



COLORADO CENTER
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Justice and Economic Security for all Coloradans

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Presentation to Interim Committee on Pinnacol
by
Ed Kahn, Special Counsel

August 4, 2009

My name is Ed Kahn. I am a business trial lawyer with about 40 years of experience. I currently serve as special counsel with the Colorado Center on Law and Policy, which advocates in the interest of lower income Coloradans.

I am here to talk to you about the conversion of Colorado Blue Cross from a non-profit to a for profit organization in the belief that that event, and the choices made in the legislation and the administrative proceeding that followed the legislation, could prove instructive should this Committee and the Legislature chose to permit privatization of Pinnacol, or some variation thereof. I MUST EMPHASIZE THAT AT THIS POINT THE COLORADO CENTER ON LAW AND POLICY HAS NOT TAKEN A POSITION ON WHAT, IF ANYTHING, THE LEGISLATURE SHOULD DO WITH RESPECT TO PINNACOL.

In January, 1996, Consumers Union of the United States and Colorado Legal Services asked me, a private lawyer, to represent the interests of Colorado consumers with respect to a 1996 bill which became CRS 10-16-324. That bill had just been introduced in the Colorado Senate, and was designed to permit the conversion of Colorado Blue Cross from non-profit to for-profit status. In California, a few years earlier, California Blue Cross and California Blue Shield, had converted, resulting in the establishment of charitable foundations with an endowment of over \$2 billion dollars. Initially, less than that \$150 million had been proposed to be paid. These types of HMO conversions, and similar hospital conversions, are governed by charitable trust principles, not strictly applicable to conversion of a public-owned entity to a private entity.

Another lawyer in my law firm, Kelly/Haglund/Garnsey & Kahn, and I lobbied at the Legislature, and achieved at least the following improvements to the proposed legislation:

1. No insider could profit from the transaction. Golden parachutes were banned. Insiders could not serve on the charitable foundation to be established.

2. No less than fair market value had to be obtained for the going business value of the enterprise. (The original bill called for the surplus, if any, to be paid over.—The surplus diminished from \$125 million to \$25 million during the time of the proposed conversion). The value ultimately obtained was \$155 million dollars.

3. The form of the conversion was left open – whether it would be an initial public offering, or a sale of assets, or a sale of the business. Ultimately, a sale of the business took place, dictated by evolving business conditions. AN AMOUNT SIX TIMES THE SURPLUS WAS OBTAINED.

4. The process, from introduction of the legislation, to completion of the conversion, took four years.

Other aspects of the conversion may be important to consider, and I will be happy to answer any questions the Committee may have, in this forum or one on one.

Thank you for your time and consideration today.