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IN THE SUPREME COURT
STATE OF FLORIDA

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.

CASE NO. 66,689

THIRD DISTRICT COURT OF APPEAL CASE NO. 83-1445

BRIEF OF AMICUS CURIAE, BROWARD COUNTY

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TABLE OF CONTENTS

TABLE OF CONTENTS
(Continued)

TABLE OF CITATIONS AND OTHER AUTHORITIES

TABLE OF CITATIONS AND OTHER AUTHORITIES
(Continued)

TABLE OF CITATIONS AND OTHER AUTHORITIES
(Continued)

INTEREST OF AMICUS CURIAE

BROWARD COUNTY respectfully submits this brief pursuant to the Court's Order dated May 20, 1985, granting Broward County's Motion for Leave to File Brief as Amicus Curiae, and Motion for Extension of Time.

Broward County is a political subdivision of the State of Florida. It does not own, operate or maintain any hospital. As amicus curiae, Broward County will present arguments supplemental and supportive of Dade County's position with regard to the following question certified by the Third District Court as one of great importance:

> DOES A COUNTY BEAR A LEGAL AND FINANCIAL DUTY TO PROVIDE POST-EMERGENCY MEDICAL CARE TO INDIGENT RESIDENTS OF THE COUNTY?

Amicus curiae, Broward County will unequivocally show that the extent of the counties' constitutionally derived responsibility for indigent health care is not universal or unlimited and that the legal and financial duty which Respondent seeks to impose upon the respective counties exceeds the bounds of the clear statutory scheme implementing the former constitutional directive, both in the present and from a historical perspective.

STATEMENT OF THE CASE AND OF THE FACTS

Broward County adopts the Statement of the Case and Statement of Facts set forth in Petitioner Dade County's Brief on the Merits.

SUMMARY OF ARGUMENT

The provision of the Constitution that is at issue in this case states simply that counties 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."

The American Hospital of Miami has said, and the court below held in effect, that this provision imposes a self-executing, legally enforceable duty on each of the counties of the State to provide "post-emergency medical care." Because the county duty said to emanate from this provision is not one that has been "prescribed by law," the decision below cannot stand. Although Respondent argues this point in terms of the existence of this so-called county duty, affirmance of the decision of the Third District Court of Appeal would create on behalf of private, for-profit hospitals the right to insist that county government pay private institutions to treat indigents, or at least make it possible for private hospitals to quickly rid themselves of indigent persons who come to their hospitals for treatment. There is no constitutional or statutory basis upon which this right may be predicated.

On this appeal, Respondent has made its claim appealingly narrow, but the argument that it makes is exceedingly broad. Exactly the same argument that has been made for a county duty to provide "post-emergency medical care to indigent residents . . . after their emergency medical condition has been stabilized, when determined by the attending physician," see Appendix to Brief of Respondent p. 55 (opinion of the Circuit Court of Dade County), would apply to any form of needed medical care, post-emergency or otherwise. This duty would be open-ended; if the duty exists by virtue of this constitutional provision, it would be absolute, not limited by the fiscal resources of the county and the taxpaying public.

However, the authors of the Florida Constitution of 1868 and of 1885 were not so extravagant in imposing open-ended duties on local government. To be sure, those authors expected that the State, and the counties, would make some provision for the unfortunate residents of the State. The State, and the counties of the State, have done so in many forms--within the constraints of their budgets and the resources of the taxpayer. But the authors of the Constitution did not provide for a lurking, omnipresent duty imposed upon the local governments of the State to do everything that anyone--including private hospitals that have only their own financial interests at heart--might want them to do for the poor.

On the contrary, the authors of the Constitution recognized in 1868, and in 1885, the basic principle that experience has made even more apparent now: Social welfare programs, government charity programs, are

enormously complex undertakings, requiring rules, regulations, the exercise of informed discretion, and above all, limitations. Social benefits programs do not spring full-blown from a vague constitutional provision; they require the exercise of detailed, thoughtful legislative not judicial, judgment, and they further require the prudent exercise of judgment by those charged on a local basis with administering the programs. That is why the authors of the Constitution were careful to state in Art. XIII, § 3, that counties shall provide for the infirm, but only "in the manner prescribed by law."

Article XIII, § 3 thus allows the legislature, by law, to establish public welfare programs in which counties may (or, if the legislature so states, must) participate.[1] Thus, even assuming that this provision remains in force, it is of no help to the Respondent. The legislature has, by statute, imposed certain duties on counties in regard to hospitalization of indigents, notably a statutory obligation to pay for the treatment of indigents who are treated outside the county where they reside. The state legislature has created numerous other programs involving indigent medical treatment in which counties may or must participate, notably medicaid. But the legislature has not enacted a law that imposes the duty that Respondent wishes that the legislature had created.

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1. Indeed, as noted below, Art. XIII, § 3 also allows the State directly, by general law, to provide for the elderly and infirm on a statewide basis, without channeling the program through the counties.

Because the constitutional provision cited by Respondent is not self-executing, and because the legislature has not by law established the kind of program that Respondent seeks, the decision below cannot be sustained.

ARGUMENT

THE LEGAL AND FINANCIAL DUTY OF A COUNTY TO PROVIDE MEDICAL CARE TO INDIGENT RESIDENTS OF THE COUNTY EXISTS ONLY TO THE EXTENT AND IN THE MANNER SPECIFICALLY PROVIDED BY LAW.

A. Legal and Financial Duty of a County to Provide Care to the Indigent Under the 1885 Florida Constitution, As Amended.

At the time of its adoption, Article XIII, Section 3 of the 1885 Constitution provided:

> "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." 25 Fla.Stat. Ann. 630 (1970)

This language had been carried forward almost verbatim from Article X, Section 3 of the 1868 Constitution. 25 Fla. Stat. Ann. 458 (1970).

In 1936, Article XIII, Section 3 of the 1885 Constitution was amended to add the following provisions authorizing statewide relief and old age benefits:

> "provided, however, the legislature may by general law provide for a uniform statewide system for such benefits, and appropriate money therefor; but no such general law shall provide benefits to any person who shall not have been a resident of the State of Florida for a period of five years continuously next preceding his application therefor, nor shall such general law provide for benefits to any person solely on account of age who has not attained the age of sixty-five years; provided, further, that where by any law of the United States, a lesser or different period of residence, age or citizenship shall be fixed in order for the State of Florida to participate in any federal grants that might be made for such purposes, the legislature may prescribe such requirements as to citizenship, age and residence as will be consistent with and not in conflict with such federal law." 25 Fla. Stat. Ann. 629, 630 (1970).

Two issues are presented in this case regarding Article XIII, Section 3 of the 1885 Constitution, as amended in 1936. The first is whether the pre-1936 amendment language is self-executing, and second, what effect, if any, the provisions added by the amendment had on the original duty imposed upon the counties of this state.

The test to determine whether a constitutional provision is self-executing is:

> Whether or not the provision lays down a sufficient 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. Gray v. Bryant, 125 So.2d 846, 851 (Fla. 1960).

This test has been reaffirmed on numerous occasions. Schreiner v. McKenzie Tank Lines, etc., 408 So.2d 711, 714 (Fla. 1st DCA 1982).

Applying this test to the original language of Article XIII, Section 3 of the 1885 Constitution quoted above, it is abundantly clear that the people intended that the duty of the respective counties of the state to provide for those of the inhabitants who by reason of age, infirmity, or misfortune may have claims upon the aid and sympathy of society was not open-ended but was to be "prescribed by law." State ex rel. Buford v. Daniels, 87 Fla. 270, 99 So.804, 810 (Fla. 1924). This language does not merely allow for supplementation of the provision by legislative act; it prevents the provision from being self-executing.

Having established that execution of the above provision is dependent upon legislative action to effect its provisions, the next point of inquiry is what effect, if any, the provisos added by the 1936 amendment to Article XIII, Section 3 of the 1885 Constitution had on the operation of the original provisions. The earliest officially reported case in Florida interpreting the effect of a proviso is State ex rel. McQuaid v. County Commission of Duval County, 23 Fla. 483, 3 So.193 (1887) wherein the court wrote:

> Being in the shape of a proviso, this limitation is to be strictly construed. A proviso to a statute is to be so construed as to take no case out of the enacting clause which is not fairly within the terms of the proviso. Its office is to except something from the enacting clause, or to restrain its generality. Duval County, supra at 194.

In a later case the Supreme Court of Florida held that a proviso modifies the language which precedes it. Futch v. Adams, 47 Fla. 257, 36 So.575 (1904).

Accordingly, the effect of the 1936 amendment to Article XIII, Section 3 of the 1885 Constitution was to restrain the generality and modify the

original language to allow for a uniform statewide system relating to such benefits; to allow for appropriation of state funds to implement such statewide system, and to allow for state participation in any federal grants made available for such purposes. As a result of the 1936 amendment to Article XIII, Section 3 of the 1885 Constitution, the responsibility which was once placed solely upon the respective counties was modified to allow for shared responsibility between the counties and the state. This shared responsibility was not self-executing but was dependent upon subsequent legislative enactments in order to effectuate both provisions. See State ex rel. Williams v. Cone, 196 So.820 (Fla. 1940).

Applying these constitutional provisions to the opinion of the Third District Court of Appeal, it appears that the court misinterpreted Cleary v. Dade County, 160 Fla. 892, 37 So.2d 248 (1948). The court gave no effect to the limitation on the responsibility of the counties created by the phrase "in the manner provided by law." Additionally, the court seems to have ignored the 1936 amendment to Article XIII, Section 3 of the 1885 Constitution which further modified the responsibility of the respective counties to allow for the creation of a statewide system of relief through enactments of general law.

B. The Provisions of Art. XIII, § 3 of the 1885 Constitution Have Been Effectuated by General Law, Population Acts and Special Acts.

It must be borne in mind that in 1948, the year Cleary, supra, was decided, not only had no statewide system of relief been created by general law, but there existed pursuant to § 125.01(4), Fla. Stat. (Vol. I, 1941), the

duty and authority on the part of the Board of County Commissioners "to have care and provide for the poor and indigent people of the county." The language of § 125.01(4), Fla. Stat., as it existed prior to the 1971 revision to Chapter 125, was no more specific than the original language in Article XIII, Section 3 of the 1885 Florida Constitution. Section 125.01(4), Volume I, Fla. Stat., 1941, is followed by a note cross-referencing the population tables in Volume II for session laws concerning the following in certain counties: ". . . Charity Funds; . . . County Welfare; . . . Free hospitalization and medical treatments; . . . Welfare Boards . . ."[2]

A brief review of these general laws of local application (population acts) indicates that such acts provided a more precise mechanism for execution of the duty of the counties to provide for the indigent by allowing for the manner in which to accomplish such care. For example Ch. 17,169, Laws of Fla., 1935, authorized the board of county commissioners of all counties having a population of not less than 6,418 and not more than 6,500 to levy and collect and expend an annual tax not exceeding one mill on all taxable property within such counties for the exclusive purpose of creating a fund for the purpose of caring for and aiding the indigent.[3] Similarly, Chapter

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2. See Ch. 17,168, Laws of Fla., 1935; Ch. 17,169, Laws of Fla., 1935; Ch. 19,421, Laws of Fla., 1939; Ch. 21,086, Laws of Fla., 1941; Ch. 15,942, Laws of Fla., 1933; Ch. 20,618, Laws of Fla., 1941; Ch. 10,135, Laws of Fla., 1925; Ch. 11,380, Laws of Fla., 1925; and Ch. 20,506 Laws of Fla., 1941.

3. Repealed by Ch. 1338, Laws of Fla., 1961.

17,168, Laws of Fla., 1935, allowed for the levy of a tax of not more than three mills on all property assessed in counties with a population between 2,750 and 2,800 and use of funds so collected to pay "hospital bills, medical bills, doctors bills and nurses bills of such poor and indigent citizens of said counties as said board of county commissioners shall decide to be entitled to such relief."[4]

In addition to general laws of local application, special acts of the legislature were enacted to effectuate the policy of Article XIII, Section 3 of the 1885 Constitution, as amended: Chapter 59-1240, Laws of Fla., authorized the Duval County Welfare Board to construct, expand, extend, renovate, repair, improve, furnish and equip hospital units and indigent relief departments in addition to authorizing the appropriation of $558,000.00 per year through 1960 for those purposes; Chapters 23,229, 23,230 and 23,225, Laws of Fla., 1945, authorized Dade County to construct, erect, maintain, operate, equip and improve . . . hospitals, homes for the aged and to issue general obligation bonds for such purposes; Chapter 27,612, Laws of Fla., 1951, enabled the board of county commissioners of Hillsborough County to donate to or contract or make agreements with South Florida Baptist Hospital or its successor for medical and hospital services rendered or to be rendered

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4. Id.

to the poor, indigent or other county patients or people. Creation of the North and South Broward Hospital Districts pursuant to Chapters 27,438, Laws of Fla., 1951, as amended, and 24,415, Laws of Fla., 1947, as amended, respectively, enabled the construction of hospitals which provide medical care and treatment to both the indigent and nonindigent residents of Broward County.

The relative ease with which the court in Cleary was able to find for Dade County without resorting to a discussion regarding these matters is probably a result of the fact that in Cleary the plaintiff sought to prevent the City of Miami from transferring Jackson Memorial Hospital to Dade County on the ground that such a transfer would constitute an unlawful delegation of the City of Miami's duty and authority to provide for the "care, support and maintenance of the orphan, dependent, delinquent or defective children and of sick, aged, insane or indigent persons." Cleary, supra at 251. Recognizing that the transfer of Jackson would benefit both the City of Miami and Dade County, the Supreme Court had no difficulty finding that since Dade County already had the general power and duty to provide for the indigent, no delegation of authority was required.

Obviously the use of the phrase "in the manner prescribed by law" in the original language of Article XIII, Section 3 of the 1885 Constitution, in contrast to the words "by general law" which appear throughout the proviso added by the 1936 amendment carries a significance which the court in Cleary did not need to address. But here, where Respondent would have the Court impose an unlimited duty upon the respective counties of the state regarding

indigent health care and relies as authority therefor, in part, on Article XIII, Section 3 of the 1885 Constitution, as amended, greater scrutiny must be given to this provision. The subject matter, powers and duties contained in the population acts and special acts described above simply nullify Respondent's contention that Article XIII, Section 3 of the 1885 Constitution, as amended, is self-executing and imposes an unlimited financial liability upon the respective counties for the provision of indigent hospitalization.

C. Effectuation of the Statewide System of Relief Authorized by the 1936 Amendment to Article XIII, Section 3 of the 1885 Constitution.

The first statewide relief program addressing the hospitalization of the poor was created in Florida in 1955 when the legislature enacted Chapter 401, Florida Statutes, entitled "Hospital Service for the Indigent," hereafter "HSI." HSI created a voluntary, jointly financed and administered state-county program, the purpose of which was to provide for payment for the hospitalization of medically indigent persons in the State of Florida.[5]

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5. Medically Indigent was defined in § 401.02, Fla. Stat. (1955), as "a person in this state who is acutely ill or injured, who can be markedly helped by treatment in a hospital and who is unable to provide himself with necessary hospital services as prescribed and ordered by a physician." Fla. Admin. Code Rule 170E-3.08, provided more specific criteria for the determination of medical indigency and § 5 of the publication of the State Board of Welfare entitled "Rules and Regulations For the Hospital Service For the Indigent in Florida" (Appendix, Tab B) supplies further assistance in the county's determination of medical indigency.

Section 401.06, Fla. Stat. (1955), required the State Board of Health to adopt rules and regulations for the proper administration of the program. Pursuant to this mandate, Chapter 170E-3, Florida Administrative Code, was adopted (Appendix to Brief Amicus Curiae, Broward County, Tab A). Additionally, the Florida State Board of Health produced a detailed publication entitled "Rules and Regulations for Hospital Service for the Indigent." (Appendix to Brief Amicus Curiae, Broward County, Tab B).

As will be discussed in the next section, the detail and specificity with which this statute and the rules and regulations relating thereto address indigent hospital services on both intra-county and inter-county levels is in sharp contrast to the isolated expression of legislative intent set forth in § 154.302, Fla. Stat.

D. Legal and Financial Duty of a County to Provide for the Indigent Subsequent to the Adoption of the 1968 Florida Constitution.

One of the issues raised in this case is whether Article XIII, Section 3 of the 1885 Constitution, as amended, exists today as a statute pursuant to Article XII, Section 10 of the 1968 Constitution. The Third District Court of Appeal found that such provision does in fact exist today on a statutory level. The key point regarding this issue is that even if it does continue as such, Art. XIII, § 3 of the 1885 Constitution, as amended, is not self-executing but is dependent upon further legislative action to carry out its purposes. It would therefore be appropriate to examine the provisions of general law presently in effect which carry out these purposes.

The first statewide relief program following the adoption of the 1968 Constitution began with the 1969 enactment of Chapter 409, Fla. Stat., which qualified the state for participation in the federally funded "Medicaid Program" established pursuant to 42 U.S.C. § 1396 et seq. (1970). With the enactment of § 409.267, Fla. Stat. (Supp. 1972), the state began charging the counties for payment of a certain portion of the cost of the state's participation in the federally funded Medicaid Program. This section required each county to set aside funds sufficient to cover 35 percent of payments for inpatient hospitalization in excess of 12 days and 35 percent of the payments for nursing home or intermediate facility care in excess of $170.00 per month. Shortly thereafter, Ch. 75-30, Laws of Fla., was enacted and retroactively operated to May 1, 1974, to limit county nursing home and intermediate facility care payments to $55.00 per month per person. Although no legislative intent is expressly set forth therein, the retroactive operation of this limitation, in conjunction with the reduction of the amount a county can be required to pay per month per person in either a nursing home or intermediate care facility, indicates the legislature's concern and response to the fiscal impact of the Medicaid upon the counties.

Several significant provisions relating to indigent hospitalization were created in Ch. 73-126, Laws of Fla. Section 111, Ch. 73-126, Laws of Fla., repealed Chapter 401, Fla. Stat. (1955), expressly terminating the HSI

Program and thus effectively ending any statutory right on the part of a private hospital to seek reimbursement from a participating county.[6]

Section 26, Ch. 73-126, Laws of Fla., created § 401.45, Fla. Stat., which, for the first time, established for the indigent a statutory right of access to emergency care in Florida,[7] and § 22, Ch. 73-126, Laws of Fla., § 401.41, Fla. Stat., which made denial of such emergency care a misdemeanor of the second degree punishable as provided in § 775.082 or § 775.083, Fla. Stat.[8]

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6. The note immediately following § 111, Ch. 73-126, Laws of Fla., reads as follows:

> Note.--This repealer was requested by the division of health, department of health and rehabilitative services, because the hospital service for the indigent program authorized by chapter 401 has not been funded since the period ending June 30, 1970. Former recipients of the HSI program benefits are now covered by the medicaid hospitalization program or by county or private sources.

7. Section 401.45(1), Fla. Stat. (1973), provided that:

> No person shall be denied treatment for any emergency medical condition which will deteriorate from a failure to provide such treatment at any hospital licensed under chapter 395 that operates an emergency department providing emergency treatment to the public.

8. Section 401.41(1), Florida Statues (1983) provides:

> (1) Any person who violates, or who fails to comply with, any provision of this act is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 for the first such violation, and is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084 for the second and subsequent offenses.

E. Reliance by the Third District Court of Appeal Upon the General Statement of Intent Set Forth in Section 154.302, Florida Statutes, as Authority for Effectively Imposing Unlimited Liability on the Respective Counties is Misplaced.

The next major development in statutory responsibility imposed by general law upon the counties occurred in 1977 when the priority for reimbursement for out-of-county indigent hospitalization costs, formerly set forth within § 401.13, Fla. Stat. (1955),[9] resurfaced in Part IV, Chapter 154, Fla. Stat., "The Florida Health Care Responsibility Act." The Third District Court of Appeal expressly relied upon the broad expression of legislative intent set forth in § 154.302, Fla. Stat., thereby rejecting the interpretation of the Fourth District Court of Appeal as to the qualifying relationship between the

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9. Section 401.13, Florida Statutes (1955) provided that:

> The first priority for payment from the fund herein created shall be to reimburse hospitals for the cost of hospital care provided for the benefit of acutely ill or injured medically indigent persons who are not residents of or from the county in which such hospital is located and shall be charged against the portion of the fund due the county of residence.

general statement of intent set forth in § 154.302 and § 154.306[10], Fla. Stat. (1977). St. Mary's Hospital v. Okeechobee County Board of County Commissioners, 442 So.2d 1044 (Fla. 4th DCA 1983).

Such reliance is misplaced for several reasons. First, there is a complete absence of any provision in the Florida Health Care Responsibility Act which would fix or prescribe the manner in which the general statement of intent set forth in § 154.302, Fla. Stat., is to be carried out by the respective counties. Second, enactment of §§ 4-10, Ch. 84-35, Laws of Fla., as an amendment to Part IV, Chapter 154, Fla. Stat., is in and of itself evidence of legislative knowledge of the status of hospital reimbursement regarding the services rendered by hospitals for in-

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10. Section 154.306, Financial responsibility for out-of-county indigent patients treated at a regional referral hospital.--Ultimate financial responsibility for treatment received at a regional referral hospital by a certified indigent patient who is a resident of the State of Florida but is not a resident of the county in which the regional referral hospital is located shall be the obligation of the county of which the certified indigent patient is a resident. A county's financial responsibility for each of its resident certified indigent patients receiving treatment at a regional referral hospital shall be limited to payment for 12 days of services per admission, not to exceed 45 days per annum, at the per diem reimbursement rate currently in effect for the regional referral hospital under the medical assistance program for the needy under Title XIX of the Social Security Act, as amended. However, no county shall be required to pay for services at a regional referral hospital when such services are available at a local hospital in the county where the indigent resides, except that the county where the indigent resides shall, in all instances, be liable for the cost of treatment provided for said certified indigent at a regional referral hospital for any emergency medical condition which will deteriorate from a failure to provide such treatment and when such condition is determined by the attending physician to be of an emergency nature.

digent health care. Additionally, it is presumed that the legislative in enacting the Public Medical Assistance Act had knowledge of the interpretation of the "Florida Health Care Responsibility Act" by the Fourth District Court of Appeal. Main Ins. Co. v. Wiggins, 349 So.2d 638 (Fla. DCA 1977).

The general presumption is that later statutes are passed with knowledge of prior existing laws, and construction is favored which gives each one a field of operation rather than having the former repealed by implication. Oldham v. Rooks, 361 So.2d 140, 143 (Fla. 1978). In the same passage, the court writes:

> Nevertheless, when the legislature makes a complete revision of a subject it serves as an implied repeal of earlier acts dealing with the same subject unless an intent to the contrary is shown. Oldham, supra, at 143.

Accordingly, it may be argued that §§ 4-10, Ch. 84-35, Laws of Fla., the Public Medical Assistance Act, as a complete revision of financial responsibility for indigent hospital care, repealed § 154.302, Fla. Stat., by implication. However, it is more likely that the legislature recognized that the "Florida Health Care Responsibility Act," §§ 154.302-154.314, Fla. Stat., was restricted in application to the reimbursement of regional referral hospitals for the acute care given to indigent residents of another county. This is in accord with the interpretation of the Fourth District Court of Appeal in St. Mary's Hospital, supra, an interpretation with which the legislature is assumed to be acquainted. This is so notwithstanding the fact that St. Mary's Hospital involved out-of-county payments while this case involves liability to private hospitals in the county where the indigent resides.

An apparent conflict exists between the interpretation of the Third District Court of Appeal of § 154.302, Fla. Stat., and the stated intent found in § 5, Ch. 84-35, Laws of Fla. The Third District Court of Appeal is mistaken in its reliance upon the general expression of intent found in § 154.302, Fla. Stat. Even if § 154.302, Fla. Stat., was originally intended to impose an absolute and unlimited statutory obligation upon the counties of this state for the unreimbursed hospital services provided to indigent patients, its continued existence would be contrary to one of the fundamental rules of statutory construction. This rule provides that the last expression of legislative will is the law, and in the case of conflicting provisions the last in point of time prevails. Askew v. Schuster, 331 So.2d 297 (1976); Marston v. Gainesville Sun Publishing Company, 341 So.2d 783 (1976).

In Marston, the court held that where conflicting policy makes it impossible to permit full reach of two acts, effect must be given to the later, more specific expression of legislative will. Comparison of the isolated legislative expression of § 154.302, Fla. Stat, which for the lack of specific provisions directing how this intent shall be carried out has contributed to

the confusion resulting in this litigation, with the stated legislative intent of the Public Medical Assistance Act[11] and the provisions following it which provide the means by which this intent is to be carried out, requires that effect be given to the latter.

Section 8, Ch. 84-35, Laws of Fla., charges the Hospital Cost Containment Board with the task of conducting a study and reporting the results thereof by February 1, 1986, to the President of the Senate, the Speaker of the House of Representatives and the Governor on the outcome of its research regarding:

> (1) The extent to which bad debts of Florida hospitals reflect the provision of care to the medically indigent.
>
> (2) Current methods of financing indigent care, including ad valorem taxes and state taxes.

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11. § 5, Ch. 84-35, Laws of Fla., provides:

Section 154.33, Florida Statutes, is created to read:

154.33 Legislative findings and declaration of intent.--It is declared that access to adequate health care is a right which should be available to all Floridians. However, rapidly increasing health care costs threaten to make such care unaffordable to many citizens. The Legislature finds that unreimbursed health care services provided to persons who are unable to pay for such services causes the cost of services to paying patients to increase in a manner unrelated to the actual cost of services delivered. Further, the Legislature finds that inequities between hospitals in the provision of unreimbursed services prevent hospitals which provide the bulk of such services from competing on an equitable economic basis with hospitals which provide relatively little care to indigent persons. Therefore, it is the intent of the Legislature to provide a mechanism for the funding of health care services to indigent persons, the cost of which shall be borne by the state and by hospitals which are granted the privilege of operating in this state.

(3) Proposals for broader based funding sources to finance indigent health care.

Additionally, § 10, Ch. 84-35, Laws of Fla., directs the Department of Health and Rehabilitative Services to determine the feasibility of using funds available pursuant to the trust fund created by § 7, Ch. 84-35, Laws of Fla., to reimburse hospitals for inpatient and outpatient services provided to qualified medically indigent residents. The recommendations which the Department of Health and Rehabilitative Services will make to appropriate officials regarding said feasibility as a result of this study are not, as yet, available.[12]

The study found that the indigent health care reimbursement program will be very costly. Over and above from the cost of the medicaid expansion, it is estimated that the Indigent Hospital Services Program will cost about $357 Million statewide for fiscal year 1986-1987, with the caveat that this figure may be a "gross understatement of actual program costs if indigents who currently have insurance duplicate their coverage to qualify for the program." (Appendix to Brief Amicus Curiae, Broward County, Tab C, pps. 13-14.)

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12. The executive summary of the feasibility study commissioned by H.R.S., entitled "Medicaid and Indigent Health Care Survey and Cost Estimation" is enclosed in the Appendix to the Brief of Amicus Curiae, Broward County, Tab C.

F. Reversal of the Decision of the Third District Court of Appeal Will Have No Effect on the Current Statutory Scheme of State-County Indigent Health Care.

In addition to Medicaid, the Florida Health Care Responsibility Act and the Public Medical Assistance Act, the legislature has enacted general laws relating to indigent health care subsequent to the adoption of the 1968 Constitution which include for example: Chapter 154, Part I, Fla. Stat., relating to county public health units, Chapter 392, Fla. Stat., relating to hospital care for tuberculosis patients; Part I, Chapter 394, Fla. Stat., relating to "Baker Act" or mental health; Section 901.35, Fla. Stat., which imposes the responsibility for payment of expenses for the care of an indigent prisoner who is ill or wounded or otherwise injured during or at the time of arrest for any violation of a state law or county ordinance on the county in which the person was arrested upon a showing by the party seeking such payment that the prisoner is uninsured and unable to pay the cost thereof;[13] and Section 951.23(2)(b), Fla. Stat., as implemented through Rule 33-8.07, Florida Administrative Code, relating to the medical expenses of county prisoners.[14]

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13. Section 901.35(2)(b), Fla. Stat., alternately provides for such payment by a municipality where such arrest was for violation of a municipal ordinance.

14. Section 951.032, Fla. Stat., authorizes county and municipal detention facilities to seek reimbursement for medical expenses paid on behalf of prisoners.

Assuming the existence of Art. XIII, Section 3 of the 1885 Constitution, as amended, on a statutory level, current laws enacted by the legislature relating to the counties' responsibility for indigents establish a statutory scheme whereby certain but not all legal and financial responsibility for indigent health services is charged to the counties. The fiscal liability of the respective counties is reasonably predictable under this statutory scheme. The arguments presented by Respondent simply do not support judicial intervention and alteration of this system, especially in light of the present activity of the legislature regarding the matter of indigent health care services.

CONCLUSION

Amicus curiae, Broward County, urges this Court to hold that the extent and manner in which the respective counties of this state must provide medical care to their indigent residents is a function of the legislative branch, which in recognition of the gravity and urgency of the problems surrounding the cost and availability of indigent hospital services, is actively involved in the resolution of this problem.

Excepting those limited circumstances relating to illness or injury of an indigent person at the time of arrest or for payment of medical expenses of county prisoners, there is no law which requires a county to reimburse a private hospital for the provision of services to indigent residents of the same county. Accordingly, the decision of the Third District Court of Appeal should be reversed.

Respectfully submitted,

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