

PHONE: (865) 273-5700
FAX: (865) 273-5705
EMITCHELL@BLOUNTTN.ORG



341 COURT STREET
MARYVILLE, TN 37804-5906
WWW.BLOUNTTN.ORG

BLOUNT COUNTY MAYOR
ED MITCHELL

"LET'S BE BLOUNT...WORK HARD. WORK HONEST. WORK TOGETHER"

November 21, 2022

Board Members
Blount Memorial Hospital, Incorporated
907 East Lamar Alexander Parkway
Maryville, Tennessee 37801

Re: Blount Memorial Hospital

Dear Board Members:

As Mayor of Blount County, I wanted to directly convey to you my grave concerns regarding the operation of Blount Memorial Hospital. In particular, I am concerned about the quality of oversight being provided by the board of directors of the non-profit corporation, Blount Memorial Hospital, Incorporated ("BMH"), that was selected by the County to operate the Hospital for the benefit of the County. The Hospital provides essential public services to the citizens of Blount County, and the current direction of the operation of the Hospital must change to protect our community.

Most of the members of the board of directors of BMH, as well as the Hospital's administration, appear to have lost sight of the relationship between BMH and the County. The Hospital and all of its assets belong to the County. BMH was appointed many years ago to operate the Hospital on behalf of the County, but BMH never became the owner of any of the Hospital's assets. Every asset of the Hospital, whether held in the name of the County or in the name of BMH on behalf of the County, is an asset of the County, and any assets that are technically in the name of BMH were acquired with revenues of the County and are held in trust by BMH for the benefit of the County. Not only has our County Attorney and bond counsel confirmed this principal/agent relationship between the County and BMH, BMH's own outside counsel previously confirmed the nature of this relationship in a lengthy opinion dated January 25, 2019. As the County's agent, BMH must follow the County's direction and put the County's best interests as its primary goal, and BMH has woefully failed in doing so.

Given this relationship, I have read with dismay that BMH has contracted to sell the health care facility operated by BMH that is located in our Springbrook neighborhood. While that facility may be titled in the name of BMH, the property was purchased with County revenues, and the sale of the facility is a major decision. It exceeds the scope of BMH's authority as manager of the Hospital to sell a major County asset without the County's approval. Further, this proposed sale is in contrast to T.C.A. § 48-62-102(b) – Sale of Assets Other Than in Regular Course of Activities.

The proposed sale is strong evidence of the declining financial position of the Hospital. Given that BMH intends to lease the facility, BMH clearly believes that there is a continuing need to use the facility as part of the Hospital, so the facility is not being sold because it is surplus property. Instead, it is apparent that the facility is being sold to generate cash to forestall other hard financial decisions. That cash, however, comes at a very high price. This type of transaction is an alternative method of borrowing funds, without technically doing a loan, but the imputed interest cost for this type of transaction is usually very high. This type of transaction is often a sign that a business is facing serious financial constraints, and a long-term, high-cost borrowing to pay operating expenses is unwise financial planning and a very serious concern.

If the proposed sale of the Springbrook facility was occurring when the Hospital's financial position was otherwise healthy, I would still have serious concerns about this type of financial transaction, but the documents that Hospital staff recently provided to us, in response to an open records request, have demonstrated the quickly deteriorating financial picture of the Hospital. As those documents show, the Hospital's debt service coverage ratio, which I understand is probably the most basic test of the Hospital's financial health, has declined so precipitously that the Hospital defaulted under the County's revenue bond covenants and BMH was forced to seek a waiver of that default from our lender. Even though BMH operates the Hospital as the County's agent and the County is the legal borrower under the debt related to the Hospital, you did not even notify us of this serious situation, and we were forced to discover this situation through an open records request.

The current financial situation created by BMH's operation of the Hospital and the repeated lack of transparency by BMH with the County and the community as a whole has become intolerable. We clearly need an independent board of directors that understands the fiduciary obligations of BMH to the County, and we need a long-term plan to address the Hospital's financial challenges, not an expensive "Band-Aid" approach through the sale of the Springbrook facility.

As Mayor, I request that BMH immediately take two steps to begin to address this situation. First, the County will immediately take steps with the hospital's cooperation, to retain a qualified, nationally-recognized consulting firm, acceptable to the County, to help develop a long-term financial plan for the Hospital. Please have Hospital staff immediately contact my staff to develop a request for qualifications for such a consulting firm. I want that request issued by December 15th and a consulting firm selected by the end of the year. Until that consultant's recommendations can be obtained, the sale of the Springbrook facility should not be pursued.

Second, we must quickly restructure the board of directors of BMH so that it is composed of directors who understand the fiduciary obligations of BMH to the County and its citizens and that BMH is operating County assets as the County's agent. The current method of selecting directors is resulting in a situation where the directors only are beholden to the Hospital administration and the BMH board and not to the broader interests of the County and the community. As a first step to correct this imbalance, BMH must immediately amend its organizational documents to eliminate the convoluted nominating process that is presently

included in those organizational documents and that was intended to insulate BMH's board from the County's oversight. Attached herewith is a resolution to amend your Charter, as well as a resolution for the Blount County Commission to approve this Charter amendment. I expect the Cities of Maryville and Alcoa to also address and pass this resolution. I will present this resolution to the Blount County Commission at a special called meeting on November 29, 2022.

Finally, we need an immediate change of the BMH board membership. As for Blount County's four (4) appointees, one term expires at the end of this year and that member will not be reappointed. There currently exists one (1) vacancy on behalf of Blount County and two (2) additional current board members appointed by Blount County. We are hereby requesting the immediate resignation of the three (3) Blount County appointed board members. I request that our County appointed Board members - Mr. Redwine, Mr. Mayes and Mr. Powell to please contact my office to schedule a meeting to discuss this situation. It is our understanding that the Cities are addressing their ongoing board membership as well. Attached hereto is additional resolution that will be addressed (if necessary) by the Blount County Commissioners at the aforementioned special called meeting.

In making these requests for resignation and restructuring, I feel it is important to mention the nature of the BMH Board membership. BMH is a non-profit corporation, whose specific purpose is to operate and maintain Blount County's hospital. The board members serve as appointees of the various local governments and do so without remuneration and as a public service. I do not want this to get into a line in the sand type of situation simply because the County has decided to take a strong stance and take on the responsibility of doing everything within our power to continue to assure the continued viability of the County's hospital. We appreciate the service that past board members have provided but it is time to move in a new direction.

Over the years, BMH has provided great service to our County in managing one of the County's prized assets. Unfortunately, BMH's board of directors, as well as the Hospital administration, appear to have lost sight of BMH's role as the operator, not the owner, of the Hospital, and we must immediately move forward in correcting this misconception. I hope you will fully cooperate in these efforts so that we do not have to consider more drastic alternatives consistent with the private act that created the Hospital.

Sincerely,

By: 
County Mayor, Blount County

RESOLUTION No. _____

Sponsored by Commissioners _____.

RESOLUTION TO ADDRESS THE OPERATION OF BLOUNT MEMORIAL HOSPITAL AND TO RESTRUCTURE THE BOARD OF DIRECTORS OF BLOUNT MEMORIAL HOSPITAL, INCORPORATED

BE IT RESOLVED, by the Board of Commissioners of Blount County, Tennessee, in session assembled this _____:

WHEREAS, the leaders of Blount County, Tennessee, in the early 1940's decided that they wanted to pursue the creation and building of a non-profit general hospital in Blount County to serve the citizens of Blount County and the cities therein; and

WHEREAS, in furtherance of this endeavor and the instruction from and with authorization of the Quarterly County Court (which is the predecessor of the current Blount County Board of Commissioners), the Blount County Judge (predecessor to the County Mayor) began seeking a grant from the federal government to further the goal of creating and building a hospital in Blount County; and

WHEREAS, the County Judge was successful in obtaining a grant and thereafter, Blount County sought and was granted authority from the state legislature by way of a private act, the authority to build, purchase, own and operate and maintain a non-profit general hospital in Blount County (See Private Act of 1945, Chapter 187); and

WHEREAS, pursuant to the authority granted by the legislature to Blount County, with help of the federal grant and other County funds, Blount County constructed and built a general non-profit hospital in Blount County in the mid 1940's to serve all citizens of Blount County; and

WHEREAS, the legislature further authorized Blount County to own, maintain and operate such hospital under the direct supervision of said Quarterly Court or in the alternative, to create a non-profit corporation which duties would be to maintain and operate said hospital on behalf of the County; and

WHEREAS, pursuant to the above authority, the non-profit corporation known as "Blount Memorial Hospital, Incorporated" was created by Charter of Incorporation that was filed with the State of Tennessee Secretary of State on January 22, 1946; and

WHEREAS, pursuant to the dictates of the Blount County Quarterly Court and the Charter of Incorporation of Blount Memorial Hospital, Incorporated, said corporation was to be managed and ran by a Board of Directors consisting of nine (9) members with four (4) members to be elected by the Blount County Quarterly Court, two (2) members to be elected by the Board of Commissioners for the City of Alcoa, two (2) members would be

elected by the Board of Commissioners for the City of Maryville, and one (1) member would be elected by the Board of Directors for Maryville College; and

WHEREAS, the Charter of Blount Memorial Hospital, Incorporated was amended in 1984 and while the directors were still appointed by the same governing bodies, a nominating committee was created to recommend candidates to the governing bodies, with the governing bodies having the authority to accept the nominating committee's nominees or reject them and upon rejection, the nominating committee would submit a new nominee for consideration by the appointing body; and

WHEREAS, Blount Memorial Hospital, Incorporated via its Board of Directors, has managed and operated the hospital on behalf of Blount County, but has regressed to a point where the non-profit corporation created to operate the hospital on behalf of Blount County appears to operate with autonomy and resents any supervision or input from Blount County and the Blount County Board of Commissioners; and

WHEREAS, when beneficial to the non-profit corporation they have, over the years, espoused and proclaimed their status as a part of Blount County, Tennessee when it was beneficial to obtain the benefits that are unique to a governmental entity, such as protection under the Tennessee Governmental Tort Liability Act or when it was beneficial to use its status as a governmental entity to obtain bond financing through the assistance of Blount County Government, yet on the other hand, when the question of the Board and hospital management were raised by Blount County, the County's efforts have been oftentimes rebuffed; and

WHEREAS, over the years, the non-profit corporation which its only duties consist of operating and maintaining the hospital on behalf of Blount County, has endeavored to purchase real properties in the name of the non-profit corporation (Blount Memorial Hospital, Incorporated) rather than the name of the Blount County and without the approval or authorization of the County; and

WHEREAS, Blount County, in recent years, has come to the point of questioning certain decisions made by the Board of the hospital and the management of the hospital, but on each occasion has been rebuffed in their requests and concerns; and

WHEREAS, Blount Memorial Hospital has recently announced the sale of a major asset described as the Springbrook real property, with said sale to be in the form of a sale and release of this property by the hospital. This action is further evidence of the rapidly declining financial condition of Blount Memorial Hospital; and

WHEREAS, Blount County has serious concerns about the financial stability and the future of Blount Memorial Hospital; and

WHEREAS, based upon the current structure of the Charter of the non-profit corporation wherein the Board appointees must go through a nominating committee, Blount County and the other appointing entities are being controlled by Blount Memorial Hospital

Incorporated rather than the nominees coming from each of the local governing bodies to the point that the appointing bodies have lost control of the ability to appoint Board members that they choose and desire and feel would operate in the best interests of the hospital in Blount County; and

WHEREAS, attorneys have examined the legal relationship between Blount County and the non-profit corporation (Blount Memorial Hospital, Incorporated) organized to operate and maintain the hospital and these attorneys are bond counsel who has been consulted relative to bond issues, private counsel was retained by Blount Memorial Hospital, Incorporated and the Blount County Attorney who have all opined that the legal relationship between Blount County and its hospital and Blount Memorial Hospital, Incorporated is that of principal and agent; and

WHEREAS, the Blount County Board of Commissioners have a duty to all of the citizens of Blount County to put forth all efforts to assure that the Blount County hospital is operated in such a manner to assure its ongoing existence, to assure that it is in the position to provide the best care possible to the citizens of Blount County and to assure the management is open and transparent to local governments and the citizens of the same; and

WHEREAS, the Blount County Board of Commissioners has lost confidence in the current structure that exists between Blount County and its agent, Blount Memorial Hospital, Incorporated as well as the current slate of Board Members of Blount Memorial Hospital, Incorporated; and

WHEREAS, the Blount County Board of Commissioners feels compelled to take action to remove the current Board of Directors of Blount Memorial Hospital, Incorporated and seek modification to the current Charter of Blount Memorial Hospital, Incorporated or in the alternative, to terminate Blount County's relationship with Blount Memorial Hospital, Incorporated and create a new non-profit corporation to assume and take over the management, operation and maintenance of Blount County's hospital; and

WHEREAS, the Blount County Board of Commissioners feels that the new board or entity that will take over the management of the hospital needs and will need the professional assistance of consultants specifically and specially trained in the administration and operation of a hospital to assist them going forward.

NOW, THEREFORE, BE IT RESOLVED, BY THE BLOUNT COUNTY LEGISLATIVE BODY MEETING IN REGULAR SESSION AT MARYVILLE, TENNESSEE, on this _____ day of _____, 2022, that:

1. The Blount County Board of Commissioners no longer desires and will not allow Blount Memorial Hospital, Incorporated with its current Board members to continue to maintain and operate the hospital for Blount County, Tennessee.

2. The Blount County Board of Commissioners feel strongly and will require the Charter of Blount Memorial Hospital, Incorporated to be amended to remove the provisions relative to the appointments/elections of their Board members by removing and disbanding the nominating committee and requiring that future nominees for this position be made directly by the three (3) governing bodies which currently appoint, as well as the Board of Directors of Maryville College. This is being addressed by the Commission in a separate resolution.

3. The current Board of Directors of Blount Memorial Hospital, Incorporated are all appointees to the Board for a limited period without remuneration. Said resignation of the current Board will operate to the benefit of Blount County and will not be to the personal financial detriment of the current Board members.

4. The Blount County Board of Commissioners desires the resignation of all of the current Board members of Blount Memorial Hospital, Incorporated to be replaced by new appointees and the Blount County Board of Commissioners, pursuant to T.C.A. § 48-58-109(b) hereby removes their Board appointees – Robert Redwine, Denny Mayes and Scott Powell, as directors of Blount Memorial Hospital, Inc.

5. Absent a smooth and cooperative transition to a new Board of Directors for Blount Memorial Hospital, Inc., this body has the authority to terminate Blount County's relationship with Blount Memorial Hospital, Inc. and create a new non-profit to manage the hospital on behalf of Blount County. This would not be a favorable alternative, but is a viable alternative that this body may pursue in the absence of cooperation with an orderly transition.

BE IT FURTHER RESOLVED THAT THIS RESOLUTION SHALL BE IN FORCE AND BECOME EFFECTIVE UPON ITS ADOPTION, THE PUBLIC WELFARE REQUIRING IT.

ADOPTED THIS _____ DAY OF _____, 2022.

CERTIFICATION OF ACTION ATTEST

Commission Chairman

County Clerk

Approved: _____

Vetoed: _____

County Mayor

Date

RESOLUTION No. _____

Sponsored by Commissioners _____.

RESOLUTION TO APPROVE CHARTER AMENDMENT OF BLOUNT MEMORIAL HOSPITAL, INCORPORATED TO REMOVE NOMINATING COMMITTEE

BE IT RESOLVED, by the Board of Commissioners of Blount County, Tennessee, in session assembled this _____:

WHEREAS, the original Charter of Blount Memorial Hospital, Incorporated provides that the Charter may be amended upon the affirmative vote of all of the governmental agencies selecting the permanent Board of Directors; and

WHEREAS, Blount County, Tennessee is one of the government agencies that selects directors for Blount Memorial Hospital, Incorporated; and

WHEREAS, Blount County, Tennessee desires an amendment of the Charter of Blount Memorial Hospital, Incorporated to remove language added by a Charter Amendment made on October 23, 1984 which provided for Blount Memorial Hospital, Incorporated Directors to be nominated by a nominating committee and said Amendment is set forth in Exhibit A attached hereto; and

WHEREAS, Blount County desires in the future to directly appoint Board Members to the Blount Memorial Hospital, Incorporated Board of Directors without the nomination of directors by a nominating committee.

NOW, THEREFORE, BE IT RESOLVED, BY THE BLOUNT COUNTY LEGISLATIVE BODY MEETING IN REGULAR SESSION AT MARYVILLE, TENNESSEE, on this _____ day of _____, 2022, that the Blount County Board of Commissioners hereby approves the Charter Amendment to delete the language included in the October 23, 1984 Amendment to the Charter of Blount Memorial Hospital, Incorporated and hereby approves the Amendment to the Charter of Blount Memorial Hospital, Incorporated attached hereto as Exhibit A.

BE IT FURTHER RESOLVED THAT THIS RESOLUTION SHALL BE IN FORCE AND BECOME EFFECTIVE UPON ITS ADOPTION, THE PUBLIC WELFARE REQUIRING IT.

ADOPTED THIS _____ DAY OF _____, 2022.

CERTIFICATION OF ACTION ATTEST

Commission Chairman

County Clerk

Approved: _____
Vetoed: _____

County Mayor

Date

THIS INSTRUMENT PREPARED BY:
Craig L. Garrett
Craig L. Garrett, Attorney at Law, PLLC
607 Smithview Drive
Maryville, Tennessee 37803

AMENDMENT TO THE CHARTER OF INCORPORATION OF
BLOUNT MEMORIAL HOSPITAL, INCORPORATED

KNOW ALL MEN BY THESE PRESENTS THAT WHEREAS, at a regular meeting of the Directors of Blount Memorial Hospital, Incorporated, held on the _____ day of _____, 20____, at Blount Memorial Hospital in Maryville, Tennessee, the following resolution was adopted by affirmative vote of a majority of the Director of Blount Memorial Hospital, Incorporated, to-wit:

RESOLUTION

BE IT RESOLVED by the Board of Directors of Blount Memorial Hospital, Incorporated, in regular session assembled on this _____ day of _____, 20____, that the Charter of Blount Memorial Hospital, Incorporated, be amended as follows:

That the following language of the Charter of Incorporation of Blount Memorial Hospital, Incorporated, which shall include all language added to the Charter by the Charter Amendment made on October 23, 1984 shall be stricken in its entirety:

~~“As the terms of the present Board of Directors expire, the members of the Board of Directors to be selected by the agencies above provided shall be elected by such respective agencies for a term of three (3) years each in the manner hereinafter provided.~~

~~That in the event of a vacancy in the Board of Directors, such vacancy shall be filled by the agency originally selecting such member in the manner hereinafter provided.~~

~~All Directors of Blount Memorial Hospital, Incorporated, shall be nominated by a Nominating Committee as hereinafter designated, which nominations shall be made to the respective electing bodies on or before the 1st day of January each year.~~

~~In the event of a vacancy in the Board of Directors, the Nominating Committee, as hereinafter provided, shall nominate to the respective electing bodies a Director to serve the unexpired term and which nomination shall be made within thirty (30) days after the occurrence of the vacancy.~~

~~The Nominating Committee shall be composed of seven (7) members, one (1) of whom shall be the President of the Board of Directors of Blount Memorial Hospital, Incorporated; of the remaining six (6) members, one shall be selected by the President or Chief Executive Officer of each of the following organizations: Blount County Medical Society, the largest industrial employer of Blount County, the largest labor union in Blount County, Blount County Farm Bureau; Blount County Chamber of Commerce; one of the following financial institutions: First Tennessee Bank, Maryville, First Federal Savings & Loan Association of Maryville, Blount National Bank of Maryville, Citizens Bank of Blount County, and American Fidelity Bank, or the successor of any said financial institutions herein named, who shall serve a term of one (1) year on a rotating basis in the order named. All members of the Nominating Committee shall be residents of Blount County, Tennessee.~~

~~The President of the Board of Directors of Blount Memorial Hospital, Incorporated, shall be the permanent Chairman of the Nominating Committee and shall annually convene the Nominating Committee for the purpose of making nominations to the respective electing bodies and shall also convene the Nominating Committee to nominate any vacancies which may occur in the Board of Directors of Blount Memorial Hospital, Incorporated. The Chairman shall be obligated to convene the Nominating Committee into session upon the request of four (4) members of the Nominating Committee.~~

~~In the event the Nominating Committee should fail or refuse to nominate a Director by the time herein specified, the electing body shall be free to select and elect a Director by nominations from the floor or by nomination by a standing Committee of the electing body and without reference to the Nominating Committee herein created.~~

~~In the event the electing body should decline to elect the person nominated by the Nominating Committee, the Nominating Committee shall immediately be reconvened and shall submit a new nomination to the electing body within thirty (30) days after the nominee has been turned down by the electing body.~~

~~All provisions of the original Charter of Incorporation not inconsistent herewith shall remain in full force and effect.~~

~~BE IT FURTHER RESOLVED that the President and Secretary of Blount Memorial Hospital, Incorporated, are hereby authorized and directed to apply for and obtain an amendment to the Charter of Incorporation of Blount Memorial Hospital, Incorporated, as hereinabove set out."~~

This language shall be substituted in lieu thereof, the following:

"As the terms of the present Board of Directors expire, the members of the Board of Directors shall be selected by the agencies above provided for a term of three (3) years each in the manner hereinafter provided.

In the event of a vacancy in the Board of Directors, such vacancy shall be filled by the agency originally selecting such members. Any Director may be removed as provided in T.C.A. § 48-58-109(b) regardless of any language in the By-Laws of the corporation.

WHEREAS, the Charter of Blount Memorial Hospital, Incorporated, provides that the charter may be amended upon the affirmative vote of all of the governmental agencies selecting the permanent Board of Directors, which vote shall be evidenced by resolution duly adopted by all of such agencies; and

WHEREAS, the governmental agencies electing the permanent Board of Directors are the Legislative Body of Blount County, Tennessee, the City Council of the City of Maryville and the City Commission of the City of Alcoa; and

WHEREAS, each governmental agency has adopted a similar resolution to that hereinabove, as evidenced by certified copies of the resolutions attached hereto of each of the governmental agencies.

NOW THEREFORE, for and in consideration of the premises and in accordance with the Board of Directors and the concurring resolutions of all three of the governmental agencies electing the permanent Board of Directors, we, the undersigned, do hereby certify that we are the duly elected and constituted President and Secretary, respectively, of Blount Memorial Hospital, Incorporated, and we

further certify that the resolution hereinabove set out was duly and regularly passed by a majority of the Board of Directors held on the _____ day of _____, 20____, and we hereby apply to the State of Tennessee, pursuant to the general laws of the State, for an amendment to the Charter of Incorporation of Blount Memorial Hospital, Incorporated, for the purposes set out and expressed in said resolution hereinbefore set out.

IN WITNESS WHEREOF, we have set our hands and seals on the _____ day of _____, 20_____.

President
Blount Memorial Hospital, Incorporated

Secretary
Blount Memorial Hospital, Incorporated