

**[Ohio Rev. Code § 109.35.]**

**§ 109.35. Approval or disapproval of proposed transactions: Attorney General—Nonprofit Health Care Entity**

(A) Not later than sixty days after receipt of a notice and other documents required by section 109.34 of the Revised Code, the attorney general shall approve or disapprove the proposed transaction, except that the attorney general for good cause may extend this period an additional ninety days.

(B) In determining whether to approve or disapprove a proposed transaction, the attorney general shall consider:

(1) Whether the proposed transaction will result in a breach of fiduciary duty, as determined by the attorney general, including conflicts of interest related to payments or benefits to officers, directors, board members, executives, and experts employed or retained by the parties;

(2) Whether the nonprofit health care entity will receive full and fair market value for its charitable or social welfare assets;

(3) Whether the proceeds of the proposed transaction will be used consistent with the nonprofit health care entity's original charitable purpose;

(4) Any other criteria the attorney general considers necessary to determine whether the nonprofit health care entity will receive full and fair market value for its charitable or social welfare assets as required in rules adopted by the attorney general in accordance with Chapter 119. of the Revised Code.

(C) The attorney general may retain, at the nonprofit health care entity's expense, one or more independently qualified experts, including an investment banker, actuary, appraiser, certified public accountant, or other expert, as the attorney general considers reasonably necessary to provide assistance in making a decision under this section. The nonprofit health care entity shall promptly reimburse the attorney general for the cost of retaining experts. The cost of retaining an expert shall not exceed an amount that is reasonable and necessary to make a determination under this section. The contract to retain an expert is exempt from Chapter 125. of the Revised Code.

At any time while considering a proposed transaction under this section, the attorney general may request any additional information from the nonprofit health care entity that the attorney general considers appropriate to the valuation of the entity's charitable or social welfare assets. The nonprofit health care entity shall provide the information not later than ten days after the date of the request. The attorney general for good cause may delay approval of the proposed transaction up to thirty days, in addition to the ninety-day extension authorized by division (A) of this section, following receipt of documents and other material containing the information requested.

(D) The attorney general shall approve or disapprove a proposed transaction on the basis of the criteria set forth in division (B) of this section. Once a proposed transaction is approved, any substantial alteration is a new transaction subject to approval by the attorney general.

The nonprofit health care entity may resubmit a notice and other documents seeking approval of a proposed transaction disapproved by the attorney general but may not submit a notice and other documents that are identical or substantially similar to the original submission.

If the attorney general disapproves the proposed transaction, the nonprofit health care entity may appeal the disapproval pursuant to division (H) of this section.

(E) If the attorney general approves the proposed transaction, the nonprofit health care entity shall hold a public hearing to receive comment on the proposed use of the proceeds of the transaction. The hearing shall be held in the county where the nonprofit health care entity has its principal place of business not later than forty-five days after receipt of written notice of the attorney general's approval.

At least thirty days prior to the date set for the hearing, the nonprofit health care entity shall publish notice of the hearing in at least one daily newspaper of general circulation in the county where the nonprofit health care entity has its principal place of business. The notice shall include a statement that a transaction has been approved by the attorney general, the names of the parties, a description of the proposed transaction, and the date, time, and place of the hearing.

(F)

(1) The proceeds of an approved transaction shall be dedicated and transferred to one or more existing or new charitable organizations exempt from taxation under section 501(a) and described in section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended.

(2) The attorney general may authorize a dedication and transfer to a person exempt from taxation under section 501(a) and described in section 501(c)(4) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended, if all of the following conditions are met:

(a) The attorney general determines that the dedication and transfer is necessary to ensure effective management and monetization of the equity ownership, if any, in the nonprofit health care entity;

(b) The person described in division (F)(2) of this section agrees to all of the following conditions:

(i) The person described in division (F)(2) of this section will receive from the nonprofit health care entity only the amount of proceeds of the transaction as are necessary to fund the level of activity necessary to preserve the person's tax-exempt status;

(ii) No proceeds of the transaction, or any other funds or resources controlled by the person described in division (F)(2) of this section, will be disbursed for campaign contributions, lobbying expenditures, or other political activity;

(iii) The person described in division (F)(2) of this section agrees to abide by any requirements imposed on persons exempt from taxation under section 501(a) and described in section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended, that the attorney general determines appropriate.

(G)

(1) No nonprofit health care entity shall enter into a transaction subject to this section without the approval of the attorney general granted in accordance with this section.

(2) No person who is an officer, director, board member, or other fiduciary of a nonprofit health care entity shall receive anything of substantial value that relates to a transaction described in this section and section 109.34 of the Revised Code and is of such a character as to manifest a substantial and improper influence on the person with respect to the person's duties.

(3) The attorney general may institute and prosecute a civil or criminal action to enforce this section and section 109.34 of the Revised Code in the court of common pleas of the county in which the nonprofit health care entity has its principal place of business or the Franklin county court of common pleas. In addition to any civil remedies that exist under common law or the Revised Code, a court may rescind the transaction, grant injunctive relief, assess a civil penalty in an amount not exceeding ten million dollars, or impose any combination of these remedies.

(H) A nonprofit health care entity that is a party to a proposed transaction that has been disapproved by the attorney general may appeal the disapproval only by following the procedure set forth in this division. The disapproval may be appealed to the court of common pleas of the county in which the nonprofit health entity has its principal place of business. The court of common pleas may reverse, vacate, or modify the attorney general's decision to disapprove a transaction if the court finds that the decision was unlawful or unreasonable. This appeal shall proceed as an appeal de novo. To bring an appeal under this division, a nonprofit health care entity shall file a notice of appeal with the court and the attorney general not later than fifteen days after the entity's receipt of notice of the attorney general's disapproval of the transaction. Not later than thirty days after receipt of the notice of appeal, the attorney general shall prepare and certify to the court of common pleas a complete record of all of the documents submitted by the nonprofit health care entity to the attorney general and any documents generated by consultants at the request of the attorney general or other materials produced by the attorney general as part of the attorney general's determination of whether to approve or disapprove the transaction.

The judgment of the court of common pleas is final unless reversed, vacated, or modified on appeal. An appeal may be taken by either the nonprofit health care entity or the attorney general, shall proceed as in the case of appeals in civil actions, and shall be pursuant to the rules of appellate procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

(I)

(1) The powers of the attorney general under this section and section 109.34 of the Revised Code are in addition to the attorney general's powers held at common law and under sections 109.23 to 109.33 of the Revised Code.

This section and section 109.34 of the Revised Code do not limit or otherwise affect any of the following:

- (a) Any other civil or criminal right, claim, or defense that the attorney general or parties may assert under common law or the Revised Code;
  - (b) The authority of the attorney general to institute and prosecute an action to enforce sections 109.23 to 109.33 of the Revised Code;
  - (c) The authority of the attorney general to investigate and prosecute violations of any state or federal antitrust law.
- (2) Nothing in this section shall be construed to grant to the attorney general any authority of the superintendent of insurance under Title XVII [17] or Title XXXIX [39] of the Revised Code relating to the superintendent's review of an entity described in division (A)(2)(b) of section 109.34 of the Revised Code.
- (3) Nothing in this section or section 109.34 of the Revised Code shall be construed to limit the independent authority of the attorney general to protect charitable trusts and charitable assets in this state.