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Hospital Exemption Law Held Unconstitutional

In an opinion issued on January 5, 2016, the Illinois Appellate Court has held that the law which allows hospitals to obtain property tax exemptions under easy-to-meet standards is invalid as inconsistent with the terms of the Illinois Constitution. The decision in the case of *The Carle Foundation v. Cunningham Township* is significant for school districts with non-profit hospitals within their boundaries because it could mean substantial increases in property tax revenues and relief for residential taxpayers.

This decision comes in a case which is just one front in the long-running war about hospital property tax exemptions. In 2010, the Illinois Supreme Court in the case of *Provena Covenant Medical Center v. Department of Revenue* made it clear that even hospitals which do not issue stock (and therefore are “non-profit” under federal income tax law) can only qualify for exemption from local property taxes if they are primarily used for charitable purposes. In response to this decision, the

General Assembly in 2012 added Section 15-86 to the Property Tax Code. That law allows non-profit hospitals to qualify for property tax exemptions simply by showing that the value of certain defined “beneficial services” are greater than the value of the property taxes the hospital owners would have to pay if the property were taxable. There are several legal problems with this framework, including the fact that previous court decisions have determined that some of the beneficial services included in the law which are to be credited against the hospital owners’ estimated tax liability are not genuinely “charitable” and the Illinois constitution allows only the courts to decide what is charitable and what is not. As a practical matter, the law removed many very valuable properties from local governments’ tax bases and, consequently, increased the burden on all other taxpayers.

Section 15-86 has been challenged as inherently flawed in multiple arenas. The *Carle Foundation* case itself involves a hospital in Champaign County which local tax assessments officials have been trying to put onto the tax rolls for several years. In two declaratory judgment cases brought against the State in Cook County Circuit Court, that court in 2015 ruled

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that the law was not invalid on its face, but only because the law might be read to retain some of the courts' standards about what is charitable. The decision in one of those cases, *Oswald v. Hamer*, is now on appeal and is expected to produce later this year an opinion either in conflict with or in concert with the *Carle Foundation* decision. Finally, our firm currently represents an interested school district in a case in which the Illinois Department of Revenue is considering the application of Skokie Hospital/NorthShore University HealthSystem for tax exempt status under provisions of the Property Tax Code including Section 15-86. There, we have been arguing that Section 15-86 is either unconstitutional or must at least be read to still require the hospital to demonstrate that is primarily charitable in use, something which most non-profit hospitals in the State are unlikely to be able to do.

The *Carle Foundation* opinion dealt with many intricate procedural issues. But once the court decided that it had no choice but to look squarely at the validity of Section 15-86, it had no problem concluding that the law was inconsistent with the Illinois Constitution's requirement that the General Assembly could grant tax exemption only to properties which are used



primarily for charitable purposes.

The legal struggle over Section 15-86 is far from over. But once the Department of Revenue starts denying exemptions to these multi-billion dollar businesses and they return to your districts' tax bases, such properties should be treated as "new property" under the Property Tax Extension Limitation Law. Then the property taxes paid may be used to provide badly needed new revenue and to accomplish a more equitable distribution of the tax burden in your community.

If you have questions regarding this opinion or anything relating to the property tax exemptions, please contact one of our attorneys in Oak Brook (630-928-1200) or Flossmoor (708-799-6766).