



State of New Hampshire

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DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER
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Concord, New Hampshire 03301

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March 27, 2018

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Approval of the Report and Findings of Councilor Joseph D. Kenney with regard to a certain project in participation with Kendal at Hanover of Hanover, New Hampshire.

EXPLANATION

This item is submitted pursuant to a request by the New Hampshire Health and Education Facilities Authority. Councilor Kenney has requested that this be placed on the agenda as a regular item for the Wednesday, April 11, 2018 meeting for ratification by the Governor and Council.

Sincerely,

Charles M. Arlinghaus
Commissioner

CMA/rjk

Attachment

**REPORT
AND
FINDINGS
OF**

JOSEPH D. KENNEY, designee of the Governor and Council of The State of New Hampshire, under the provisions of the New Hampshire Health and Education Facilities Authority Act, Chapter 195-D of the New Hampshire Revised Statutes Annotated, on the undertaking by the Authority of a certain project in participation with **KENDAL AT HANOVER** of Hanover, New Hampshire, pursuant to said Act.

Introductory

The New Hampshire Health and Education Facilities Authority (hereafter referred to as the “Authority”), requested of Governor Christopher Sununu and the Executive Council that a hearing be held pursuant to the New Hampshire Health and Education Facilities Authority Act, Chapter 195-D of the New Hampshire Revised Statutes Annotated (hereafter referred to as the “Act”), and particularly as prescribed in Section 21 of the Act. The hearing is required as the result of an application submitted to the Authority by Kendal at Hanover, a private, not-for-profit and charitable corporation (hereafter sometimes referred to as the “Institution” or “Kendal”) which operates a continuing care retirement community located in Hanover, New Hampshire and which constitutes a “nursing home” as that term is defined in the Act. Kendal is a participating health care institution under RSA 195-D:3. Such application seeks the participation of the Authority, under the Act, in the refinancing of certain existing indebtedness and the financing of certain capital improvements relating to the Institution’s facility located in Hanover (hereafter sometimes referred to as the “Project”).

Pursuant to RSA 195-D:21 above cited, the Governor and Council designated me to hold a hearing and make findings in connection with the application. Following Public Notice given in accordance with Chapter 91-A of the New Hampshire Revised Statutes Annotated, by notice published in the New Hampshire Union Leader on March 19, 2018, the hearing was held

commencing at 1:00 p.m. on Thursday, March 22, 2018, in the Administrative Conference Room of the Community Center of Kendal at Hanover, 80 Lyme Road, Hanover, New Hampshire. All witnesses were duly sworn. A summary of testimony presented at the hearing follows:

Summary of Testimony

Brent Edgerton, the Interim Executive Director/CEO and Chief Financial Officer of Kendal at Hanover, was the first witness. He described Kendal as a not-for-profit corporation which owns and operates a continuing care retirement community on 75 acres of land adjoining the Connecticut River in Hanover, New Hampshire. Kendal currently consists of 250 independent living apartments, a Health Center comprised of 82 assisted living beds and 3 skilled nursing beds as well as certain common facilities.

Mr. Edgerton testified that the Institution's independent living units are located in a combination of one, two, and three-story buildings adjoining the Community Center and the Health Center. Kendal's skilled nursing facilities are licensed by the Department of Health and Human Services of the State of New Hampshire. In accordance with the provisions of New Hampshire law relating to continuing care retirement communities, Kendal's nursing care beds are not supported by the Medicaid program.

Mr. Edgerton stated that the new money component of the Project consists of the financing of the costs of the construction, renovation, expansion, improvements, furnishing, and equipping of the Institution's health care center, including the renovation of the Borrower's existing approximately 80,800 square foot Health Center and the construction of an approximately 13,000 square foot addition to the Health Center. The Project will result in the addition of 3 Barclay Level-1 Assisted Living Units, 2 Pickett Level-1 Assisted Living Units, 3 Whittier Memory Care Level-1 Assisted Living Units, a reduction of 3 Jones Level-2 Assisted Living Units, and the

addition of 9 Vining Level-2 Assisted Living Units. The cost of the new construction and renovations is estimated to be approximately \$28,950,000. Bond proceeds may also be used to fund routine capital expenditures during the three years following issuance of the Bonds, pay capitalized interest, fund a debt service reserve fund, and pay certain costs of issuing the Bonds and incidental costs related to the Bonds.

Mr. Edgerton also testified that depending on market conditions the Project may also include the refinancing of the Series 2004B Bonds issued by the Authority for the benefit of Kendal (the "2004B Bonds") and the Series 2008 Bonds (the "Series 2008 Bonds") issued by the Authority for the benefit of Kendal. He testified that the 2004B Bonds and Series 2008 Bonds were used to refinance previous bond issues, the proceeds of which were used to finance or refinance the initial construction of the facilities that constitute the continuing care retirement community as well as subsequent additions and renovations thereto, and the equipping and furnishing thereof. Mr. Edgerton confirmed that under the bond documentation with the Authority, Kendal will be required to continue to carry blanket fire and extended coverage as well as general liability insurance.

Mr. Edgerton explained that, in his view, the Project would be of public use and benefit and would permit Kendal to continue to render an appropriate level of service to its current and future residents. He also stated his opinion that Kendal would be able to meet its financial obligations under the proposed bond issue and that Kendal is operating in a financially responsible manner. Finally, he testified that the refinancing of existing indebtedness would be done in connection with the capital equipment and improvements portion of the Project and would assist Kendal in lowering the costs of providing health care facilities.

The next witness was Keith Robertson, Managing Director of B.C. Ziegler and Company, the placement agent to Kendal. He stated that the plan of financing is to issue the Bonds in a private placement with the purchaser expected to be TD Bank, National Association. The Bonds are expected to have a final maturity in 2038. He stated that, as part of his work in connection with the proposed bond issue, he had reviewed the Institution's financial statements and utilization statistics. He testified that, on the basis of such review, as well as based upon his discussions with members of the working group and the Institution's management, he was of the view that the Institution would be able to meet its financial obligations under the proposed bond issue. In concluding his testimony Mr. Robertson stated that, based upon such review, he was of the opinion that Kendal is operating as a financially responsible health care institution.

Bonnie S. Payette was the final witness called. She stated that she is the Executive Director and Secretary of the Authority, and is familiar with administration of the Authority's day-to-day affairs. In her capacity as Executive Director she has become acquainted with the Project and the details of its financing, having worked with Kendal's officers in developing the financial arrangements to be reflected in the bonds proposed to be issued.

She stated that the Authority has voted to issue its bonds for the Project, subject to compliance being had with all laws bearing upon such issue and the advice of counsel, including Bond Counsel. She testified that the Authority adopted a Resolution on February 15, 2018, approving issuance of bonds for Kendal.

Ms. Payette testified that certain documents will be prepared for execution in connection with the Project, including a Bond Indenture to be entered into between the Authority and the Trustee for the bond issue and a Loan Agreement or Loan Agreement and Mortgage. She stated that there is a provision in the bond documents under which the Institution is obligated to hold and use the Project for health care purposes so long as the bonds are outstanding. She testified to the

language in the Bond Indenture which requires that each bond issued by the Authority for Kendal bear on its face the following provision:

Neither the State of New Hampshire nor any political subdivision thereof shall be obligated to pay the principal of or interest on this bond, other than from Pledged Revenues, and neither the faith and credit nor the taxing power of the State of New Hampshire or of any political subdivision thereof is pledged to the payment of the principal of or interest on this bond.

Ms. Payette testified that the bond documents will make adequate provision for payment of principal and interest on the bonds, as well as the costs of the Project, so that the State of New Hampshire will not be obligated in any way for their repayment.

Ms. Payette concluded her testimony by stating that, based on her familiarity with the statute under which the Authority operates, in her experience as Executive Director of the Authority, and on the advice of counsel, including Bond Counsel, the Project is within the powers conferred by law upon the Authority.

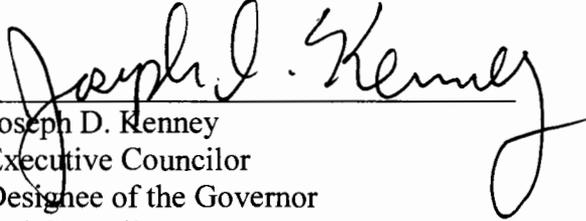
Findings

Upon the testimony submitted at the hearing, and upon consideration, I find as follows:

- (1) The construction and acquisition of the Project, as the same is described in such testimony, will enable and assist Kendal at Hanover (herein called the "Institution"), a not-for-profit health care institution located in Hanover, New Hampshire, to provide health care facilities within the State of New Hampshire (herein called the "State"); and
- (2) The Project, including the refinancing of existing indebtedness, will be leased to, or owned by, the Institution, which is a financially responsible participating institution within the State; and
- (3) Adequate provision has been, or will be, made for the payment of the cost of the construction and acquisition of the Project and the refinancing of existing indebtedness, and under no circumstances will the State be obligated, directly or indirectly, for the payment of the principal of, or interest on, any obligations issued to finance such construction and acquisition or to provide for the refinancing of existing indebtedness, or obligations to which such refinancing of existing indebtedness relates; and

- (4) Adequate provision has been, or will be, made in any lease or mortgage of the Project to be undertaken or any property leased or mortgaged in connection with the issuance of bonds or notes for the payment of all costs of operation, maintenance and upkeep of the Project by the Institution so that under no circumstances will the State be obligated, directly or indirectly, for the payment of such costs; and
- (5) Adequate provision has been made to obligate the Institution to hold and use the Project for health care purposes so long as the principal of and interest on bonds or other obligations issued by the New Hampshire Health and Education Facilities Authority (herein called the "Authority") to finance the cost of the Project, including any refunding bonds issued to refund and refinance such bonds, have not been fully paid and retired and all other conditions of the resolution or trust agreement authorizing and securing the same have not been satisfied and the lien of such resolution or trust agreement has not been released in accordance with the provisions thereof; and
- (6) The construction and acquisition of the Project will be within the authority conferred by Chapter 195-D of the New Hampshire Revised Statutes Annotated upon the Authority; and
- (7) The construction and acquisition of the Project serves a need presently not fulfilled in providing health care facilities within the State and is of public use and benefit; and
- (8) The refinancing of existing indebtedness is being done in connection with the Project and will assist the Institution in lowering the cost of providing health care facilities in the State.

Dated: March 22, 2018



Joseph D. Kenney
Executive Councilor
Designee of the Governor
and Council

RATIFICATION AND GOVERNOR'S APPROVAL

The Governor and Council hereby ratify, confirm, approve and adopt the findings set forth in the Report and Findings attached hereto made by Joseph D. Kenney, the Designee of the Governor and Council to hold a hearing and make findings pursuant to Section 21 of the New Hampshire Health and Education Facilities Authority Act, Chapter 195-D of the New Hampshire Revised Statutes Annotated. The hearing was required and held as a result of an application submitted to the New Hampshire Health and Education Facilities Authority by Kendal at Hanover, a not-for-profit corporation which is located in Hanover, New Hampshire, is licensed by the Department of Health and Human Services and provides health care facilities within the State of New Hampshire. The hearing was held on March 22, 2018 following public notice, in the Administrative Conference Room of the Community Center of Kendal at Hanover, 80 Lyme Road, Hanover, New Hampshire at 1:00 p.m.

The Governor's signature constitutes his approval under Section 147(f) of the Internal Revenue Code of 1986, as amended, of the issuance of the bonds described herein and as described in the Notice of Public Hearings published on March 19, 2018 and on March 15, 2018, and in a hearing conducted by the Authority on March 29, 2018.

Dated: April 11, 2018

Governor and Council:
