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It Ain't Over: Illinois Supreme Court Narrowly Upholds 2012 Hospital Property Tax Statute, Holds Ultimate Question for Extra Innings

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On September 20, the Illinois Supreme Court kept alive from a constitutional challenge the state's 2012 statute intended to clarify the standards for charitable hospital property tax exemption. The well-reasoned but incredibly narrow ruling in *Oswald v. Hamer*, 2018 IL 122203 (Sept. 20, 2018), affirmed lower court rulings upholding the statute from a challenge that it was unconstitutional **on its face**. Though only one step toward resolving whether the statute will stand as applied to a specific hospital application for exemption, the decision resolves the first hurdle encouragingly for the hospital community, because not everyone was certain a decade ago that the legislature could resolve the then-boiling hospital tax exemption question in a manner that could be reconciled with restrictions in the state constitution.

The statute in question, Section 15-86 of the Property Tax Code (35 ILCS 200/15-86 (West 2012)), establishes that Illinois nonprofit hospitals may qualify for property tax exemption if the value of certain "qualified services or activities" is equal to or exceeds the estimated value of the hospital's property tax exemption. Although the Illinois Attorney General had earlier sought to strengthen the charity care obligations of tax-exempt hospitals in the state, pressure for legislative action exploded in March 2010 when the Illinois Supreme Court ruled that Provena Covenant Medical Center did not provide enough free care to qualify for charitable property tax exemption. *See Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368 (2010). That opinion was disappointing to hospitals, not only because of the result, but because it was a plurality decision (and thus not binding in other cases) and did not establish a bright-line test either for how much charitable funding a hospital must receive or for how much charity care a hospital must provide to qualify as a charitable institution. Two years later, the legislature created such a test.

The real issue, both then and now, is how the legislature's act could be reconciled with and applied in light of (1) the limited discretion allowed the legislature by the state constitution and (2) the specific requirements for charitable exemption already in the constitution. As in a few other states, the root of charitable tax exemption in Illinois is in the constitution, not statutory law. See Ill. Const. 1970, art. IX, § 6. The constitution requires that an organization seeking charitable exemption be used "exclusively for *** charitable purposes," a requirement that at times has proven difficult to meet.

When the legislature enacted Section 15-86, it set forth new requirements surrounding free care and

other tests for activities and stated that a hospital applicant “shall be issued” a property tax exemption if it meets the tests. It was unclear at the time whether the Section 15-86 tests were intended to interpret the constitutional standard or supplement it, and thus unclear whether the statute, in implementation, would survive constitutional scrutiny. *Oswald*provides a partial answer. With the issue framed as whether the statute is unconstitutional on its face, the Supreme Court said its job was to determine whether there were **any**circumstances under which the statute could pass muster. The court stated that it presumes that the legislature enacts statutes in light of (and intending to be consistent with) the state constitution. The key finding the court reached is that, although unstated by the legislature, Section 15-86 supplements (not supplants) the “exclusively for *** charitable purposes” requirement in the constitution. Subsumed within that finding is the court’s determination that the “shall” language in the statute is permissive and not, as might appear at first glance, mandatory.

In its first at-bat, Section 15-86 has survived a very narrow test. This is a positive development, but the real test will come later as the statute is applied to the facts of a real application, facing almost certain further challenge.

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