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Nonprofit Hospitals Must Prove Actual Charitable Use for Property Tax Exemption

On September 20, 2018, the Illinois Supreme Court issued its much-anticipated decision in *Oswald v. Hamer*, a lawsuit challenging the facial constitutionality of Section 15-86 of the Property Tax Code, the nonprofit hospital property tax exemption legislation enacted by the General Assembly in 2012. That section created a new test for tax exemptions -weighing the cost of certain beneficial services against the hospital's estimated property tax liability – which was extremely easy for large modern hospitals to meet, even those which could not be considered “charities” under traditional standards. But while the Supreme Court upheld the special hospital tax exemption provision of the Revenue Act as not unconstitutional on its face, it made clear that any applicant for an exemption under that provision still “must show that the subject property meets the constitutional test of exclusive charitable use.” For that reason, the Court’s ruling is effectively a victory for school



districts and other taxing bodies and should, ultimately, result in many hospitals coming onto the property tax rolls.

The Supreme Court emphasized that it was asked only whether Revenue Act Section 15-86 was invalid on its face, and the court ruled that it was not. (The Court expressly declined the Illinois Association of School Boards', the Illinois Association of School Administrators', and the Illinois Association of School Business Officials' request that it re-examine the way in which Illinois courts evaluate the constitutionality of the text of a statute.) However, in so doing, the Court was forced to expressly say that Section 15-86 cannot dispose of the traditional constitutional definition of charitable use for hospitals.

For that reason, the practical effects of the Supreme Court's decision are just as beneficial to school district finances as if the statute had been invalidated. "Nonprofit" hospitals (*i.e.*, those without shareholders) are now in no better position legally than they were before Section 15-86 was enacted in 2012; they still must show facts which demonstrate that they are truly and primarily charitable, including factors such as the public or charitable source of their funding, the dispensing of



services regardless of ability to pay, and the absence of private profit or gain to those connected with the institution.

What remains to be seen is the reaction of the Illinois Department of Revenue, the various county boards of review, and local assessors to this decision. If those agencies implement the constitutional requirement as they should, a large number of the 157 nonprofit hospitals in Illinois will become taxable and their assessed values will be considered “new property” under Property Tax Extension Limitation Law. What we cannot say right now is how quickly and effectively this will be accomplished. No doubt there are many issues still to be resolved in the courts.

For those Illinois school districts with nonprofit hospitals within their geographical boundaries, this may have a major impact on their revenues. For Illinois taxpayers, this decision should bring an element a greater fairness in the distribution of their property tax burden.

Our attorneys John M. Izzo and Eugene C. Edwards submitted *amicus curiae* briefs in this appeal on behalf of the Illinois Association of School Board, the Illinois Association of School

Published September 25, 2018

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Administrators, and the Illinois Association of School Business Officials.

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