IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,689

DCA CASE NO. 83-1445

DADE COUNTY, a political subdivision of the State of Florida, and the PUBLIC HEALTH TRUST OF DADE COUNTY, FLORIDA, an agency and instrumentality of Dade County, Florida,

Petitioners,

vs.

AMERICAN HOSPITAL OF MIAMI, INC., a Florida corporation,

Respondent.

FILED
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APR 23 1985
CLERK, SUPREME COURT
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BRIEF OF AMICUS CURIAE

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STATEMENT OF AMICUS CURIAE

Pursuant to Rule 9.370, Florida Rules of Appellate Procedure, the City of Homestead ("Homestead") files this amicus curiae brief with the written consent of the Petitioners, Dade County and the Public Health Trust of Dade County, Florida (collectively, the "County"), and Respondent, American Hospital of Miami, Inc. ("American Hospital"). Copies of such consents are attached hereto in the Appendix, at pages A-1 and A-2.

For purposes of identification, Homestead is a Florida municipal corporation which is the owner of James Archer Smith Hospital, located in Dade County, Florida.

The County is seeking to reverse a Partial Summary Declaratory Judgment in favor of American Hospital. As amicus curiae, Homestead seeks to supplement American Hospital's Answer Brief with respect to the County's arguments in its Initial Brief (the "Brief") that the County has no statutory responsibility for the medical care of its indigents, or statutory duties to reimburse those Dade County hospitals which do provide medical treatment to indigents without compensation.

Homestead adopts the Statements of the Case and of the Facts contained in the Answer Brief of American Hospital.

ARGUMENT

DADE COUNTY HAS STATUTORY RESPONSIBILITY FOR THE MEDICAL CARE OF DADE COUNTY INDIGENTS.

The entire premise of the County's argument to the trial and appellate courts below and to this Court has been that the County has no "duty" with respect to the health care of Dade County indigents. But, as shown in the discussion below, Florida's statutory scheme for indigent health care has imposed that duty on the various counties of this State through Sections 154.302 and 155.16, Florida Statutes, and Article XIII, Section 3 of the Florida Constitution of 1885, which is now a statutory obligation by virtue of Article XII, Section 10, of the Florida Constitution of 1968. The County contended below and in its Brief that no such duty exists under these provisions because: (i) Article XIII, Section 3 of the 1885 Constitution was repealed (even though the 1968 Constitution specifies that it is automatically part of the statutory law of Florida); (ii) Section 154.302 applies only to treatment of Dade County indigents outside of Dade County (even though it is absolute and contains no such limitation); (iii) the State of Florida under certain circumstances is obligated to provide medical assistance to indigents (even though none of those limited forms of medical assistance is applicable to the medical care at issue in this action); and (iv) Defendants do not

own, operate or govern a hospital subject to Section 155.16, Florida Statutes (even though this Court has held to the contrary).

A. The County's Responsibility For The Health Care Of Its Indigents Under Article XIII, Section 3, of the Florida Constitution of 1885.

Article XIII, Section 3, of the Florida Constitution of 1885, specifies:

> The respective counties of the State shall provide in the manner prescribed by law, for those of the inhabitants who by reason of age, infirmity, or misfortune, may have claims upon the aid and sympathy of society.

This Court in Cleary v. Dade County, 37 So.2d 248, 251 (Fla. 1948), held that Article XIII, Section 3, which then had the force of a constitutional provision and now has the force of a statutory obligation, places on Dade County:

> both the authority and the duty to care for the indigent, sick and poor in all of Dade County.

Article XII, Section 10, of the Florida Constitution of 1968 gives this provision, automatically and without legislative action, the force of statutory law:

> All provisions of Articles I through IV, VII and IX through XX of the Constitution of 1885, as amended, not embraced herein which are not inconsistent with this revision shall become statutes subject to modification or repeal as are other statutes.

The County argues at pages 9-10 of its Brief that all sections of the 1885 Constitution not listed in the

Table Tracing Provisions in Volume 3 of the published edition of Florida Statutes 1969, at page 376 (the "Tracing Table"), were repealed by the subsequent reviser's bills. However, the County ignores that under analogous circumstances this Court has held that an 1885 constitutional provision, which automatically became a statute under Article XII, Section 10 of the 1968 Constitution, was not repealed by subsequent reviser's bills or Section 11.2422, even though that 1885 constitutional provision was not specifically reenacted by the Legislature and does not appear on the Tracing Table. In Warren v. Capuano, 282 So.2d 873, 874 (Fla. 1973), affirming 269 So.2d 380, 381 (Fla. 4th DCA 1972), notwithstanding the failure of the Legislature to specifically reenact as a statute Section 9, Article XVI of the 1885 Constitution and the omission of that 1885 constitutional provision from the very Tracing Table relied upon by the County, this Court held: "Section 9, Article XVI [of the 1885 Constitution] became a statute pursuant to Section 10, Article XII of the schedule of the 1968 constitutional revision." Accord Benitez v. State, 350 So.2d 1100, 1102 n. 2 (Fla. 3d DCA 1977), cert. denied, 359 So.2d 1211 (Fla. 1978) (Section 9, Article XVI of the 1885 Constitution "is preserved by Article XII, Section 10, of the 1968 revision of the Florida Constitution"). Although the Legislature has the power to enact a specific statute reaffirming any 1885 constitutional provision to confirm it has not been subject

to modification or repeal, such specific action by the legislature is not needed to give the provision statutory effect.

The County's citation at pages 9-10 of its Brief to the Note to the Tracing Table in the 1969 Florida Statutes begs the question: At issue here is whether the general repeal provision of Section 11.2422 could repeal the 1885 constitutional provisions in the absence of a specific reviser's bill showing the Legislature's intent to do so, not whether the provisions could be repealed at all. In the words of the Note, there must be an "appropriate reviser's bill" to effectuate the repeal of Article XIII, Section 3; meaning one which reflects the deliberate intent of the Legislature to repeal that specific provision. This is shown by the Legislature's treatment of a constitutional provision substantially identical to Article XII, Section 10 of the 1968 Constitution. Effective January 1, 1973, the 1968 Constitution was amended to repeal Article V of the 1885 Constitution, which previously had been carried forward under the original 1968 Constitution. Article V, Section 20(g) of this 1973 constitutional amendment, like Article XII, Section 10 of the 1968 Constitution, rendered the provisions of Article V of the 1885 Constitution into statutes "subject to modification or repeal as are other statutes":

> (g) All provisions of Article V of the Constitution of 1885, as amended, not embraced herein which are not inconsistent with this revision shall become statutes subject to modification or repeal as are other statutes.

If the County's interpretation of Article XII, Section 10 were correct, there would have been no need for passage of a reviser's bill specifying the repeal of Article V. However, in direct contravention of the County's theory, the Legislature did find it necessary to enact a special reviser's bill, Chapter 73-303, Laws of Florida (1973), which recited that the Legislature specifically had considered whether Article V of the 1885 Constitution qualified to be carried forward as statutory law under the revised Article V, Section 20(g), specifically determined that it did not, and therefore specifically repealed Article V of the Constitution of 1885 as statutory law. Because no similar "appropriate" reviser's bill was enacted to repeal Article XIII, Section 3 of the 1885 Constitution, that provision remains part of the statutory law of Florida today.

Indeed, those reviser's bills which were enacted by the Legislature in 1969 and 1971 confirm by the conspicuous absence of any reference to Article XIII, Section 3 the Legislature's failure to repeal that 1885 constitutional provision.

In the 1969 volume of the Laws of Florida, there were five reviser's bills -- none of which even refer to Article XIII, Section 3 of the 1885 Constitution. Chapter 69-216, Laws of Florida (1969) amends those statutes which previously had cross-referenced 1885 constitutional provisions, but pointedly makes no reference to any repeal of Article XIII, Section 3 of the 1885 Contitution.

Even if it were the 1971 legislative session which was to have enacted the applicable "appropriate reviser's bill", the 1971 volume of Laws of Florida shows there were two reviser's bills that year -- and again there was no reference to Article XIII, Section 3. Chapter 71-355, Laws of Florida (1971) recites that it was enacted pursuant to Section 11.242 "to delete obsolete or expired provisions", and specifically identifies those statutory provisions which accordingly were being repealed. Although Chapter 71-355 exhaustively lists 104 statutory provisions which the Legislature intended to repeal, nowhere does it even refer to Article XIII, Section 3. Similarly, none of the reviser's bills enacted in the seven legislative sessions from 1971 to date alluded to by the County at page 12 of its Brief makes any reference to Article XIII, Section 3. Nothing could be clearer -- there was no repeal of Article XIII, Section 3 of the 1885 Constitution because there was no "appropriate reviser's bill" doing so.

The County then contends at pages 11-13 of its Brief that Article XIII, Section 3 of the 1885 Constitution was subject to the "automatic repeal" of Section 11.2422, Florida Statutes. The County can cite no precedent for applying Section 11.2422 to repeal 1885 constitutional provisions because Section 11.2422 is expressly limited to statutes "enacted by the State". As discussed above, Article XIII, Section 3 of the 1885 Constitution has the force

of statutory law not through enactment by the legislature, but through the vote of the people in passing Article XII, Section 10 of the 1968 constitution.

The Legislature's intention not to repeal Article XIII, Section 3 is underscored by the pointed failure to list that provision in the official Table of Repealed and Transferred Sections, appearing at pages 377-416 of Volume 3 of the published edition of Florida Statutes 1971. Because that Table was designed to identify those statutes repealed by the reviser's bills, the conspicuous absence of Article XIII, Section 3 from the Table belies the County's argument.

Moreover, the "automatic repeal" provision was in effect prior to passage of the 1968 constitutional provision. If applied to the 1885 constitutional provisions, it would totally eviscerate the effect and meaning of Article XII, Section 10 of the 1968 Constitution. Such an interpretation is impermissible:

> A constitutional provision is to be construed in such a manner as to make it meaningful. A construction that nullifies a specific clause will not be given unless absolutely required by the context.

Plante v. Smathers, 372 So.2d 933, 936 (Fla. 1979).

Article XII, Section 10 was intended to require selective and deliberate decisions by the Legislature as to the merits of particular 1885 constitutional provisions to repeal those provisions. Because no such deliberate decision to repeal Article XIII, Section 3 of the 1885 Constitu-

tion has ever been made, it continues to have the force of statutory law.

The County erroneously contends at page 13 of its Brief that for this Court to confirm that Article XIII, Section 3 continues as a Statute would impose a "dual repeal" requirement on the Legislature. To the contrary, only one repeal would be necessary -- and the Legislature chose not to do so. It is instead the County which is advocating a "dual passage" requirement; in addition to the adoption of Article XII, Section 10 of the 1968 Constitution, the County's theory requires specific reenactment of an 1885 Constitutional provision to render it part of the statutory law of Florida. Such a "dual passage" requirement is not contained in Article XII, Section 10, and cannot be imposed here.

Finally, the County, at pages 13-15 of its Brief, contends Article XIII, Section 3 of the 1885 Constitution cannot impose a duty on the County for the care of indigents because it is "not self executing". However, it is black letter law that a constitutional provision must be deemed self-executing if it delineates "a rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment." Schreiner v. McKenzie Tank Lines, Etc., 408 So.2d 711, 714 (Fla. 1st DCA 1982), quoting, Gray v. Bryant, 125 So.2d 846, 850 (Fla. 1960). Unlike Lewis v. Florida State Board of Health, 143 So.2d 867 (Fla.

1st DCA 1962), cert. denied, 149 So.2d 41 (Fla. 1963), cited by the County at page 14 of its Brief, in which the unclear extent of authority granted the State Board of Health could not be determined without legislative enactment, the unambiguous directive of Article XIII, Section 3 undisputably delineates such a rule without the aid of any supplementary statute.

B. The County's Responsibility For The Health Care Of Dade County Indigents Under Section 154.302, Florida Statutes.

1. The unambiguous language of Section 154.302 imposes upon the County the responsibility for the health care of County indigents.

Section 154.302, Florida Statutes, states as follows, in its entirety:

> 154.302 Legislative intent. -- It is the intent of the Legislature to place the ultimate financial obligation for the medical treatment of indigents on the county in which the indigent resides, for all those costs not fully reimbursed by other governmental programs or third-party payors.

The County attempted in its Brief, at pages 17-21, to avoid its responsibility for indigent health care under this section by claiming it applies only when indigents from one county are treated in a different county. The County assumed, without citation, that the section's absolute language is somehow limited because other sections of The Florida Health Care Responsibility Act (Sections 154.301-154.316) deal

with the issue of one county's treatment of another county's indigents. However, Section 154.302, entitled "Legislative intent", unambiguously establishes the premise of the remainder of the Act -- that a county is responsible for the medical treatment of its indigents. The remainder of the Act deals with certain carefully delineated limitations on this responsibility solely in the special politically sensitive and bureaucratically complex situation where a hospital in one county provides treatment to an indigent resident of a different county, and establishes procedures for determining the ultimate financial responsibility for such treatment.

The County erroneously claimed in its Brief, at page 18, that "all appellate decisions of this State" have interpreted the Health Care Responsibility Act as being limited to treatment of indigents in hospitals not located in their Home County. In fact, Dade County is the only county that has had the temerity to suggest such a limited interpretation of Section 154.302, and no appellate decision has ever agreed to such a limited interpretation. All of the cases cited by the County involved disputes over how to apply the administrative procedures under Sections 154.306-154.316 to an intercounty dispute. In none of those cases was it briefed, argued or decided that Section 154.302 did not render the counties responsible for the medical care of their own indigents. For example, St. Mary's Hospital v. Okeechobee County Board of County Commissioners, 442 So.2d

1044 (Fla. 4th DCA 1983) only states that the express exceptions of Sections 154.306-154.316 must be enforced where applicable. It is just because those carefully carved out exceptions are not applicable here that the County must assume its responsibility under Section 154.302 for the indigents treated at American Hospital. Similarly, the administrative procedure of Section 154.312, which is explicitly limited to disputes between different counties, is irrelevant to this claim because this action is brought exclusively under Section 154.302, governing intracounty disputes, and not Sections 154.306 through 154.316, governing intercounty verification procedures.

2. The County is bound by the County Attorney's determination that the County is financially responsible for the health care of Dade County indigents inder Chapter 154.

The Dade County Attorney already has conceded that Section 154.302 does mandate the County's responsibility for the health care of Dade County indigents treated in Dade County hospitals. County Attorney Opinion 79-25, dated August 22, 1979, states:

> Therefore, Dade County is financially responsible for the medical treatment of a Dade County resident who is eligible for treatment pursuant to this Act and qualifies as an indigent under the Department of HRS standards. Dade County is financially responsible for these patients' medical care regardless of whether the patient is treated at Jackson Memorial Hospital or at another hospital within the state. (Emphasis added)

* * *

CONCLUSION

> In general, the Dade County Commission and the Public Health Trust have the discretion to determine the medical services to be funded and provided by Jackson Memorial Hospital. Florida law limits this discretion by requiring that the following medical services be provided by the County and the Trust:
>
> * * *
>
> Part IV, Chapter 154, Florida Statutes, requires that Dade County be financially responsible for the medical treatment of the indigents residing in Dade County that meet the eligibility requirements of the Department of Health and Rehabilitation Services. This Part does not require that the services must be provided by the County, but that the County will be financially responsible for the cost of treating its resident indigents. (Emphasis added)

This County Attorney Opinion, a copy of which is attached hereto in the appendix at A-3 through A-11, is binding upon the County pursuant to the Code of Metropolitan Dade County, Chapter 2, Section 2-14, Page 75, which has the force and effect of statutory law under Article VIII, Section 6, Florida Constitution (1968):

> (b) The county attorney shall serve as legal adviser to the county commission, manager, department heads, county boards, and county officers. When requested, he shall render written legal opinions on matters relating to county government and the interpretation, construction and meaning of the constitutional amendment, charter, statutes, ordinances, resolutions and contracts affecting or pertaining to the county government, and such opinions shall be binding upon, and adhered to by all

> appointed county officials or employees, except in the performance of judicial or quasi-judicial powers of (sic) duties. Copies of all written opinions of law rendered by the county attorney shall be furnished to the chairman of the county commission and the manager. (Emphasis added)

This binding opinion contradicts the County's contention that Section 154.302 does not impose upon the County financial responsibility for the medical care of its indigents.

C. The State Of Florida Is Not Responsible For The Medical Assistance Which Is The Subject Of This Action.

The County contends in its Brief, at pages 22-24, that the State of Florida provides medical assistance to indigents under Medicaid (Sections 409.266, et seq., and 409.2671, Florida Statutes), and in 1984 specifically expanded that program by increasing both the amount of the payments and the number of eligible participants. However, because there is no indication in the record that Medicaid patients are involved in this action (because they are not), the existence of such State programs is totally irrelevant. It is the medical treatment not covered by Medicaid and other such federal, state and county programs which is at issue.

The County's quotation of legislative intent is not to the contrary; the County apparently has overlooked that Section 154.302 limits the counties' responsibilities for treating their indigents to only "those costs not fully reimbursed by other governmental programs or third-party

payors." American Hospital does not ask to be reimbursed for costs recovered from other sources. The State of Florida has assigned to the counties the general responsibility for indigent health care under Sections 154.302 and 155.16, Florida Statutes, and Article XIII of the 1885 Constitution. Simply because the State has assumed responsibility for particular programs such as mental health and Medicaid, which are not the subject of this action, does not absolve the counties of their responsibility for the medical care of their indigents.

D. The County's Responsibility For The Health Care Of Its Indigents Under Section 155.16, Florida Statutes.

Section 155.16, Florida Statutes specifies:

> Every hospital established under this law shall be for the benefit of the inhabitants of such county and of any person falling sick or being injured or maimed within its limits, . . . Every such inhabitant or person who is not a pauper shall pay. . . a reasonable compensation for occupancy, nursing, care, medicine, and attendance. . . .

The County, at pages 15-17 of its Brief, attempted to avoid any obligations under Section 155.16 by asserting it does not own, operate or govern a hospital under Chapter 155.

Dade County's assertion it does not own a "County hospital" is bizarre. In Dade County v. Baker, 237 So.2d 545, 547 (Fla. 3d DCA 1970), Dade County claimed Jackson

Memorial Hospital was a Chapter 155 "County hospital", and secured this Court's agreement:

> Dade County argues that Jackson Memorial Hospital is a County hospital (Chapter 155, Fla.Stat., F.S.A.) and that it is not equipped or staffed, physically or financially, to treat, guard, and maintain criminal defendants who have been adjudicated insane. . . We agree.

The subsequent creation of the Public Health Trust does not alter Jackson Memorial Hospital's responsibility for the medical care of Dade County indigents under the health care scheme set up by the Florida Legislature.

CONCLUSION

The County's entire Brief is premised on its fallacious contention that it has no statutory duty with respect to the health care of its indigents. But as shown above, Dade County does have statutory responsibility for the health care of its indigents. The decision of the Third District Court of Appeal should be affirmed.

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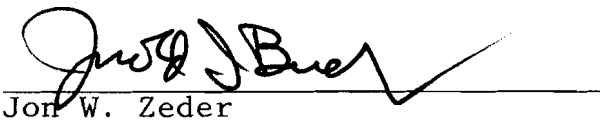

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief of Amicus Curiae was served by mail this 22nd day of April, 1985 upon the following:

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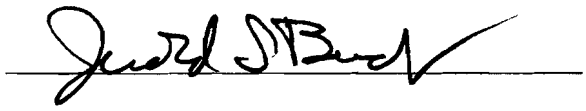

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