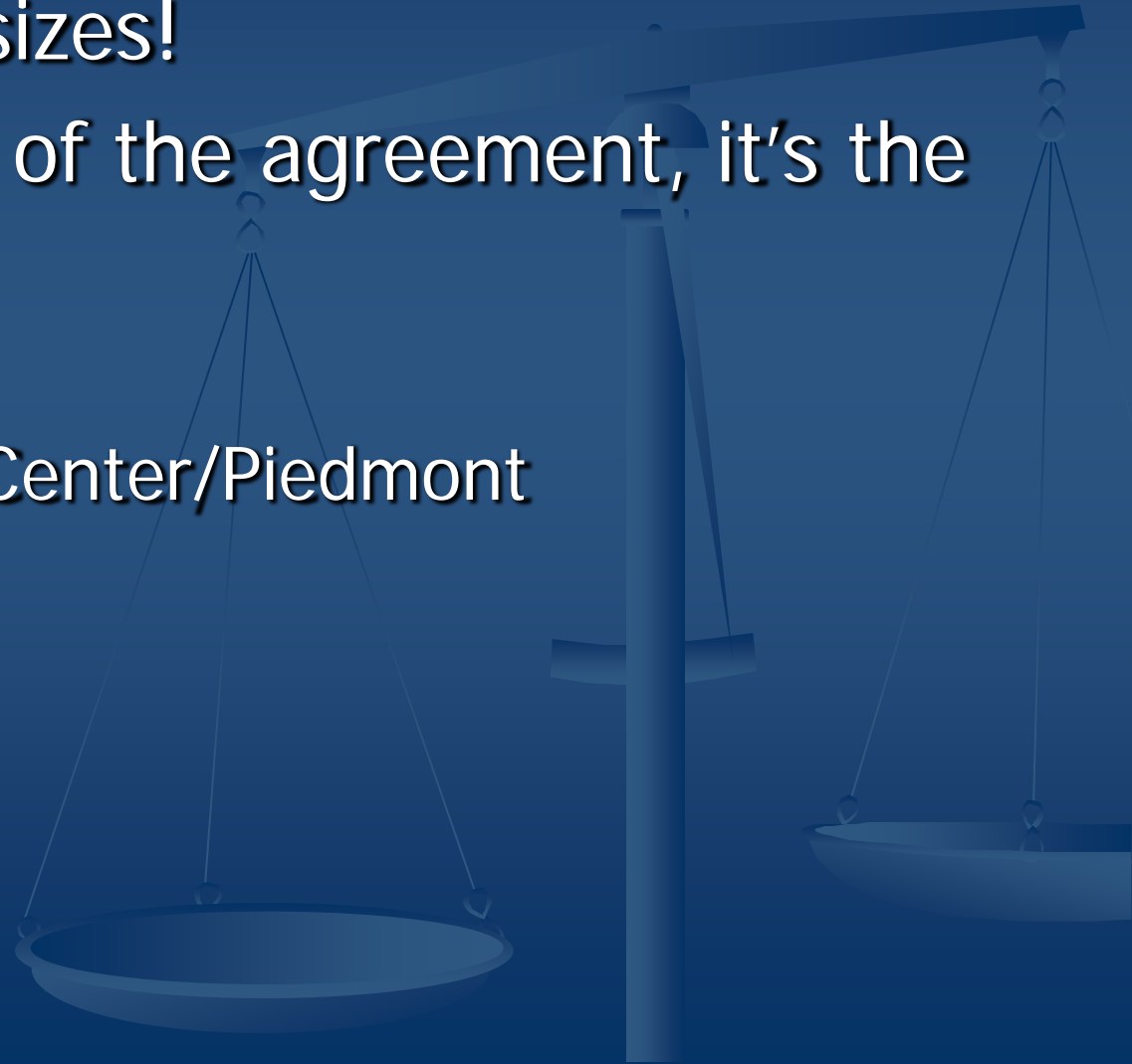
Common Mistakes



- Not contacting our office for a determination when there is a question
- Attempting to file before the Notice is ready
- Not including a valuation with Notice filing
- Not filing with sufficient time to close the transaction
- Attempting to execute the sale documents (you may have an unsigned draft) before AG issues report

Affiliations

- All shapes and sizes!
- It's not the title of the agreement, it's the content:
 - Satilla/Mayo
 - Henry Medical Center/Piedmont



Management Agreements

Hypothetical:

- Fife Memorial Hospital is currently owed by the Hospital Authority of Mayberry. The Hospital Authority of Mayberry will lease all its assets to the Hospital Authority of Mt. Pilot, a neighboring county authority, for a 5 year term. The Hospital Authority of Mt. Pilot will then enter into a Management Agreement with Weaver Investments, Inc. ("Weaver, Inc."), a nonprofit corporation to manage the Hospital.
- **Question for the AG:** Whether the Management Agreement with Weaver, Inc. indirectly operates as a lease of 50% or more of Hospital assets to a nonprofit having its principal place of business outside of Mayberry County?

Management Agreements Con't

Pros

- Authority retains ultimate control over leased assets and hospital operations
- Authority retains right to revoke Weaver's control over medical staff affairs and appointments
- Authority retains control over all appointments to Hospital's medical staff, granting of clinical privileges at the hospital and any actions related to medical staff members, including appeals and actions.
- All accounts receivable and billings for services remain in the name of and for the account of the Authority
- Authority must approve the annual budget
- All licenses, permits and provider agreements will be in the name of Authority

Cons

- Weaver's principle place of business is in Mt. Pilot County, not Mayberry County.
- Nonprofit's compensation under the Management Agreement is to be equal to the net revenues generated through the operation of the Hospital.
- Is this the equivalent of the nonprofit taking complete operational control?
- Can't rename a lease as a management agreement and avoid the Act.

When in Doubt . . .

If you question whether the Hospital Acquisition Act applies, contact our office for an official determination.

Julie Adams Jacobs
Senior Assistant Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 463-5989
jjacobs@law.ga.gov

