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Herbert J. Johnson, Jr.  
(of counsel)

January 17, 1992

Representative Italo Cappabianca  
Second Legislative District  
1216 West 26th Street  
Erie, PA 16508

Dear Representative Cappabianca:

Please find enclosed a true copy of **United States of America vs. Rockford Memorial Corporation and Swedish American Corporation** which was decided on April 8, 1990, by the United States Court of Appeals for the Seventh Circuit. Judge Posner's Opinion accurately states the current status of the anti-trust laws and hospital mergers for the United States. It also accurately states the Justice Department's policy both before the publishing of this Opinion and after, since the Justice Department has adopted one of his arguments. The facts of this case are strikingly similar to a hypothetical merger of St. Vincent Health Center and Hamot Medical Center. Erie, Pennsylvania, is a city of approximately 120,000 people whereas Rockford, Illinois, was a city of 140,000 people. The market share of the merged hospitals in Rockford would have been 64% to 72%; while the market share of a merged St. Vincent and Hamot would be approximately 82% to 85%.

Lastly, the Circuit Court found that the defendant hospitals drew 87% of their patients from Rockford and not the 10 county area advanced before the District Court. This led the Circuit Court to conclude that a merger of the two hospitals would create a monopoly in the geographical market place. The Court then concluded, as it had on page 5 of the Opinion, that the merger violated Section 1 of the Sherman Anti-Trust Act. The merger would, according to the Court, reduce competition in the market place substantially. Accordingly, the Circuit Court affirmed the District Court's Opinions and made a specific finding of a violation of Section 1 of the Sherman Anti-Trust Act. The merger was prohibited.

This same case law and statute governs any proposed merger of hospitals within the Erie area. Any hospital merger in the United States today is subject to U.S. Justice Department scrutiny and, if the Justice Department fails to approve a proposed hospital merger, the hospitals' only recourse is in the Federal Court system.

I hope this Opinion is helpful to you in understanding my example, as given, at the Health Summit Conference on January 16, 1992. I can advise you with great certainty that so long as Hamot and St. Vincent had approximately 82% to 85% of the market share of Erie County and other surrounding counties, that the U.S. Justice Department would certainly refuse to permit

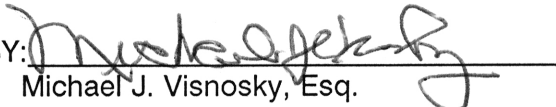
Representative Italo Cappabianca  
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any merger between them, based upon the current status and interpretation of the Federal Anti-Trust Laws, particularly, the Sherman Anti-Trust Act and the Clayton Anti-Trust Act.

I remain,

Very truly yours,

McCLURE & MILLER

BY:   
Michael J. Visnosky, Esq.

MJV:dlc

Enclosure: U.S.A. vs. Rockford Memorial Corporation and Swedish American Corporation



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

August 2, 1996

THOMAS W. CORBETT, Jr.  
ATTORNEY GENERAL

Reply To:

14th Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 787-4530  
Fax: (717) 787-1190

The Honorable Italo S. Cappabianca  
House of Representatives  
Room 30 East Wing, Main Capitol  
House Box 202020  
Harrisburg, PA 17120-2020

Dear Representative Cappabianca:

This letter supplements Patricia L. Saylor's June 25, 1996, letter to you regarding your recent letter concerning the status of non-profit corporations in Pennsylvania.

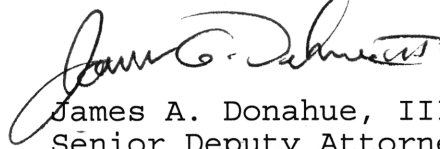
The Antitrust Section would be happy, however, to meet with you and your staff to discuss your proposed legislation and how it would help us investigate consolidations such as Blue Cross of Western Pennsylvania and Pennsylvania Blue Shield. Our Office shares your concern about the impact on the Commonwealth of mergers between for-profit and non-profit entities. We are also concerned about the impact of such mergers on competition generally.

Regarding the conversion or merger of a non-profit corporation into a for-profit corporation, our Office is particularly concerned about how the non-profit assets should be valued so that compensation can be established for the loss of the non-profit status. On the antitrust side, as you know, Pennsylvania is the only state without a state antitrust statute. As such, we have no independent ability to require production of the information necessary to review a merger's possible anticompetitive effects, and must rely on the parties' voluntary production of information. This voluntary cooperation is not always forthcoming.

The Honorable Italo S. Cappabianca  
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August 2, 1996

We would be happy to discuss these and similar issues further with you and your staff. I look forward to hearing from you in the near future to set up such a meeting.

Very truly yours,



James A. Donahue, III  
Senior Deputy Attorney General  
Antitrust Section

JAD/lkg/cappabi.740

cc: Janice Anderson, Esq.  
Chief Deputy Attorney General

Ms. Patricia L. Saylor  
Director of Office of Legislation & Policy Development





COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

April 10, 1996

THOMAS W. CORBETT, Jr.  
ATTORNEY GENERAL

Reply To:

14th Floor, Strawberry Square  
Harrisburg, PA 17120  
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Honorable Italo S. Cappabianca  
House of Representatives  
Commonwealth of Pennsylvania  
Room 30, East Wing  
Harrisburg, PA 17120-0028

**Re: Monopolistic Practices in the Waste-Hauling  
Industry**

Dear Representative Cappabianca:

Your March 8, 1996, letter requesting that the Attorney General investigate possible monopolistic practices in the waste-hauling industry by Waste Management, Inc. and Browning-Ferris, Inc. has been referred by the Environmental Crimes Section to the Antitrust Section as the appropriate section to review your complaint.

As you know, Pennsylvania does not have a general state antitrust statute so any review of your complaint would be limited to determining whether there is a violation under the federal antitrust laws. The Antitrust Section of the Office of Attorney General is aware of the United States Department of Justice's investigation and settlement with Waste Management and Browning-Ferris to end monopolistic practices in Georgia, Louisiana, Tennessee and Iowa. In fact, just two weeks ago, Justice Department officials met with the National Association of Attorneys General Antitrust Task Force, of which Pennsylvania is a member, to discuss the possibility of putting together a training seminar for state antitrust attorneys to develop investigative techniques and strategies for investigating the waste/trash-hauling industry. The Justice Department has also offered to conduct joint investigations with states of trash haulers when there are sufficient allegations of an antitrust violation.

Honorable Italo S. Cappabianca  
April 10, 1996  
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Monopoly cases are perhaps the most difficult and complex to investigate and prosecute under the antitrust laws. This difficulty is compounded in Pennsylvania because of the lack of a state antitrust statute with precomplaint investigative powers, and because some municipalities, pursuant to the Pennsylvania Solid Waste Management Act, 35 P.S. §§ 6018.101, 6018.201, have adopted waste disposal plans that require that a single vendor handle all waste disposal within that municipality. These contracts have the effect of giving a particular vendor a "monopoly" within the municipality for some period of time. Such agreements are probably not subject to challenge under the antitrust laws.

In addition, we currently have no specific complaints that either waste-hauling company is engaged in the same or similar type conduct that would warrant an investigation at this time. Without some actual evidence that a violation may be occurring in Pennsylvania, we are concerned about initiating an investigation that could be perceived to be a "fishing expedition." We have advised the Justice Department of our willingness to work jointly on these types of investigations, and we do plan to attend any training seminar offered by the Department involving this industry.

Finally, I should note that the Antitrust Section has previously investigated the waste-hauling industry on several occasions over the last ten years, and one such investigation resulted from a complaint by the Mayor of Erie in the late-1980s. The matter was resolved, however, and the City withdrew its complaint before we completed our investigation.

Again, I want to thank you for bringing this matter to our attention, and I want to assure you that we will be vigilant in looking for similar violations in Pennsylvania.

Very truly yours,



Carl S. Hisiro  
Chief Deputy Attorney General  
Antitrust Section

CSH/dmh/RepCapp.Ltr

EX0960512

cc: Mark A. Bellavia  
Chief Deputy Attorney General  
Environmental Crimes Section



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
HARRISBURG, PA. 17120

THOMAS W. CORBETT, JR.  
ATTORNEY GENERAL

16TH FLOOR  
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(717) 787-3391

March 20, 1996

Honorable Italo S. Cappabianca  
House of Representatives  
30 East Wing, Main Capitol  
Harrisburg, Pennsylvania 17120

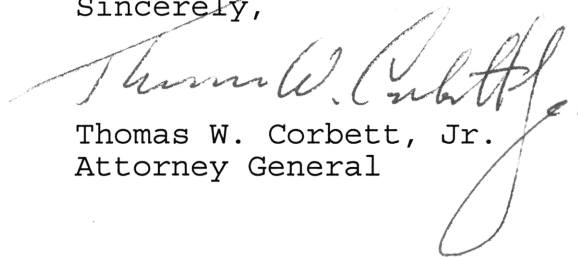
Dear Representative Cappabianca:

This will acknowledge receipt of your recent correspondence regarding the firms of Waste Management, Inc. and Browning-Ferris, Inc.

I have referred this information to our Environmental Crimes Section for review and action, as appropriate. You will be notified directly of any inquiry.

Thank you for bringing this matter to the attention of the Office of Attorney General.

Sincerely,



Thomas W. Corbett, Jr.  
Attorney General

TWCjr/PLS/slf  
cc: Mark A. Bellavia, CDAG  
Environmental Crimes Section