

[N.D. Cent. Code § 10-33-145.]

§ 10-33-145. Transaction by a nonprofit corporation or entity operating or controlling a hospital or nursing home -- Attorney general's powers and duties -- Experts -- Continuing appropriation: Nonprofit Corporations

1. Upon receipt of a notice under section 10-33-144, the attorney general may review and investigate the proposed agreement or transaction and may require the nonprofit corporation or entity operating or controlling a hospital or nursing home and the other parties to the agreement or transaction to provide to the attorney general any additional information relevant to the review or investigation of the proposed agreement or transaction.

2. Upon receipt of a notice under section 10-33-144, the attorney general may review the proposed agreement or transaction to determine whether consummation of the proposed agreement or transaction by the nonprofit corporation or entity operating or controlling a hospital or nursing home is consistent with the purposes of the nonprofit corporation or entity operating or controlling a hospital or nursing home and the fiduciary obligations of the officers and directors of the nonprofit corporation or entity operating or controlling a hospital or nursing home and is in accordance with law. The attorney general shall consider the following factors in reviewing and evaluating a proposed agreement or transaction:

- a. Whether appropriate steps were taken by the nonprofit corporation or entity operating or controlling a hospital or nursing home to safeguard restricted assets transferred to the acquiring entity;
- b. Whether appropriate steps were taken by the nonprofit corporation or entity operating or controlling a hospital or nursing home to ensure that any proceeds of the proposed agreement or transaction are used for purposes consistent with restrictions placed on assets of and with the purposes of the nonprofit corporation or entity operating or controlling a hospital or nursing home;
- c. Whether the terms and conditions of the proposed agreement or transaction are fair and reasonable to the nonprofit corporation or entity operating or controlling a hospital or nursing home, including whether the nonprofit corporation or entity operating or controlling the hospital or nursing home will receive fair market value for its assets and, in a proposed agreement or transaction involving a nursing home, whether the proposed agreement or transaction constitutes a bona fide transaction;
- d. Whether any conflict of interest or breach of fiduciary duty exists or was disclosed, including any conflict of interest or breach of fiduciary duty related to directors and officers of, executives of, and experts retained by the nonprofit corporation or entity operating or controlling a hospital or nursing home and any other party to the agreement or transaction;
- e. Whether the agreement or transaction will result in inurement, pecuniary gain, or excess benefit to any person associated with the nonprofit corporation or entity operating or controlling a hospital or nursing home or to any other person;

f. Whether the transaction is in the best interests of the nonprofit corporation or entity operating or controlling a hospital or nursing home; and

g. Whether the transaction is authorized by the nonprofit corporation's governing records.

3. For the purpose of reviewing and evaluating the factors identified in subsection 2, the attorney general may retain experts if necessary and reasonable and may obtain public comment regarding the proposed agreement or transaction. A contract entered by the attorney general with an expert under this section does not require a bid and is exempt from chapters 44-08 and 54-44.4. If the attorney general intends to seek payment from the nonprofit corporation or entity operating or controlling a hospital or nursing home for the cost of any expert retained under this subsection, at least five days before retaining that expert, the attorney general shall notify the nonprofit corporation or entity operating or controlling a hospital or nursing home of the expert cost projected to be incurred. A nonprofit corporation or entity operating or controlling a hospital or nursing home which receives notice under this subsection shall pay the reasonable cost of any retained expert. If the nonprofit corporation or entity operating or controlling a hospital or nursing home objects to paying the costs of an expert, the corporation or entity may seek a district court order limiting the corporation's or entity's liability for the costs. In determining whether to issue an order, the court shall consider whether the expert is necessary and reasonable and the cost of the expert relative to the value of the proposed agreement or transaction.

4. Section 44-04-18.4 applies to any information provided to the attorney general under sections 10-33-144 through 10-33-147.

5. All costs, fees, and other moneys received under sections 10-33-144 through 10-33-149 must be deposited into the attorney general's operating fund. The moneys in the fund are appropriated to pay the costs incurred in the attorney general's performance of responsibilities pursuant to sections 10-33-144 through 10-33-149.