

Michele Smith

From: Wally McDonell [mcdonellw@idcnet.com]
Sent: Tuesday, May 02, 2006 11:32 AM
To: Kevin Brunner; Dean Fischer; Michele Smith; Tom Barnes
Subject: Hospital Hill

Dear Michele, Kevin, Tom & Dean:

You have asked me to research the issue of whether or not there are to be any restrictions on the sale of the 13 acres which is presently in the City's name and is often referred to as Hospital Hill. I have completed my research on this issue and am prepared to provide the opinion that the property can be sold but that any funds from the sale of Hospital Hill must be put into a fund for the benefit of the Whitewater Rescue Squad for the purpose of purchasing technologically-advanced equipment for life-saving purposes, and secondly, for the purpose of education, both of the Whitewater Rescue Squad members and the Whitewater citizenry.

The reason that these funds would be restricted is that the 13 acres was originally willed to the Whitewater Medical Corporation for the purpose of building a hospital. In 1988, our office petitioned the court and requested that the court make a finding that it was not practical that the funds be used for a hospital in the City of Whitewater because of the high cost of building and maintaining a community hospital. The law provides that, if the original purpose of a bequest is impractical, the funds should be dedicated to a similar use. At the time, the City made the judgment that the best use would be for Whitewater Rescue Squad purposes, in particular the purchase of technologically-advanced equipment and education of the rescue squad and Whitewater citizenry. Therefore, the City petitioned the court under the doctrine of *cy pres* and asked the court to allow the funds to be used for the Whitewater Rescue Squad purposes. The court granted that request and held that the funds and the land (and any proceeds from the land) be "transferred into a special fund for the benefit of the rescue squad for the purpose of purchasing technologically-advanced equipment for life-saving purposes and, secondly, for the purpose of education both of the Whitewater Rescue Squad members and the Whitewater citizenry".

This finding was opposed by a group who wanted the court to designate it for a long-term care facility. The matter went to the court of appeals and the court of appeals affirmed the circuit court decision. I will send you all a copy of the court's decision in this matter. It is important to note that I do not think there is any reasonable possibility of the court changing this designation for the Whitewater Rescue Squad. Even if the court would change it, it would have to be to another medically-related use.

If you have any questions, please feel free to contact me at any time.

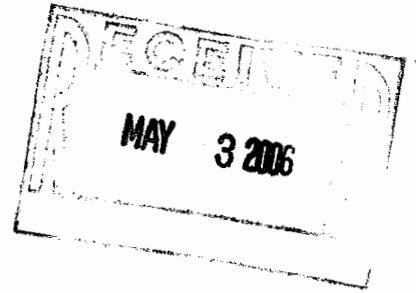
Wally McDonell

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7/25/2006

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May 2, 2006

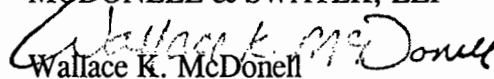
Michele Smith
Kevin Brunner
Tom Barnes
Dean Fischer

Gentlemen & Michele:

Please find enclosed herewith a copy of the court's decision that I referred to in my e-mail today.

Yours truly,

HARRISON, WILLIAMS,
MCDONELL & SWATEK, LLP


Wallace K. McDonell
(State Bar No. 01008713)

WKM/cep
Enclosure



| WISCONSIN LAWYERS.
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STATE OF WISCONSIN

CIRCUIT COURT

WALWORTH COUNTY

In the Matter of the Estate of:

IDA M. CRAVATH,

Deceased,

and

ORDER

COPY

In the Matter of the Estate of:

JAMES MOORE,

Deceased.

Case No. 88-PR-178

The above-captioned matter having come on for hearing on the petition of the City of Whitewater on the 4th day of May, 1989, at 1:30 p.m., and the City of Whitewater appearing by its City Manager, Paul Webber, and its City Attorney, Martin W. Harrison, and other appearances being the Whitewater Rotary Club by Attorney Russell Devitt, and appearing individually, Mrs. Margaret Pior, and

the Court having considered the file in this action, the testimony as presented, and the oral arguments submitted, NOW, THEREFORE, I do make the following Findings of Fact:

1. That the City of Whitewater has received from the estates of James Moore and Ida Cravath bequests which have been held by the City of Whitewater as a special fund for the purpose of a municipal hospital in the City of Whitewater.

2. That the funds which were originally given to the City have a present value at the time of the hearing of this action in the amount of approximately \$243,000. That the City of Whitewater has further acquired 13 acres of land on the east side of the city for purposes of a site for a municipal hospital.

3. Medical costs are such at the present time that a single piece of equipment, such as a cat-scan costs \$800,000.

4. Rural communities such as Whitewater no longer are building 30-50 bed hospitals.

5. The building cost alone for a 50-bed extended care unit would be in the range of \$22,000 to \$28,000 per bed.

6. The Whitewater Rescue Squad participated in a pilot program under the auspices of the State of Wisconsin, such that its E.M.T. personnel have become educated and certified in the use of a defibrillator.

7. That since the inception of the defibrillator program by the Whitewater Rescue Squad three years ago, four lives have been actually saved because of the equipment and training of the Whitewater Rescue Squad.

8. The Whitewater Rescue Squad is on call and available to all of the citizens of Whitewater, as well as the surrounding townships of Cold Spring, Lima, Koshkonong, Johnstown, and Richmond.

9. The Whitewater Rescue Squad has had its members take advanced training such that they can become certified to use further advanced techniques and medical equipment which is now available to such specially trained individuals.

10. The Whitewater Rescue Squad does provide public training and does promote public awareness relating to health in the Whitewater community.

NOW, THEREFORE, I do make the following Conclusions of Law:

1. That it is impossible and impracticable for there to be built in the City of Whitewater a municipal hospital.

2. That since the wishes of the testators, James Moore and Ida Cravath, cannot be fulfilled, the doctrine of cy-pres should be applied with respect to the funds and land presently being held by the City of Whitewater for a municipal hospital.

3. The various care facilities as described in the testimony in this action would be wonderful for the Whitewater community, but the issue for this Court to decide is what is the next best similar thing. It is the conclusion of this Court that the Rescue Squad in its operation is very similar to a hospital and, in fact, is an emergency mobile hospital.

IT IS THEREFORE ORDERED that the City of Whitewater's petition is granted, and the funds and land held by the City of Whitewater may now be transferred to a special fund for the benefit of the Rescue Squad for the purpose of purchasing technologically advanced equipment for life saving purposes and secondly for the purpose of education both of the Whitewater Rescue Squad members and the Whitewater citizenry.

The City of Whitewater IS ORDERED to provide notice of this Court's findings, conclusions and order to the Attorney General of the State of Wisconsin in order to give that office an opportunity to intervene or reopen this matter.

IT IS FURTHER ORDERED that the City of Whitewater shall not

disburse any of these funds until 30 days after the entry of this Order.

Dated 6/26/89

BY THE COURT:

Robert J. Kennedy
Judge Robert J. Kennedy

Approved as to form:

~~Attorney Russell Devitt~~

Signed over objections of Rotary Club atty. Russell W. Devitt. The court finds the objections in Devitt's letter of 6/19/89 to be without merit since the court did make that findings of fact & conclusions of law objected to.