IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,689

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.	:

. . . . . .

BRIEF OF RESPONDENT

Discretionary Proceeding to Review
Decision of Third District Court of
Appeal Case No. 83-1445 (463 So.2d 232)

DARREY A. DAVIS
STEEL HECTOR & DAVIS
4000 Southeast Financial Center
Miami, Florida 33131-2398

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER
425 Park Avenue
New York, New York

Attorneys for Respondent

TABLE OF CONTENTS

	Page
Table of Citations	-i-
Foreword	1
Explanation of References.	4
Restatement of the Case and of the Facts	5
Summary of Argument	12
Argument	15
Standing to Seek Declaratory Relief	15
Obligation to Care for Medically Indigent	17
Administrative Construction of Statutory Obligation	29
County Attorney's Opinion on County's Obligation	31
County's Obligation Unaffected by Chap. 84-35, Laws of Florida	34
Common Law Duty to Care for Indigents	37
Conclusion	38
Certificate of Service	39

TABLE OF CITATIONS

	Page
Cases	
Cleary v. Dade County, 160 Fla. 892, 37 So.2d 248 (1948)	13, 18-19, 20, 25, 26
Dade County v. American Hospital of Miami, Inc., 463 So.2d 232 (Fla. 3d DCA 1985)	1, 2
LeJeune Road Hospital, Incorporated v. Watson, 171 So.2d 202 (Fla. 3d DCA 1965)	15
Lewis v. Florida State Board of Health, 143 So.2d 867 (Fla. 1st DCA 1962)	25
Metropolitan Dade County v. Maddox, 242 So.2d 165 (Fla. 3d DCA 1970).	30
St. Mary's Hospital v. Okeechobee County Board of County Commissioners, 442 So.2d 1044 (Fla. 4th DCA 1983)	28
Shands Teaching Hospital & Clinics of University of Florida v. Council of City of Jacksonville, 398 So.2d 907 (Fla. 1st DCA 1981)	28, 29
State v. Sarasota County, 74 So.2d 542 (Fla. 1954)	20
Tallahassee Memorial Regional Medical Center v. Lewis, 399 So.2d 106 (Fla. 1st DCA 1981)	29
Warnock v. Florida Hotel and Restaurant Commission, 178 So.2d 917 (Fla. 3d DCA 1965).	30

Constitutions

	Page
Art. XII, § 11, Fla. Const. (1968)	24
Art. XIII, § 3, Fla. Const. (1885)	21, 32

Florida Statutes

Section 11.2422, Fla. Stat.(1981).	22, n.23
Section 125.01(4), Fla. Stat. (1957)	19
Section 154.302, Fla. Stat. (1977)	27, 32-33
Section 154.306, Fla. Stat. (1977)	27
Section 395.0143, Fla. Stat. 1983)	6, n.16
Section 401.45(1), Fla. Stat. (1983)	6, n.16

Other Materials

Art. 1, Section 1.01(A)(6), Home Rule Charter of Dade County	n. 19
Fla. Admin. Code, Rule 10C-7.39, Part II(21), Medicaid Program (1983 Summer Supp.)	36
Jackson Memorial Hospital Policy and Procedure Manual	6, 7, 30

BRIEF OF RESPONDENT

FOREWORD

Scope of Question Certified

The Supreme Court is requested to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal in Dade County v. American Hospital of Miami, Inc., 463 So.2d 232 (Fla. 3d DCA 1985) on the ground that it passes on a question of great public importance. The certified question is stated as follows:

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

The decision of the District Court affirmed the partial summary declaratory judgment of the Circuit Court of Dade County which in part declared:

> 4. As between the parties to this action, defendants bear a legal duty and the financial responsibility to provide post-emergency care to indigent residents of Dade County after their emergency medical condition has been stabilized, when determined by the attending physician and to promptly accept from plaintiff the transfer of indigent patients whose emergency medical condition has been stabilized.
>
> * * *
>
> 6. The declaration of rights, status and relations herein made is applicable only to the parties herein under the circumstances presented in this case.

(App. 55).

The limitations of the partial summary judgment, affirmed by the panel decision of the District Court, suggests that the statement of the certified question tends to overstate the scope of the question actually involved. This may have prompted the views expressed by Chief Judge Schwartz in his dissenting opinion:

> In my judgment, the panel's sweeping conclusion that every Florida county - presumably including those which do not maintain hospitals or other medical facilities - is responsible for the hospital expenses of its indigent residents is directly contrary to a prior decision of this court, and more important, is totally unjustified by the statutory provisions cited by the panel or by any other enactment of the legislature.

463 So.2d at 233.

This declaratory judgment action is limited to the matters of controversy existing between American Hospital and Jackson Memorial Hospital (owned by Dade County and operated by the Public Health Trust). American Hospital believes it occupies a status different from other private hospitals.

American Hospital sought a declaration of the rights, status and relations between the two hospitals in respect to the responsibility for providing medical care to indigent patients brought to American Hospital in an emergency medical condition, whose emergency medical condition has been treated and stabilized, but who require additional non-emergency secondary or tertiary medical care.

American Hospital fulfils the requirement imposed on all hospitals to provide emergency medical care to all persons brought to the hospital. A substantial number of emergency indigent patients are brought to American Hospital by the Fire Rescue Service operated by Dade County.

American Hospital bears no legal duty or financial responsibility to provide non-emergency medical care for indigents. It has no obligation to accept non-emergency indigents as patients.

Admittedly, Jackson Memorial provides medical care to all qualified indigents brought to the hospital, and accepts the transfer of non-emergency indigent patients whose emergent medical condition has been stabilized by private hospitals, to the extent that beds for indigents are made available. American Hospital complains that Jackson Memorial refused to accept transfers of non-emergency indigent patients from it, while accepting transfers from other hospitals.

American Hospital pays all costs of stabilizing the emergency medical condition of all indigent patients brought to the hospital, and makes no claim for reimbursement of such medical costs. The subject matter of its claim is limited to the question of the responsibility of Jackson Memorial Hospital to accept the transfer of non-emergency

indigent patients whose initial emergent medical condition has been treated and stabilized by American Hospital.

The decision of the Court below correctly determined that, as between the parties, Jackson Memorial Hospital has the responsibility to provide post-emergency medical care for indigent patients whose emergency medical condition has been stabilized by American Hospital.

Explanation of References

(App.__) refers to the page number as identified in the Appendix accompanying this Brief of Respondent.

(R.__) refers to the page number as identified in the original record before the trial court and appellate court.

(Dep.__) refers to page number as identified in the deposition of Fred J. Cowell, Chief Executive Officer of the Public Health Trust, the operator of Jackson Memorial Hospital.

Petitioners are sometimes referred to as "Jackson Memorial Hospital" which is owned by Dade County. The County delegated to the Public Health Trust, an agency and instrumentality of Dade County, the possession and operating control of the hospital.

Respondent is referred to as "American Hospital."

RESTATEMENT OF THE CASE AND OF THE FACTS

Respondent is unable to concur in petitioners' statement of the facts. Petitioners' colored version omits material facts and asserts as facts matters not in the record, and inaccurate matters.

Jackson Memorial Hospital is a publicly owned and operated hospital. (App. 16). Dade County acquired the ownership and operation of the hospital from the City of Miami by contract under which the County covenanted and agreed to provide medical care for indigent residents. (App. 28-29). The County created the Public Health Trust to operate Jackson Memorial Hospital for the purpose of providing county-wide health care, pursuant to policy established by the Board of County Commissioners. (App. 3). The agreement between the County and the Public Health Trust authorizes an amount of free medical care to be provided by Jackson Memorial Hospital for indigent residents. (App. 28).

Jackson Memorial Hospital receives ad valorem taxes and financial assistance from federal, state and local funds and grants, as well as revenues from paying patients. (App. 29). The hospital receives federal funds under the Hill-Burton Act, Pub. L. No. 88-443, 78 Stat. (codified as amended in scattered sections of 42 U.S.C.), which assures medical care

to indigent patients by requiring hospitals using Hill-Burton funds to provide a reasonable volume of free medical care to indigents. (App. 29-30).

Jackson Memorial Hospital has 1250 beds. (Dep. 62). A substantial number of the beds are reserved for paying patients. (Dep. 66-67). Efforts are being made to increase the number of private paying patients. (Dept. 71).

Jackson Memorial Hospital recognizes it has the responsibility for providing health care of indigents. (Dep.14, 18). Indigents include residents who do not have Medicare, Medicaid or other medical insurance coverage. (Dep. 55-56, 74-75). However, non-emergency indigents are accepted only when beds allocated for indigents' use are available.

Jackson Memorial Hospital (as well as all private hospitals) is required to provide medical care for all emergency patients brought to the hospital, whether they are indigents or paying patients. See § 395.0143, Fla. Stat. (1983), and § 401.45(1), Fla. Stat. (1983).

Jackson Memorial Hospital acknowledges its responsibility to accept the transfer of post-emergency indigent residents whose emergency medical condition has been stabilized from private hospitals. The hospital's Policy and Procedure Manual in part provides:

> Jackson Memorial Hospital acknowledges its responsibility to accept indigent Dade County residents in transfer from other medical facilities . . .
>
> * * *
>
> Clinical services may not deny transfer of indigent Dade County residents unless it is clear that transport of the patient may result in loss of life or limb . . . (App. 36)

The President of the Public Health Trust (which is the governing board of Jackson Memorial Hospital), testified his belief that the hospital accepts between 75% and 80% of the total transfer requests, both indigents and paying patients. (Dep. 94, 136). American Hospital complains that Jackson Memorial Hospital refuses to accept from it transfers of post-emergency indigent patients whose emergent medical condition has been stabilized. (App. 3-4). Jackson asserts that it bears no legal or financial duty to accept transfers of post-emergency indigent patients. (Br. 7).

At the request of the Public Health Trust, governing board of Jackson Memorial Hospital, the County Attorney issued County Attorney's Opinion 79-25 prescribing the legal duty and financial responsibility of the Trust to provide medical care for indigents. (App. 23-31). Section 25A-7 of the Code of Metropolitan Dade County mandates that legal opinions of the County Attorney's office shall be binding on the Public Health Trust.

As a private hospital, American is under no obligation to admit any non-emergency patient, whether indigent or paying patient. (App. 46-47). The only obligation is to provide the emergency medical care necessary to stabilize the emergency medical condition of persons brought to the hospital. (App. 41). American Hospital asserts that the obligation to provide emergency care to indigents does not extend to providing secondary and tertiary medical care to indigents after their emergency medical condition has been stabilized. (App. 1-8). The refusal of Jackson Memorial Hospital to accept from American Hospital transfers of medically stabilized indigents prompted this action for declaratory relief. (App. 1-8).

American Hospital on March 25, 1981, filed against Dade County and the Public Health Trust (as the owner and operator of Jackson Memorial Hospital) a single count complaint for declaratory judgment and supplemental relief. American Hospital sought a declaration of the rights, status and legal relations, as between the parties only, determining the question whether Jackson Memorial Hospital is obligated to accept the transfer and provide post-emergency secondary or tertiary medical care to indigent patients whose emergency medical condition has been

stabilized by American Hospital, or to reimburse American Hospital for the reasonable cost of providing on behalf of Jackson Memorial Hospital the necessary post-emergency medical care to indigent residents. (App. 1-8).

The County and the Public Health Trust disclaim any responsibility for Jackson Memorial Hospital to provide medical care of a non-emergency nature to indigent residents (App. 9-11). The County and the Public Health Trust assert there is no "constitutional, statutory or common law authority requiring Dade County to reimburse a private hospital directly for patient care." (Br. 7).

Following the completion of discovery, American Hospital moved for partial summary judgment declaring the rights and duties between the parties with respect to the post-emergency medical care of the class of indigents involved. (App. 15-39). The motion for summary judgment was supported by the County Attorney's opinion (App. 23-31), Jackson Memorial Hospital administrative policy and procedure manual (App. 32-39), affidavit of American Hospital's Administrator (App. 40-42), supporting memorandum brief (App. 43-51), and the deposition of the President of the Public Health Trust. (Dep. 1-177).

Finding there was no genuine issue of material fact and American Hospital was entitled to partial judgment as a matter of law, the trial court granted American Hospital's motion and entered partial summary judgment. The judgment declared that, as between the parties, Jackson Memorial Hospital had the legal duty and financial responsibility to provide post-emergency medical care to indigent residents after their emergency medical condition had been stabilized, and to accept from American Hospital the transfer of indigent patients whose medical condition had been stabilized. The court adjudicated that such declaration applies only to the parties, under the circumstances of this case. The court retained jurisdiction to consider the claims for supplemental relief. (App. 55-57).

The County and the Public Health Trust moved for rehearing on the partial summary judgment. Pursuant to hearing and argument of counsel, the trial court entered a supplemental order clarifying and explaining the basis for the partial summary judgment, and denying the motion for rehearing. (App. 58-64).

On appeal, the partial summary judgment was affirmed by the panel decision of the District Court. (App. 65-67).

The County filed (1) motion for rehearing, or in the alternative to certify the "subject issues as being of great importance, and/or being in direct conflict with the decisions of sister appellate courts of Florida" (App. 68-75), and (2) motion for rehearing en banc. (App. 80-81).

The motion for rehearing was denied by per curiam decision. Motion for rehearing en banc was granted to consider the possible conflict between the panel decision and a prior decision of the Third District. After supplemental briefs and argument, the majority of the District Court found no conflict existed and denied the motion for rehearing en banc. The majority certified as a question of great public importance the following:

> Does a county bear a legal and financial duty to provide post-emergency medical care to indigent residents of the county?

App. 82-83).

Chief Judge Schwartz and Judge Pearson authored dissenting opinions, in which Judges Nesbitt and Ferguson concurred. (App. 84-89).

SUMMARY OF ARGUMENT

It is undisputed that American Hospital, a private hospital, bears no legal and financial duty to provide any medical care to indigents, except to treat and stabilize the emergency medical condition of indigents brought to the hospital. Jackson Memorial Hospital, a public hospital owned by Dade County and operated by the Public Health Trust with federal, state, and county funds, bears a legal and financial duty to provide post-emergency medical care for indigent residents based on (1) statutory authority, (2) administrative construction of statutory authority, and (3) binding legal duty mandated by the County Attorney.

The statutory authority includes the provisions of Art. XIII, § 3, Fla. Const. 1885, made a statute by Art. XII, § 10, Fla. Const. 1968. Petitioners' argument that this statutory authority has been repealed by reviser's bills is without merit because repeal by a reviser's bill is applicable only to statutes enacted by the state legislature (not to a section of the Constitution), and a reviser's bill does not repeal a statute "recognized and continued in force by reference" in the Constitution. See § 11.2422, Fla. Stat. (1981).

Art. XII, § 11, Fla. Const. 1968, sets out the procedure by which the legislature may delete from the 1968

Constitution the provisions thereof retaining Art. XIII, § 3, Fla. Const. 1885, as a statute. The legislature has not done so. Accordingly, Art. XIII, § 3, Fla. Const. 1885, remains in force as a statute.

The clear legislative intent stated in § 154.302 - that a county has the ultimate financial responsibility for the medical treatment of its indigent residents - is not merged into § 154.306, which requires a county to pay for treatment of its indigent residents by a regional hospital in another county.

Admittedly, Dade County has power and authority to provide a public hospital and to care for medically indigent residents. The County has seen fit to exercise this power. The County, having done so, assumed the duty and it is bound to continue to care for its medically indigent residents. See Cleary v. Dade County, 160 Fla. 892, 37 So.2d 248 (1948).

Jackson Memorial Hospital, for many years, has recognized its responsibility to provide medical care for post-emergency indigent patients. The administrative construction by Jackson Memorial Hospital of its legal and financial duty in respect to indigents is entitled to great weight.

Under the Code of Metropolitan Dade County, the legal mandate of the County Attorney to petitioners governing the legal and financial duty to care for medically indigent residents is entitled to great weight.

Chap. 84-35, Laws of Florida, does not affect the legal and financial duty of Jackson Memorial Hospital to provide post-emergency medical care to indigent residents. This Act does not impair the existing duty. It simply increases the present obligation.

The contention that the decision in this case rests solely on a non-existent common law duty is not supported by the record. This contention is merely a "straw man" issue.

It is suggested that American Hospital lacks standing to maintain this action because it was acting as a "mere volunteer" in providing the services in question. On the contrary, American Hospital is forced to provide post-emergency medical care for indigents involuntarily because of Jackson Memorial's refusal to accept transfers of indigent patients whose emergency medical condition has been treated and stabilized. Under the undisputed circumstances, American Hospital clearly has standing to seek declaratory relief.

ARGUMENT

Standing to Seek Declaratory Relief

As a basis for reversal, the dissenting opinion of Chief Judge Schwartz suggests that American Hospital lacks standing to maintain this declaratory judgment action for the reason that it was acting as a mere volunteer in providing the services in question. (463 So.2d at 236, n. 5)

The services in question involve post-emergency secondary or tertiary hospital services necessary for indigent patients after their initial emergency medical condition has been treated and stabilized.

As a private hospital, American Hospital is under no obligation to provide medical care to any non-emergency patient. It is permissible for a private hospital to reject any applicant for medical services, unless an emergency medical condition is presented. See LeJeune Road Hospital, Incorporated v. Watson, 171 So.2d 202, 205 (Fla. 3d DCA 1965). Accordingly, American Hospital bears no legal duty or financial responsibility to provide non-emergency medical care to indigents.

American Hospital is required to provide emergency medical care to all persons brought to the hospital in an

emergent medical condition, including indigents.*/ If the hospital fails to discharge its duty to treat an emergent medical condition, it may be required to respond in damages.

American Hospital fulfils the obligation to provide medical services to indigent patients brought to the hospital in an emergent medical condition. No claim is made for reimbursement of the costs of treating and stabilizing the emergency medical condition of indigent patients.

The County operates the Metro-Dade Fire Rescue Service created under Chap. 18, Art. II, Code of Metropolitan Dade County for the purpose of providing temporary treatment and for transporting persons with an emergency medical condition to a hospital. This county agency decides whether to take the emergency patient to Jackson Memorial Hospital or to a private hospital. A substantial number of indigents in an emergency medical condition are brought to American Hospital.

---

*/ § 395.0143, Fla. Stat. (1983), provides:

> No general hospital licensed under this part, and no specialty hospital with an emergency room, shall deny any person treatment for any emergency medical condition which will deteriorate from a failure to provide such treatment. . . .

§ 401.45(1), Fla. Stat. (1983), provides:

> No person shall be denied treatment for any emergency medical condition which will deteriorate from a failure to provide such treatment at any general hospital licensed under chapter 395 or at any specialty hospital that has an emergency room.

Many of the indigent emergency patients brought to American Hospital require secondary or tertiary hospital services for extended periods after their emergency medical condition has been stabilized.

Since American Hospital bears no legal duty to provide non-emergency medical care to indigents, it has requested Jackson Memorial Hospital to accept the transfer of post-emergency indigents after their emergent medical condition had been treated and stabilized. Jackson Memorial Hospital disclaims any legal or financial duty to provide non-emergency medical care to indigent patients. The refusal of Jackson Memorial Hospital to accept transfer of non-emergency indigents whose emergency medical condition has been stabilized requires that American Hospital involuntarily provide the post-emergency medical services in question.

Under the circumstances, it is difficult to understand the basis upon which American Hospital may be considered a "mere volunteer" without standing to seek declaratory relief.

Obligation to Care for Medically Indigent

As between the parties, it is clear that the responsibility of American Hospital to care for medical indigent residents is fulfilled when the emergency medical condition of indigents brought to the hospital has been treated and

stabilized, so that no emergency medical condition exists. Jackson Memorial Hospital disclaims any responsibility to provide post-emergency hospital care to medically indigent patients.

This Court has held that Dade County has both the prerogative and obligation to care for the infirm and aged within the entire County. See Cleary v. Dade County, 160 Fla. 892, 37 So.2d 248 (1948), a suit to enjoin the City of Miami from transferring Jackson Memorial Hospital to Dade County. The trial court dismissed the suit, and this Court affirmed.

This Court pointed out that the agreement between the City and the County provides:

> (T)he County shall continue with the operation of said hospital and hospital facilities and shall "provide for, take care of and accept full responsibility for the care of the sick, and indigent, and all charities and welfare cases" of all Dade County, including the City of Miami. . . .

37 So.2d at 249.

This Court held:

> It (Dade County) has both the authority and the duty to care for the indigent, sick and poor in all of Dade County by virtue of the statute above referred to and by the provisions of Section 3 of Article XIII of the Constitution of Florida, F.S.A., which reads as follows: "Section 3. The respective counties of the State shall provide in the manner prescribed by law, for those of the

> inhabitants who by reason of age, informity (sic), or misfortune, may have claims upon the aid and sympathy of society". It is clear that since the County has both the prerogative and obligation to care for the infirm and aged within the entire County, it is unnecessary that such power and duty be delegated to it by the City.

The statute referred to was § 125.01(4), Fla. Stat. (1957), which prescribed the powers and duties of the Board of County Commissioners:

> "To have care and provide for the poor and indigent people of the county". . . .

Section 125.01 was amended in 1971. The statute now gives the governing body of a county the power to "Provide hospitals, ambulance service, and health and welfare programs." [§ 125.01(1)(e), Fla. Stat. (1983)*/].

Petitioners contend the amendment indicated a legislative intent to release the County from any obligatory duty to

---

*/ In addition, Article I, Section 1.01(A)(6) of the Home Rule Charter of Dade County adopted by the electors pursuant to Article VIII, Section 11, 1885 Florida Constitution (now Article VIII, Section 6, 1968 Florida Constitution), vests the Board of County Commissioners with the power to:

> 6. Provide hospitals and uniform health and welfare programs.

care for medically indigent residents. As this Court pointed out in the Cleary decision, the reply to such contention is that since the County has seen fit to exercise the power granted:

> (I)t assumed the duty of continuing such care, support and maintenance. . . .

37 So.2d at 251.

Under the circumstances of this case, it is immaterial whether the hospital care of medically indigent residents is prescribed as a duty or power. Since Jackson Memorial Hospital has exercised the statutory power for many years, pursuant to agreement with the City of Miami, it assumed the duty of continuing the care of medically indigent residents as a matter of law. Cleary v. Dade County, supra.

The decision in State v. Sarasota County, 74 So.2d 542, 543 (Fla. 1954), cites with approval the Cleary decision:

> (I)n providing such service for its people a county discharges the obligation imposed upon it by Section 3 of Article XIII of our Constitution, F.S.A., and Section 125.01, Florida Statutes, F.S.A., to care for the infirm and aged within the county. See Cleary v. Dade County, 160 Fla. 892, 37 So.2d 248, 251. A county hospital "serves a county purpose just as the acquisition of a right-of-way for a road or a bridge or the construction of a road or a bridge will serve a county purpose." (citation omitted)

In accord with the Cleary decision, the District Court held that, as between the parties, the provisions of Art. XIII, § 3, Fla. Const. 1885 mandated that Jackson Memorial Hospital bear the legal and financial duty to care for medically indigent residents on a non-emergency basis.

Art. XIII, § 3, Fla. Const. 1885, provides:

> 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; . . .

It is undisputed that, under Art. XII, § 10, Fla. Const. 1968, this provision, while no longer a part of the Constitution, became a statute. It is also beyond legitimate dispute, on its face, that Art. XIII, § 3, Fla. Const. 1885, obligates Dade County to provide for its indigent residents. In other words, if such provisions are effective and mean what they say, the District Court decision must be affirmed.

Petitioners argue that Art. XIII, § 3, Fla. Const.1885, has been repealed and, in any event, it is not self executing, and thus ineffective to obligate Jackson Memorial Hospital to provide indigent residents with medical care.

Petitioners present a convoluted argument that boils down to the following proposition: Since the Legislature did not expressly reenact Art. XIII, § 3, Fla. Const. 1885,

after the effective date of the 1968 Constitution, the subsequent enactment of reviser's bills operated, under § 11.2422, Fla. Stat., automatically to repeal it. Section 11.2422 states:

> Every statute of a general and permanent nature, enacted by the State or by the Territory of Florida at or prior to the regular and special 1981 legislative sessions, and every part of such statute, not included in the Florida statutes 1981, as adopted by § 11.2421, as amended, or recognized and continued in force by reference therein or in § 11.2423 and 11.2424, as amended, is repealed. (Emphasis supplied)

To begin with, § 11.2422 is expressly limited to statutes "enacted by the State." Art. XIII, § 3, Fla. Const. 1885, is not such a statute. It has the force of statutory law not by virtue of enactment by the Legislature, but rather by virtue of the direct vote of the people in passing the 1968 Constitution, including Art. XII, § 10. Thus, on its face, § 11.2422 is simply inapplicable here.

In addition, as the District Court recognized, § 11.2422, by its very terms, does not repeal statutes "recognized and continued in force by reference" in the Florida Statutes. Since those Statutes include the Florida Constitution, and the Constitution expressly recognizes and continues in force, Art. XIII, § 3, Fla. Const. 1885

(rendered a statute by Art. XII, § 10, Fla. Const. 1968)*/, § 11.2422 did not repeal it.

Petitioners argue that Art. XII, § 10, Fla. Const. 1968--despite the undisputed fact that it remains fully in force as part of Florida's fundamental law -- was "directory and temporary only" and "not devised to perpetually 'continue in force' the provisions of the 1885 Constitution. . . ." (Br. p. 12). To the extent that Art. XII, § 10, transformed previously constitutional provisions into statutes subject to repeal by the Legislature, the County is, of course, correct. But it does not follow that the "automatic repeal" provision of § 11.2422 operated to repeal the newly-created statutes. Art. XII, § 10, was plainly designed to permit repeal of the 1885 constitutional provisions transformed into statutes only by selective and deliberate decisions by the Legislature with respect to each provision's terms. Because no such deliberate decision to repeal Art. XIII, § 3, Fla. Const. 1885, has ever been made, it continues to have the force of statutory law.

Moreover, Art. XII, § 11, Fla. Const. 1968, prescribes the manner by which the Legislature may delete Art. XII, § 10, from the Constitution (which retains Art. XIII, § 3, Fla.

---

*/ See § 11.2422(4)(b), Florida Statutes 1981, which sets forth the provisions recognizing the continuing in force Article XIII, § 3 of the 1885 Constitution.

Const. 1885, as a statute). If the Legislature acted in accordance with the procedure prescribed in Art. XII, § 11, Fla. Const. 1968, it would operate to repeal the effectiveness of the provisions of Art. XIII, § 3, Fla. Const. 1885, as a binding statute by deleting the constitutional basis under which such provisions are "recognized and continued in force by reference" as a statute under § 11.2422, Fla. Stat. (1981). The Legislature has not exercised this power. The legislative procedure prescribed by Art. XII, § 11, Fla. Const. 1968, is as follows:

> The legislature shall have power, by joint resolution, to delete from this revision any section of this Article XII, including this section, when all events to which the section to be deleted is or could become applicable have occurred. A legislative determination of fact made as a basis for application of this section shall be subject to judicial review.

The argument that the provisions of Art. XIII, § 3, have no legal effect because they are "not self executing" is equally without merit.

The decision in this case relies on the language of Art. XIII, § 3, as statutory law effective upon adoption of the 1968 Constitution, and not as a provision of the Constitution. The self executing argument simply is not applicable to a statute.

What is more, this Court has already held that Art. XIII, § 3, as a provision of the Constitution, imposes on Dade County the obligation to provide medical care for its resident indigents. As stated in Cleary v. Dade, 160 Fla. 892, 37 So. 2d 248 (1948):

> It [Dade County] has both the authority and the duty to care for the indigent, sick and poor in all of Dade County by virtue of the statute above referred to and by the provisions of Section 3 of Article XIII of the Constitution of Florida . . . . (Emphasis supplied)

37 So.2d at 251.

The provision in question states that counties "shall provide in the manner prescribed by law" for their indigent residents. The statutory command to provide is absolute; only the "manner" in which the counties are to discharge their obligation is left to be "prescribed by law." In other words, there is no need for any other legislation to impose the responsibility for indigent care on the County. Art.XIII, § 3, unequivocally does so; and the "prescribed by law" clause in no way limits the breadth of the statutory mandate.

The point is aptly illustrated by comparing the language of Art. XIII, § 3, with the provision construed by the First District in Lewis v. Florida State Board of Health, 143 So.2d 867 (Fla. 1st DCA 1962), relied upon by petitioners at pp.13-14 of their brief.

In Lewis, the Court construed a provision stating that "the State Board of Health shall have supervision of all matters relating to public health as may be prescribed by law." The First District properly determined that this language -- which provided the Board with authority only over such "matters . . . as may be prescribed by law" -- was not self executing and that until the Legislature provided that a matter should be supervised, the Board had no authority. See 143 So.2d at 869, quoted at Pet. Br., p. 14. Art. XIII, § 3's language is significantly different in that it imposes an unconditional obligation on the counties to provide for indigents and leaves for the Legislature to prescribe by law only the manner in which such care shall be provided. Since the issue before this Court is limited solely to Dade County's obligation, Art. XIII, § 3, standing alone, is sufficient to resolve it.

Petitioners argue that § 125.01, Fla. Stat. (1957), was "the implementing statute of Art. XIII, § 3." But nothing in the Cleary opinion so states; and the Court's use of the conjunctive "and" clearly reflects its holding that the constitutional provision independently imposed the duty of care on Dade County.

In sum, Art. XIII, § 3, Fla. Const. 1885, is an effective statute which, as the District Court correctly held, unequivocally imposes on Dade County the obligation to provide medical care for its indigent residents.

There is a second statutory basis supporting the District Court's ruling. Section 154.302, Fla. Stat. (1977), reflects a clear and unambiguous legislative intention to impose upon the County the obligation to provide medical care for its indigent residents. The statute could not be clearer:

> 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 payers.

Petitioners would limit the force of this clear expression of legislative intent. First, they argue that the statute is limited to situations in which the indigent in question obtains medical care at a hospital located in a county other than the county in which the patient resides. To be sure, a principal purpose of Chapter 154, Part IV was to address that circumstance and make the county of residence financially responsible for medical care received in another county by an indigent county resident. This is demonstrated by the language of § 154.306:

> 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. . . .

But that in no way detracts from the force of § 154.302 which reflects a broader legislative purpose to place the financial responsibility for the medical care of indigents on the county of residence, regardless of where the patient is treated. To conclude as petitioners assert, that this obligation is limited to care provided outside Dade County would not only disregard the clearest possible statement of legislative intent but would, in effect, render the County a provider not of medical care, but of travel insurance. It would not make sense to hold that every county in Florida is responsible for non-emergency medical care provided for its indigent residents by American Hospital with the single exception of Dade County, where American Hospital is located. Surely the law is not so perverse.

It is argued that the legislative intent stated in § 154.302 - that the ultimate financial obligation for the medical treatment of indigents is placed on the county in which the indigent resides - does not mean what it says because it is superseded and limited by § 154.306 governing the financial responsibility of a county for indigent residents treated by a regional hospital in another county. St. Mary's Hospital v. Okeechobee County Board of County Commissioners, 442 So.2d 1044 (Fla. 4th DCA 1983), Shands Teaching Hospital & Clinics of University of Florida v. Council of City of

Jacksonville, 398 So.2d 907 (Fla. 1st DCA 1981), and Tallahassee Memorial Regional Medical Center v. Lewis, 399 So.2d 106 (Fla. 1st DCA 1981) are cited in support of this argument.

In considering the relationship of the two different statutory provisions, it is noteworthy that § 154.320 prescribes the County's financial obligation for medical treatment of its indigent residents as "all those costs not fully reimbursed by other governmental programs or third party payors." On the contrary, § 154.306 (governing the County's obligation to indigent residents treated by a regional hospital in another county) expressly limits the County's payments to 12 days of medical service and limits this amount to the current medicaid rate. This indicates that distinct obligations are placed on counties in respect to resident indigents treated by a regional hospital in another county and otherwise.

Administrative Construction of Statutory Obligation

It was testified in this case by the President of the Dade County Public Health Trust that it is the responsibility of Jackson Memorial Hospital to provide medical care for indigents. (Dep. 14, 18). For nearly ten years, Jackson Memorial Hospital has recognized its responsibility to accept transfers of indigent residents from private hospitals,

as reflected by its Policy and Procedure Manual:

> Jackson Memorial Hospital acknowledges its responsibility to accept indigent Dade County residents in transfer from other medical facilities. . . .
>
> * * *
>
> Clinical Services may not deny transfer of indigent Dade County residents unless it is clear that transport of the patient may result in loss of life or limb. . . .

App. 36.

As stated in Warnock v. Florida Hotel and Restaurant Commission, 178 So.2d 917, 918 (Fla. 3d DCA 1965):

> The law is well settled that contemporaneous construction of a statute by those charged with its enforcement and interpretation is entitled to great weight, and that courts will not depart from such construction unless it is clearly erroneous. United States Gypsum Company v. Green, Fla. 1959, 110 So.2d 409.

See also Metropolitan Dade County v. Maddox, 242 So.2d 165, 168 (Fla. 3d DCA 1970).

For many years, Jackson Memorial Hospital recognized its responsibility to care for its medically indigent residents, and to accept transfers of non-emergency indigent patients from private hospitals. American Hospital complains that Jackson refuses to accept transfers from it, while accepting transfers from other hospitals. Petitioners seek to avoid responsibility for transfers from American Hospital by

asserting "there is no constitutional, statutory or common law authority to reimburse a private hospital directly for patient care." (Br. &).

County Attorney's Opinion on County's Obligation

The Home Rule Charter of Dade County adopted by the electors "pursuant to the Florida Constitution" requires that Dade County shall be represented by a full time County Attorney, appointed by the Board of County Commissioners. The County Attorney shall serve as legal counsel to the County Commission, the County Manager, and all County departments, offices and agencies. See Section 4.06, Home Rule Charter.

The Code of Metropolitan Dade County provides that the County Attorney shall be the attorney of record for the County in all civil actions and legal proceedings. When requested, the County Attorney shall render written legal opinions on matters relating to county government and the interpretation, construction and meaning of statutes affecting or pertaining to the County. It is further provided that the opinions of the County Attorney "shall be binding upon, and adhered to by all appointed County officials or employees." See Sec. 2-14, Code of Metropolitan Dade County. Section 25A-7 of the Code expressly mandates that the County Attorney's opinions pertaining to the Public Health Trust shall be binding on the Trust.

Pursuant to the request of the Public Health Trust, the County Attorney on August 22, 1979, rendered County Attorney's Opinion No. 79-25. This formal legal opinion was rendered in response to the Public Health Trust's question, "what medical services the Public Health Trust must legally provide." (App. 23-31).

Shortly prior to the commencement of this declaratory judgment action, the County's obligation to provide medical care for indigent residents was publicly stated as follows:

(1) Art. XIII, § 3, Fla. Const. 1885.

> Although this provision was not included in the 1968 Constitution, which replaced the 1885 Constitution, this provision has the force of a statute since it is not inconsistent with the new Constitution. The clause places a duty on the County to render health care to the aged, infirm and misfortunate but does not state the extent of that duty.

(App. 24).

(2) Section 154.302, Fla. Stat.

> 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.

(App. 30)

There is no material factual issue involved in this case. It is admitted that Jackson Memorial Hospital for many years has recognized and performed its responsibility to provide medical care for indigent residents, and to accept from private hospitals the transfer of medically stabilized indigent patients for post-emergency secondary or tertiary treatment. The County Attorney confirmed that, as a matter of law, Jackson Memorial Hospital bears the legal and financial duty to continue the existing medical treatment of indigent residents.

American Hospital, complaining that Jackson Memorial Hospital refuses to accept transfers of medically stabilized indigent patients from it, brought this action for declaratory relief. In defense, the County Attorney completely ignores his legal mandate and asserts there is no authority creating any obligation on Jackson Memorial Hospital to provide medical care for non-emergency indigent patients. No attempt is made to explain the basis of this reversal of legal position.

County's Obligation Unaffected by Chap. 84-35, Laws of Florida

Petitioners moved for rehearing in the District Court referring the Court to Chap. 84-35, Laws of Florida (Public Medical Assistance Act), enacted May 18, 1984, and suggested that this subsequent legislation "may have some impact on this Court's ruling." After supplemental briefs and argument, the District Court denied the motion for rehearing.

Petitioners here contend such legislation "is dispositive of the question of legislative intent on funding of indigent care." (Br. 22). The controlling provisions do not support petitioners' view.

The Act levies on each hospital an assessment in an amount equal to 1 percent of its first annual operating revenue, and in amount equal to 1.5 percent of such revenue for each hospital fiscal year thereafter, to be deposited in the Public Medical Assistance Trust Fund. [§ 395.101(2), Fla. Stat.(1984 Supp.)]. In addition, 20 million dollars is annually appropriated to the Public Medical Assistance Trust Fund from the General Revenue Fund to be administered by the Department of Health and Rehabilitation for the various purposes prescribed in § 409.266(6). See § 409.2662(3), Fla. Stat.(1984 Supp.).

The Act also limits the rates by which hospitals may increase the budgets in relation to the National Hospital

Input Price Index, the inflation rate for hospitals. The Hospital Cost Containment Board is empowered to disapprove budgets of hospitals that exceed the limits without justification. [§ 395.509, Fla. Stat.(1984 Supp.).]

Although a hospital may receive credit on its net operating revenues for uncollected medical services, there is no requirement for a private hospital to accept a non-emergency indigent patient.

Under the applicable provisions of the Act, American Hospital's obligation to non-emergency indigents is discharged by payment of the annual tax assessment on net operating revenues, and maintaining annual budgets subject to standards approved by the Hospital Containment Board.

The question presented in this case is unaffected by the cited 1984 legislation. This is demonstrated by the fact that the legislature did not repeal or amend the existing statutes relevant in this case. The existing statutory authority remains in force and effect. The Act does not diminish Jackson Memorial's obligation to care for medically indigents. The Act simply adds to the existing financial duty. The District Court correctly denied petitioners' motion for rehearing based on the Act because it has no bearing on the question involved in this case.

Under the Act, the State Department of Health and Rehabilitation Services continues with administration of the Medicaid funds received by the State. [§ 409.266, Fla. Stat. (1984 Supp.)]. However, many indigent patients are not included in the Medicaid program.

Under the Medicaid program, no reimbursement is made to a non-participating hospital (such as American Hospital) except for emergency medical services provided to Medicaid patients. Fla. Admin. Code, Rule 10C-7.39, Part II(21), Medicaid Program (1983 Summer Supp.), provides:

> 21. Reimbursement is made to non-participating Florida hospitals only when the service is determined to constitute a medical emergency. By definition, emergency services are those inpatient services which are necessary to prevent the death or serious impairment of the health of the individual and which, therefore, necessitate the use of the most accessible hospital available and equipped to furnish such services.
>
> a. No reimbursement shall be made to a non-participating Florida hospital for services rendered after the emergency has ended. An emergency no longer exists when it becomes safe from a medical standpoint to move the patient to a participating facility or to discharge the patient, whichever occurs first. (Emphasis added).

Accordingly, the decision of the State to partially reimburse non-participating private hospitals for stabilizing the emergent medical condition of Medicaid patients does not relieve Jackson Memorial Hospital from the legal duty and financial responsibility for the post-emergency medical care

of indigent residents of Dade County, which is the subject matter involved in this case.

Jackson Memorial Hospital receives reimbursement for all medical services provided to Medicaid patients. It receives County tax funds for medical services provided to indigent patients not covered by Medicaid.

Common Law Duty to Care for Indigents

Petitioners, having contended for the absence of any statutory obligation of Jackson Memorial Hospital to provide non-emergency care to indigent residents, suggest that the decision in this case necessarily must be based on a common law duty. It is asserted that, although there are no cases on point in Florida, the general rule by the overwhelming weight of authority is there is no common law duty for counties to provide medical care for indigents.

This is not an issue involved in this case. There is nothing in the record indicating that American Hospital's claim for relief is based on a common law duty; nor is there anything indicating that the decision in this case is based on a common law duty.

CONCLUSION

It is respectfully urged that, based on the controlling statutory authority and case law, the certified question should be answered in the affirmative as between American Hospital and Jackson Memorial Hospital, under the circumstances in this case.

Approval of the Third District's opinion affirming the partial summary judgment will permit the trial court, upon remand, to proceed to trial on the pending claims for supplemental relief, including the extent of Jackson Memorial Hospital's financial duty to provide post-emergency care to indigent residents, in the light of the evidence presented.

Respectfully submitted,

DARREY A. DAVIS
STEEL HECTOR & DAVIS
4000 Southeast Financial Center
Miami, Florida 33131-2398

KAYE, SCHOLER, FIERMAN, HAYES & HANDLER
425 Park Avenue
New York, New York 10022

Attorneys for Respondent

CERTIFICATE OF SERVICE

I CERTIFY that copies hereof have been provided by mail on this 8th day of May, 1985, to the following:

ROBERT L. BLAKE
Assistant County Attorney
Jackson Memorial Hospital
1611 N. W. 12th Avenue
West Wing, Suite C, 0108
Miami, Florida 33136
Attorney for Petitioners

JON W. ZEDER
JEROLD I. BUDNEY
THOMSON, ZEDER, BOHRER, WERTH,
ADORNO & RAZOOK
100 South Biscayne Boulevard, Suite 1000
Miami, Florida 33131
Attorneys for Amicus Curiae,
City of Homestead

JAMES J. KENNY
MICHAEL NACHWALTER
RICHARD ALAN ARNOLD
PAUL M. BUNGE
KENNY, MACHWALTER & SEYMOUR
400 Edward Ball Building
100 Chopin Plaza-Miami Center
Miami, Florida 33131
Attorneys for Amici Curiae

DARREY A. DAVIS