

ORDINANCE NO. FCO-2017-3

AN ORDINANCE OF THE FLOYD COUNTY BOARD OF COMMISSIONERS

AMENDING and REPEALING PORTIONS OF ORDINANCE FCO 2016-25

WHEREAS, the Floyd County Board of Commissioners approved Ordinance FCO-2016-25 on November 6, 2016 by unanimous consent.

WHEREAS, the Floyd County Board of Commissioners have determined that it is in the best interest of Floyd County and the taxpayers of Floyd County that the Floyd County Commissioners and the Floyd County Council further discuss and evaluate the proper ownership, management, use and investment of the proceeds from the sale of Floyd Memorial Hospital.

WHEREAS, the Floyd County Commissioners have determined that Ordinance FCO 2016-25 binding future Floyd County Boards the discretion to determine the use and investment of future proceeds is improper given the discretionary function legally vested in the Floyd County Commissioners and Floyd County Council and the discretionary function of its successors.

WHEREAS, the Floyd County Commissioners have determined that Ordinance FCO 2016-25 is improper by requiring a unanimous vote of the Floyd County Council which is in contradiction of Indiana Law including IC 36-1-3-8(b)(3) which states that local governments cannot impose duties on other local governments except as expressly granted by statute.

WHEREAS, the Floyd County Commissioners have determined that local governments have been granted the power to enact and repeal ordinances by simple majority vote and that an ordinance that requires a unanimous vote is improper pursuant to Indiana Law. IC 36-1-4-11. IC 36-2-4-5.

WHEREAS, the Floyd County Commissioners believe that an attempt at entrenching an ordinance in this manner exceeds the powers conferred on a local government by statute, because the statutes grant all such governments, present and future, the right to enact or repeal ordinances based on simple majority vote.

WHEREAS, the Floyd County Commissioners believe that the contract between the Community Foundation of Southern Indiana and the Floyd County Board of Commissioners dated November 4, 2016 is unenforceable as it relates to FCO 2016-25, Section 3, Section 4, and Section 5.

WHEREAS, the Floyd County Commissioners believe that the contract between the Community Foundation of Southern Indiana and the Floyd County Board of Commissioners as it pertains to FCO 2016-25, section 3, 4 and 5 created no vested rights, no consideration, and the proposed inter vivos gift has not been delivered and therefore the contract is unenforceable under these circumstances as it relates to the Community Foundation of Southern Indiana.

NOW THEREFORE, BE IT ORDAINED BY THE County Board of Commissioners of Floyd County, Indiana, that Ordinance FCO 2016-25, Section 3 and Section 4 and Section 5 are hereby repealed.

Further, Resolution 2016-4 adopted and passed October 18, 2016 is hereby repealed to the extent that it conflicts with this ordinance.

Further, Section 1 of FCO 2016-25 shall survive for purpose of creating a nonreverting fund titled Hospital Fund, for the receipt of the Proceeds, current and future, from the sale of Floyd Memorial Hospital.

Further, Section 2 shall survive for the purpose of assuring that the proceeds from the sale of Floyd Memorial Hospital are deposited in the proper nonreverting fund titled Hospital Fund by the Floyd County Treasurer and Floyd County Officials for distribution as directed by the Floyd County Commissioners and the Floyd County Council. Creation of the Hospital Fund and use of the Hospital Fund for the purposes described herein create no vested rights to the hospital proceeds in the Community Foundation of Southern Indiana.

Further, should any section, paragraph, sentence, clause, phrase, or work of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be affected thereby.

Further, any portion of any prior Ordinances in conflict with the provisions of this ordinance are hereby repealed.

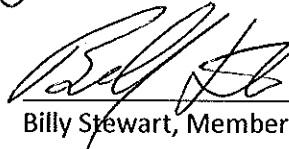
Adopted and approved this 19 day of January, 2017.

Board of Commissioners of Floyd County, Indiana

D. Mark Seabrook, President



John Schellenberger, Member



Billy Stewart, Member

Attest:



Scott Clark, Auditor