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,

v.

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

Respondent.

BRIEF OF PETITIONERS ON THE MERITS ON APPEAL FROM THE THIRD DISTRICT COURT OF APPEAL

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I.

INTRODUCTION

The Petitioners, Dade County, a political subdivision of the State of Florida, which owns Jackson Memorial Hospital and the Public Health Trust of Dade County, Florida, an agency and instrumentality of Dade County, which governs and operates Jackson Memorial Hospital, were Appellants in the district court and Defendants in the trial court. 1/ The Respondent, American Hospital of Miami, Inc., a private hospital operating and doing business in Dade County, was the Appellee in the District court and Plaintiff in the trial court. In this brief, the parties will be referred to as Petitioners and Respondent, respectively, and alternatively, by name. Jackson Memorial Hospital will be referred to as "Jackson". The symbol "TR" will be used to designate the deposition of Fred J. Cowell, the Chief Executive Officer of the Public Health Trust. All emphasis has been supplied by counsel unless indicated to the contrary.

II.

STATEMENT OF THE CASE

This action was commenced in the circuit court when American Hospital filed a multi-count complaint seeking

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1/ The Public Health Trust of Dade County was created and established in 1973 Pursuant to Section 154.07, Fla.Stat. (1983). See Code of Metropolitan Dade County, Chapter 25A, Section 25 A-1. Also See, Chapter 25A-3 outlining the procedures by which Dade County Board of County Commissioners appoints Public Health Trust board members.

declaratory and injunctive relief against Dade County and the Public Health Trust. The gravamen of the complaint was that, Petitioners are obligated to admit into Jackson all Dade County indigents who are initially admitted into American hospital for emergency treatment and are stabilized, but need further medical care. American further alleged that when Jackson has reached its admitting capacity and is unable to accommodate additional patients, Dade County is obligated to reimburse American, and all other medical providers similarly situated, for medical care rendered to those indigent patients.

American moved the lower court pursuant to Fla.R.Civ.P.1.510, for partial summary judgment on liability on the grounds that it was a private hospital and that, pursuant to the constitution of the State of Florida and other statutory authority, it was entitled to prevail as a matter of law.

After hearing argument of counsel and reviewing documents submitted by both sides, the lower court granted American's motion for partial summary judgment. The Third District Court of Appeal affirmed the lower court's ruling.

The Petitioners moved the District Court and was granted a Rehearing En Banc. After receiving supplemental briefs and hearing oral argument, the District Court denied the Motion for Rehearing and certified the following question to this Court:

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

This Court granted jurisdiction pursuant to Fla.R.App.P. 9.030(2)(A)(V), and this appeal ensued.

III.

STATEMENT OF THE FACTS

Under Section 401.45, Fla.Stat.(1983) 2/, any hospital with an emergency room is required to render emergency medical care to any person requesting treatment for any emergency condition within its medical and staff capabilities. After stabilizing patients that it deems indigents but require further medical care, American Hospital invariably requests Jackson to accept those indigent patients as transferees.

The President of the Public Health Trust, Fred J. Cowell, in deposition testimony which is unrefuted anywhere in the record stated that, Jackson, a 1250 bed hospital, received approximately 5,000 requests for patient transfers from forty (40) community hospitals in Dade County during the calendar year 1982, and that the number of requests is increasing. He stated further that Jackson makes every reasonable effort to accept tne patients in all cases, but the many demands placed on Jackson sometimes exceed its capacity to perform instantly. (TR.36,42,45,59-61,94,136).

2/ 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.

Jackson, nonetheless, does immediately accept between 75%-80% of all transfer requests from these forty (40) community hospitals in Dade County (TR.94,136). Petitioners proffered evidence in the lower court and American conceded that, at times, Jackson could not accept some requests for transfers because of lack of bedspace, and in some instances the acute medical condition of the patients will not allow the patients to be moved without exacerbating the medical condition of the patient.

The lower court also admitted evidence that American received a substantial amount of medicaid funds for both inpatient and outpatient medical care. These funds were appropriated by Petitioner, Dade County and the State of Florida under the aegis of Section 409.267, Fla.Stat. (1983) and Section 409.2671, Fla.Stat.(1983), for fiscal years 1979 through 1982, the time period for which American sued. After filing the lawsuit in the trial court, American voluntarily withdrew from the medicaid program.

It was American's contention below that medicaid benefits were inadequate to reimburse hospitals for the medical treatment rendered to indigents and that the costs of rendering treatment to other patients who were ineligible for medicaid benefits, but who could not afford to pay for medical care, created a financial burden on its hospital.

American cited Article XIII of the 1885 Constitution and several statutory provisions as support for

its position that Dade County was legally responsible for medical care for indigents. The Petitioners contended below that American's use of the generic term "indigency" clouded the issue because the Legislature of Florida had enacted laws defining and providing medical care for indigents in hospitals, and further, had created administrative bodies to administer the various programs.

The Petitioners further contended that if American were dissatisfied with who was covered under the State's definition of indigency, and the extent of that coverage, the Legislature, not the Judiciary, was the appropriate forum to change the medicaid statute.

SUMMARY OF THE ARGUMENT

1. Article XIII of the 1885 Constitution has been repealed. When in force, the Article delegated authority to the Legislaure to enact laws imposing an obligation on either the counties or the State to provide for the aged, infirmed or misfortunate of the State. This Court ruled in Cleary v. Dade County, 37 So.2d 248 (Fla. 1948) that Section 125.01(4), Fla.Stat.(1957), imposed such an obligation on the counties. In 1959, the Legislature repealed Section 125.01(4).

In 1969, Florida adopted a new constitution which converted Article XIII into a statute subject to repeal as other statutes. In the ensuing 1969 legislative session, the Legislature re-enacted and codified some of the former constitutional provisions and they became part of Official

Florida Statutes. Others, including Article XIII, were not re-enacted and codified. Thus, both the constitutional provision and its implementing legislation have been repealed.

2. Jackson is not subject to the terms of Chapter 155 because it is a Public Health Trust, governed by Section 154.07, Fla.Stat.(1983), and the lower court erred by relying upon Chapter 155 as a basis for imposing an obligation on Dade County to pay local hospitals for patient care.

3. There is no common law duty on counties to provide medical services for indigents.

4. The Legislature has enacted medicaid, a program to provide funding for the needy, and which has recently been upgraded. The current law envisiones a new concept of funding the expanded program by imposing on the State, the counties and private and public hospitals varying assessments. This new statewide plan supercedes all general statutes on the subject of medical care for indigents.

5. The Health Care Responsibility Act (Section 154.301, et. seq. Fla.Stat. 1983) requires counties to pay out-of-county hospitals the medicaid reimbursement rate when: 1) indigents receive emergency care in other counties and 2) when treatment is not available in that county. The statute does not impose any obligation on any counties to pay local hospitals for treatment of patients.

6. The lower court was without any constitutional or statutory guidance on the issue of health care for indigents and its ruling infringes upon the Legislative perogative. A review of the citations and the authorities relied on by both sides, will amply and affirmatively demonstrate that, there is no constitutional, statutory or common law authority requiring Dade County to reimburse a private hospital directly for patient care.

IV.

ARTICLE XIII OF THE 1885 CONSTITUTION, MADE A STATUTE BY ARTICLE XII, SECTION 10 OF THE 1968 CONSTITUTION, HAS SINCE BEEN REPEALED BY THE FLORIDA LEGISLATURE

A.

Article XII, Section 10 of the 1968 Constitution directed that designated articles of the 1885 Constitution, including Article XIII, "shall become" part of Florida Statutory law. 3/ Thus, Articles formerly embodied in the 1885 Constitution, upon adoption of the 1968 Constitution, were converted into statutes by virtue of the terms of

3/ Article XIII, Section 3. The respective counties of the State shall provide in the manner prescribed by law, for those of the innabitants who by reason of age, infirmity or misfortune, may have claims upon the aid and sympathy of society; provided, however, the Legislature may be general law provide for a uniform State-wide system for such benefits, and appropriate money therefor. . .

Article XIII, Section 4. The first Legislature that convenes after the adoption of this Constitution shall enact the necessary laws to carry into effect the provisions of this Article.

Article XII, Section 10 of the Constitution of 1968. 4/

The 1968 Constitution left no doubt, however, that Article XII, Section 10 of the 1968 Constitution was to be temporary, transitional and interim in nature. The 1968 Constitution conferred on the Legislature the authority to delete all sections of Article XII of the 1968 Constitution after the occurrence of certain events. The impermanency of Article XII of the 1968 Constitution, including Article XII, Section 10, was expressly articulated in Article XII, Section 11:

> 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.

B.

By its own terms, the 1968 Constitution became effective January 7, 1969. 5/ In the ensuing 1969 legislative session, the Florida Legislature moved immediately to re-enact a number of the articles of the 1885 Constitution described in Article XII, Section 10. These new statutes were assigned specific statutory section numbers and have been carried forward in the tracing tables

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4/ Article XII, Section 10. All provisions of Article 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.

5/ 10 Fla.Jur.2d, Constitutional Law, Section 1. Second survey of Florida Law Constitutional Law. 10 Miami LQ 143; Constitutional Law. 12 Miami L. Rev. 288; Florida Constitutional Law. 14 Miami L. Rev. 501; A Survey of Trends in Florida Constitutional Law. 16 Miami L. Rev. 685; Survey of Florida constitutional law. 18 Miami L Rev 888.

of all publications of the Official Florida Statutes since 1969. Official Florida Statutes, 1969, Volume 3, Page 376. 6/ Article XIII of the 1885 Constitution was not re-enacted by the Legislature in 1969 or any time thereafter.

Even if there were uncertainty respecting what the Legislature intended regarding those provisions of the 1885 Constitution that were not re-enacted and carried forward, that uncertainty was eliminated by the information in the statutory note to the 1969 Official Statutes. The note clarified the Legislature's intent, stating clearly and firmly that, provisions of the 1885 Constitution that were not affirmatively re-enacted and assigned statutory section numbers would be deleted as statutes of Florida by reviser's bill:

6/ This Court may note that the table tracing the re-enacted 1885 constitutional provisions, originating in 1969, and included in every official publication thereafter, has not changed. The Legislature has made a conscious choice to use the phrase "carry forward" to indicate the provisions which are viable as Florida Statutes and "not carry forward" to indicate those that were not viable as Florida Statutes. See Official Florida Statutes, 1983, Volume 4, Page 313 and its predecessors.

The Court may also note that those constitutional provisions that were not carried forward generally required implementing legislation. The Legislature needed neither a constitutional provison, nor enabling statute to legislate in the field of health care. The Legislature has the inherent power under its general welfare police powers to regulate health, morals, safety and general welfare.

> NOTE: For text of Section 10, Art.XII, see page 32 of this volume. References to sections of the Constitution of 1885 do not necessarily indicate that the entire section was carried forward into the Florida Statutes; sometimes only a portion of a section was so carried forward. Provisions of the Constitution of 1885, as amended, not carried forward as statutory law will be repealed by an appropriate reviser's bill. Id. at page 376. 7/

On May 14, 1969, only four months after the establishment of the 1968 Constitution, but prior to any reviser's bill which would have effected these newly created statutes, this Court decided a question propounded by the Governor with respect to the status of the 1885 Articles. At issue was the point in time that former provisions of the 1885 Constitution lost their constitutional standing and became statutory law. This Court accepted and approved the transition from constitutional provisions to statutes in In Re Advisory Opinion To The Governor, 223 So.2d 35, 38 (Fla.1969) and evinced by clear, forceful language that, the retained Articles of the 1885 Constitution became statutes on the effective date of the new constitution:

7/ The published edition of the Florida Statutes, shall contain the following: such other matters, notes, data, and other material as may be deemed necessary or admissible by the joint committee for reference, convenience or interpretation. Section 11.242(4)(d), Fla.Stat.(1969).

> So it is that former Section 30, Art.XVI, Fla. Const., 1885 has now become a statute subject to modification or repeal as are other statutes. 7A/

Accord, Kirk v. Brantley, 228 So.2d 278, 280 (Fla.1969); In Re Advisory Opinion To The Governor, 225 So.2d 512(Fla. 1969).

Applying these principles of constitutional and statutory construction to the instant case, it follows that since all of tne retained provisions of the 1885 Constitution became statutes on January 7, 1969, and subject to being repealed as other statutes, any subsequent reviser's bill directed to these statutes, along with other preexisting numbered statutes, would indeed subject those provisions to repeal.

C.

The Florida Legislature has perennially reenacted a reviser's bill mandating that those statutes not included in the Official Florida Statutes are repealed. Section 11.2422, Fla. Stat.(1983). See also Shuman v. State, 358 So.2d 1333, 1338 (Fla.1978) (holding that a reviser's bill

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7A/ Article XVI, Section 30 was briefly a statute by virtue of Article XII, Section 10 only. This Court ruled that Article XVI, Section 30 was subject to repeal as other statutes notwithstanding the fact that it was never carried forward by affirmative legislative enactment. Interestingly, other sections of Article XVI were re-enacted, given statutory section numbers and carried forward as statutes. See, Official Florida Statutes 1969, Vol.3, Page 376 and its successors.

does not effect the current laws, but repeals prior years' enactments). 8/

There have been seven reviser's bills expressly repealing all statutes not included in the Official Statutes of Florida since 1969. Because Article XIII, Section 3 of the 1885 Constitution has neither been included in the Official Statutes of Florida, nor re-enacted into a statute as have other provisions of the Constitution of 1885, it stands repealed with no legal viability.

D.

The District Court obliquely ruled by way of footnote that Section 11.242(4)(b), Fla.Stat. (1983), embraced Article XII, Section 10 and has continuously thereby embraced and incorporated all of the delineated provisions of the 1885 Constitution as statutes. The District Court's position is fundamentally flawed when juxtaposed with this Court's holdings in the seminal cases cited above. Article XII, Section 10 of the 1968 Constitution being directory and temporary only, was not devised to perpetually "continue in force" the provisions of the 1885 Constitution, but was the vehicle by which these

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8/ "The statutory revision publication of the statutes of this state as revised and consolidated is adopted biennally by the legislature. By Chapter 77-266, Laws of Florida, the 1977 Legislature adopted the statutes of 1975, to be published under the title "Florida Statutes 1977". All laws enacted at or prior to the 1975 session not contained in Florida Statutes 1977 were repealed. The legislature did not, however, repeal any laws enacted at the 1976 and 1977 sessions. This will occur only upon adoption by the 1979 Legislature of the laws enacted during the 1976 and 1977 sessions." Id at page 1338.

provisions became statutes.

The intent of the Legislature regarding the unnumbered statutes is abundantly clear from its affirmative act of re-enacting certain provisions of the 1885 Constitution, rejecting others by reviser's bills and including interpretative notes that those statutes that were not re-enacted were not carried forward into Florida Law. The Legislature did not anticipate the additional legislative process of dual repeal as required by the holding of the District court. It re-enacted many of the 1885 provisions in its usual manner and repealed other provisions as other statutes were repealed.

V.

ARTICLE XIII IS NOT SELF EXECUTING AND REQUIRES IMPLEMENTING LEGISLATION TO MAKE IT FUNCTIONAL

Assuming arguendo that Article XIII of the 1885 Constitutions is extant, it nonetheless may not be given the effect ascribed to it by Respondent and the majority in the District Court. As Chief Justice Schwartz stated below, "The section states only that the counties shall act 'in the manner prescribed by law;' it is thus not self-executing and requires specific supporting and enforcing legislation."

Whether a constitutional provision is self-executing or not has been authoritatively decided. See, Manatee County v. Longboat Key, 365 So.2d 143,146 (Fla. 1978); Lewis v. Florida State Board of Health, 143 So.2d 867, 869 (Fla.1st DCA 1962); Oak Park Federal Savings & Loan

Association v. Village of Oak Park, 54 Ill. 2d 200, 296 N.E. 2d 344 (1973). This constitutional principle was discussed in Lewis, supra, when the First District interpreted language strikingly similar to the language of Article XIII, Section 3. "[T]hat the State Board of Health shall have supervision of all matters relating to public health as may be prescribed by law". The interpretative statement that follows has been universally recognized and accepted by the judiciary throughout the United States:

> It is elementary that a constitutional provision may be self-executing which requires no legislative action to put its terms into operation, or it may not be self-executing in which case legislative action is required to make it operative. 6 Fla.Jur. Constitutional Law, Section 32; 4 Fla. Law and Practice, Constitutional Law, Section 6. . .
> It is elementary that the constitutional provision mentioning the State Board of Health is not self-executing, and does not bestow upon the State Board of Health any powers until and unless the Legislature of Florida decides that this field is one needing regulation. Id. At page 869.

Clearly, the language of Article XIII, Section 3 of the Constitution of 1885 required legislative initiative to activate its terms. This view is harmonious with the intent of Section 4 of Article XIII which requires express statutory authorization by the Legislature to give viability to Article XIII, Section 3. There is no such enactment.

This Court in Cleary v. Dade County, 37 So.2d 248 (Fla. 1948), pointed to the then existing 125.01(4), Fla.Stat. (1957) as the implementing statute of Article

XIII, Section 3, a Florida Statute that has long since being repealed. 9/ Consequently, any underpinnings Article XIII may once have had, no longer exist.

VI.

THE PUBLIC HEALTH TRUST OF DADE COUNTY IS NOT GOVERNED BY THE PROVISIONS OF CHAPTER 155, FLORIDA STATUTES

A hospital is created under Chapter 155 pursuant to a deed of trust whereby owners of property (usually a medical facility), convey property to a consenting County for the purpose of establishing a hospital. 10/ The owners retain a reversionary future interest in the event the property ceases to be used as a hospital or other medical facilities. Section 155.01, Fla.Stat.(1983). Nothwithstanding the fact that a county owns a Chapter 155 hospital

9/ Section 125.01(4), Fla.Stat. (1957). "To have care of and to provide for the poor and indigent people of the county," relied on in Cleary, supra was repealed in 1959. See 8 Fla. Stat. Ann. Page 12. The Statute was replaced by Section 125.01(e),Fla. Stat.(1983), granting the several counties the power to "provide hospitals, ambulance services and health and welfare programs." Cleary, distinguished between the obligatory duty on one hand and the discretionary power on the other. 37 So.2d at 251.

10/ There are no statutory or constitutional provisions compelling Dade County to own a hospital. "There may be created in and for each county of the state a public body corporate and politic, to be known as the Public Health Trust." Section 154.07, Fla.Stat.(1983). "[T]he board of county commissioners may accept such trust and act as trustees thereunder." Section 155.01 Fla.Stat.(1983). "The legislative and governing body of a county shall have the power to. . . provide hospitals". Section 125.01, Fla.Stat. (1983). "The Board of County Commissioners shall have the power to. . . provide hospitals and uniform health and welfare programs." Code of Metropolitan Dade County, Florida, Charter, Article 1, Sec.1.01(6).

as trustee, the hospital is not operated, governed or controlled by the county.

The Governor of the State of Florida appoints the Board of Trustees in a hospital established under Chapter 155. Section 155.06 Fla.Stat (1983). The Board is authorized to make and adopt bylaws and rules and regulations for their own guidance and for the government of the hospital. Section 155.10, Fla.Stat. (1983). County governments have no authorization or ability to mandate policy, control staffing, set fees or determine who are to be admitted or discharged as patients.

Conversely, a Public Health Trust established under Chapter 154 of the Florida Statutes, is owned, controlled and governed by county government. The Attorney General of the State of Florida queried whether a county hospital operating under Chapter 155 could be transferred to a public health trust, issued the following opinion:

> Chapter 73-102, Laws of Florida [154.07-154.12, F.S.], authorizes the governing body of each county to create a governmental unit known as a public health trust...A Ch.155, F.S., hospital is owned by the county as a political subdivision, but it is not operated and governed or controlled by the governing body of the county. A board of trustees, appointed by the governor pursuant to 155.06 is responsible for the operation, maintenance, and governance of a Ch. 155 hospital. An inspection of the preamble to Ch.73.102, supra, forecloses the possibility that the legislature intended a Ch.155 hospital to be included within 2(a), Ch.73.102 [154.08(1), F.S.], as a "designated facility." The preamble, which clearly states in the first sentence that "[w]hereas there are counties of this state which through their governing bodies own,

> operate and govern public health care facilities. . . ."(Emphasis supplied.), precludes the possibility of including a Ch. 155 hospital, which is not owned, operated, and governed by a board of county commissioners, within those designated health-care facilities which may be transferred to the public health trust. Thus, the only health-care facilities intended by the legislature to be designated facilities, and hence transferable, are those which are actually owned, operated, and governed by the board of county commissioners. 1973 Op.Att'y Gen. Fla.073-431 (November 26, 1973).

Jackson is not subject to the terms of Chapter 155 because it is a Public Health Trust, governed by Section 154.07, Fla.Stat. (1983), and the lower court erred by relying upon Chapter 155 as a basis for imposing an obligation on Dade County to pay local hospitals for patient care.

VII.

SECTION 154.302, FLA. STAT. DOES NOT CREATE AN UNLIMITED OBLIGATION ON COUNTY GOVERNMENT TO PAY FOR INDIGENT MEDICAL CARE IN ITS OWN COUNTY

The Health Care Responsibility Act obligates county governments to pay regional hospitals (those outside their own counties) when those hospitals treat their indigents under certain circumstances. Reimbursement is identical to the medicaid rates. Section 154.30, Fla. Stat. (1983).

The Legislature delineated the eligibility of the patients and hospitals, and the extent and degree of the counties' monetary responsibility under Chapter 154. The Act imposes a limited financial obligation on County governments when (1) their citizens receive medical care in other counties for treatment unavailable in their own

counties; (2) for emergency care in another county. 11/

All appellate decisions of this state have interpreted the Health Care Responsibility Act as imposing a limited financial duty on the indigent's home county when the indigent obtains medical care at a hospital in another county. See, 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 Fla. v. Council of City of Jacksonville, 398 So.2d 907 (Fla.1st DCA 1981); Tallahassee Memorial Regional Medical Center v. Gerald A. Lewis, 399 So.2d 106 (Fla.1st DCA 1981).

In St. Marys, supra, the Fourth District was compelled to interpret Section 154.302, because an indigent resident from Okeechobee County received treatment in a Palm Beach County Hospital. Not unlike the position taken by the Respondent in the instant case, the Palm Beach hospital contended that the preamble to the Act, Section 154.302, afforded relief in addition to that given in the contents of the Act. The Fourth District rejected the hospital's argument and held that Section 154.302 afforded no avenue for additional relief separate and apart from the statute's reimbursement formula. The well reasoned opinion in St. Mary's, supra, illumines the intent of the Legislature as follows:

11/ See the unabridged Health Care Responsibility Act, Session Laws of the State of Florida, Volume I, Part 2, Chapter 455, Senate Bill No. 875, Page 1841 (1977). The preamble to the Act states with unmistakable clarity the intent of the Legislature.

> As we see it, the legislative intent announced in Section 154.302, Florida Statutes (1981), is basically repeated in the first sentence of Section 154.306, Florida Statutes (1981). It is immediately followed by the limitations in question. Thus we hold that the home county is responsible for all charges with the limitation or cap found in the second sentence of Section 154.306, Florida Statutes (1981), subject further to the exceptions found in the third sentence of Section 154.306, Florida Statutes (1981). The third sentence provides two circumstances. First, the home county will not be responsible for the care of its indigents in a regional hospital if the services rendered were available locally. This is not applicable to the facts of this case since the needed St. Mary's services were not available in Okeechobee. Second, this exception is qualified if the services rendered are of an emergency nature in which case the home county would be responsible for payment. Id. at 1046.

The facts in the case at bar bear no resemblance to the two exceptions described in St. Mary's or mentioned in the act. In fact, the Respondent being located in Dade County, would have a cause of action under the statute to make a claim against any other county except Dade County. See Also, Dade County v. Hospital Affiliates International Inc., 378 So.2d 43,46 n.5 (Fla.3d DCA 1980); City of Plantation v. Humana, 429 So.2d 37, 39 (Fla. 4th DCA 1983); 1959 Op.Att'y Gen. Fla.059-18.

Section 154.308, Fla. Stat.(1983), required the Department of Health and Rehabilitative Services, in consultation with the Florida Association of County Welfare Executives to adopt rules which provide uniform statewide eligibility standards for certifying indigents for the purposes of the Health Care Responsibility Act. See Also, Rule 10C-26.02, F.A.C.

A construction of a statute by the administrative agency charged with the enforcement of the act and authorized to make reasonable rules and regulations is accorded considerable weight by the court. State ex rel. Bennett v. Lee, 123 Fla. 252, 166 So. 565 (Fla. 1936).

Contrary to the Respondent's position that Section 154.302 provides universal health care without regard to the specific terms under the statute, the Department of Health and Rehabilitative Services has promulgated the following rule with regards to reimbursement under the act:

> Prior to an individual's being certified as indigent by a county the individual must have applied for and have fully utilized all other governmental programs or third-party payors for which he/she may be eligible to help meet his/her medical expenses. Rule 10C-26.06, F.A.C.

The lower Court fashioned a third and distinct category of financial obligation to local hospitals never mentioned or contemplated under the Health Care Responsibility Act. Such strained interpretation of the Act cannot be supported by any legal authorities. There is nothing under the District Court's expansive reading of the Act that would preclude indigent patients from admitting themselves into any hospital in Dade County for any medical treatment, even for elective cosmetic surgery, and compelling Dade County to pay for such care. The Respondent's attempt to carve out a narrow interpretation that the relief sought would apply only to stabilized indigent patients is inapposite. If 154.302 is applicable to the instant case, its broad construction would preclude

selective enforcement. If Section 154.302 is apposite, neither the courts nor these parties can determine the statute's applicability without obvious inconsistencies in results and necessarily depending on ad hoc classificatons.

It is highly unlikely that the Legislature while devoting a full chapter to the Health Care Responsibility Act, would thrust such stupendous responsibility of universal health care for all indigents upon the counties in a single sentence and as an afterthought to another statute.

VIII.

THERE IS NO COMMON LAW DUTY OBLIGATING THE RESPONDENTS TO PROVIDE AND PAY FOR MEDICAL CARE FOR ITS INDIGENT RESIDENTS

There are cases in many other states on the issue of the common law duty, or lack thereof, on county governments to provide medical care for indigents, althougn there are no cases on point in Florida. The general rule by the overwhelming weight of authority is that, there is no common law duty for counties to provide medical care for indigents. Mandan Deaconess Hospital v. Sioux County, 63 N.D. 538, 248 N.W. 924 (1933); St. Luke's Hospital Ass'n v. Grand Forks County, 8 N.D. 241, 77 N.W. 598 (1898); Roane v. Hutchinson County, 40 S.D. 297, 167 N.W. 168 (1918); Hamlin County v. Clark County, 1 S.D. 131, 45 N.W. 329 (1890); Patrick v. Town of Baldwin, 109 Wis. 342, 85 N.W. 274 (1901); Carthaus v. County of Ozaukee, 236 Wis. 438, 295 N.W. 678 (1941); Willacy County v. Valley Baptist Hospital, 29 S.W. 2d 456 (Tex. Civ. App. 1930). In Patrick v. Town of

Baldwin, supra, the Court considered and rejected the argument that a governmental entity is legally bound to provide medical assistance to indigents under common law principles:

> While there is a strong moral obligation resting upon organized society to relieve all poor persons in its midst standing in need thereof, there is no legal obligation to do so in the absence of a statute creating it, and . . . the courts cannot go further than the legislative will has been expressed. To what extent, under what circumstances, at what place and by what agencies poor persons shall be relieved at the expense of the public, are all purely legislative questions. Patrick v. Town of Baldwin, 85 N.W. at 276.

Because it deals with the identical argument made by Respondent, the decision of the Wisconsin Supreme Court is particularly helpful. As Judge Pearson pointed out in his opinion below,

> "[T]he majority holding that the expense of post-emergency care to indigent residents must be borne by the public through the County, no matter how well intended, is, in my view, impermissible judicial legislation."

IX.

THE RECENTLY ENACTED PUBLIC MEDICAL ASSISTANCE ACT IS DISPOSITIVE OF THE QUESTIONS OF LEGISLATIVE INTENT ON FUNDING OF INDIGENT CARE

The Legislature has enacted a uniform statewide program for medical care for indigents of this state to benefit hospitals and physicians choosing to participate. The statute obligates the State and the counties to provide funds to implement this program. Section 409.266, et seq., Fla.Stat.(1983). 12/

12/ See Sections 409.267, 409,2671, Fla.Stat. (1983) for counties' obligation to contribute to this program.

In April, 1984, the Legislature augmented the statewide medicaid program by enacting "The Public Medical Assistance Act." Section 154.32, et seq., Fla.Stat. (1984). This newly created legislation expanded the existing medicaid program not only for increased funding but also increased and expanded payments for medical services to additional eligible persons. Sections 154.35,(9)(10) Fla.Stat.(1984); 409.266(6)(a)(b)(c)(1)(2)(3)(d) Fla.Stat. (1984). In the statute's preamble, the Legislature expressed its findings and proposed solutions to funding indigent medical care. Section 409.2662, Fla.Stat.(1984):

> 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 costs of services delivered. Further, the Legislature finds that inequities between hospitals in the provisions of unreimbursed services prevent hospital which provide the bulk of such services from competing on an equitable economic basis with hospitals which provide relative 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 tne counties, See Sections 409.266, et seq. 154.35(9)(1)(2)(3)(4)(5); and Rule 10C-7.30, F.A.C. (1)(a)] and by hospitals which are granted the privilege of operating in this state. (Bracketed wording is supplied by this writer). 13/

13/ The bill imposes upon each public and private hospital in this State, an assessment of 1% of net operating revenue for the first fiscal year, and 1.5% of such revenue for each year thereafter as its contribution for indigent medical treatment. Section 395.101, Fla. Stat.(1984).

The Legislature is presumed to know existing law when it enacts a statute and it is also presumed to be acquainted with the judicial construction of former laws on the subject concerning which the latter statute is enacted. Williams v. Jones, 326 So.2d 425,435 (Fla. 1975); Collins Investment Co. v. Metropolitan Dade County, 164 So.2d 806, 809 (Fla. 1964). If the Legislature were aware of any lawful means by which private hospital could simply recover unreimbursed losses by billing counties, the statute would have been unnecessary.

The general rule is that specific statutes on a subject take precedence over another statute covering that same subject in general terms. Littman v. Commercial Bank and Trust Co., 425 So.2d 636, 639 (Fla. 3d DCA 1983; Brescher v. Associate Finance Services, 460 So.2d 464, 467 (Fla. 4th DCA 1985). There can be no clearer misapplication of this statutory construction than the case at bar. The Respondent claims that statutory language formerly embodied in Article XIII continues to take precedent over the Public Medical Assistance Act, notwithstanding repeal of its implementing statute by the Legislature presumed to know the judicial construction of Cleary by this Court. Even construing the unnumbered statute in the manner advocated by Respondent, it is no more than a general precatory statute authorizing the Legislature to enact laws providing for public assistance for indigents.

X.

THE RELIEF SOUGHT BY THE RESPONDENT IS WITHIN THE PROVINCE OF THE LEGISLATURE RATHER THAN THROUGH THE COURTS

The primary question here is whether the court below can conceivably fashion a remedy consistent with its decision without statutory or constitutional guidance. The answer is that the lower court erred in declaring in favor of the Respondent under the facts of this case. Implicit in the Court's ruling is the assumption that the Court has answers to questions that its ruling would inevitably spawn:

A. Must the Public Health Trust reject all paying patients, leaving all of its beds for indigents in light of Section 154.11 allowing each trust to set its own rates and charges.

B. Is there a limitation on the number of paying patients the Public Health Trust may accept?

C. May the Public Health Trust legally accept paying patients who have unique maladies and can only receive their needed treatment at the Public Health Trust? This Court can take judicial notice that Jackson Memorial Hospital provides many medical services that no other hospitals in Dade County can provide, i.e., the only certified burn unit in South Florida, the only nationally recognized orthopedic rehabilitation center in South Florida, among others.

D. Are there hospitals in Dade County that may not petition the lower court for reimbursement, such as those hospitals that are unaccredited?

E. Would physicians, nursing homes, hospitals, health spas, private duty nurses, clinics, pharmacists, rescue units and any other institutions be eligible for reimbursement for direct and ancillary indigent medical care?

F. To what extent would Dade County be financially responsible to each entity or person treating indigents?

G. Would podiatrists, naturopaths, chiropractors, osteopaths or optometrists be entitled to the same rate of reimbursement as other medical practitioners?

H. If a patient who is not an indigent but incapable of paying is brought to the Public Health Trust needing emergency care, and is treated and stabilized but needs further treatment, must the Public Health Trust transfer that patient to another hospital, possibly the Respondent's hospital, because it subjects itself to a lawsuit for retaining non-indigent patients?

I. Would the County have a cause of action against a hospital which refused patients incapable of paying, who are not indigents but could not remain in the Public Health Trust because of their financial status?

J. What paying patients, if any, may the Public Health Trust admit for teaching purposes, in light of its affiliation with the University of Miami School of Medicine?

K. Would the various hospitals be allowed to request administrative costs, and if so to what extent?

L. Out of what fund must Dade County pay for such medical expenses?

M. In the case of catastrophic illnesses, is there a limitation or cap on the amount hospitals may bill the County?

N. If raising taxes is needed to appropriate more funds to pay for indigent medical care, is it legally permissible for the lower Court to compel Dade County to raise taxes, notwithstanding the Supreme Court's ruling that only the Board of County Commissioners has the authority consistent with the Florida Constitution to decide the millage rate? See Board of County Commissioners v. Harry Wilson, 386 So.2d 556 (Fla. 1980).

O. Would Dade County be liable to other hospitals and nursing homes for custodial care as well as acute care or both?

P. Would Dade County be liable for prescription drugs on an outpatient basis? Are there prescriptions that would not be allowable?

Q. Would there be limitations on the number of visits per month or week that indigent patients would be allowed at a doctor's office or hospital?

R. May patients admit themselves into the hospitals of their choice in Dade County when the Public Health Trust has no available beds, or must the patients go to the hospital nearest to his residence or place of business? or must indigents go to a hospital designated by Dade County?

S. Who are indigents--Who decides the various classifications of indigency?

T. How long must indigents reside in Dade County before being eligible for free medical service?

U. If a citizen who did not have money to pay for medical needs moved from another state or county to Dade County, and immediately was admitted into a hospital, would that hospital be eligible for reimbursement?

V. If other hospitals or physicians refused to accept patients capable of paying so that they could accept only indigents for guaranteed reimbursement from Dade County, would Dade County be allowed to withhold payments from such hospitals?

W. Would Dade County be obligated to reimburse Respondent and other hospitals and physicians for costs only, or would the hospitals and physicians be entitled to overhead and profit?

X. Within what period of time from the patients' discharge must hospitals bill Dade County? In what period of time must Dade County respond?

Y. What considerations, if any, would the Court give inflationary or recessionary pressures in determining the County's obligation?

Z. If Dade County's population dramatically increased, would the financial burden increase likewise or would Dade County's responsibilities remain the same?

Obviously, the questions raised are not answerable by the judiciary in the absence of constitutional or statutory guidance on these issues. It is demonstrably apparent that the above questions must be answered

legislatively or in the political arena. The contrary emphasis of its arguments notwithstanding, the Respondent did not and cannot point to any Florida law addressing the above questions apart from the well defined formulas and rules and regulations promulgated through the medicaid program. See Rule 10C-7, Fla. Admin. Code and Section 409.266, et seq. Fla. Stat.(1983). 14/

The Supreme Court of the United States recognized the difficult task public officials face in distributing public assistance benefits and stated that, it does not have jurisdiction to review to what extent the states allocate their funds for economic and social programs:

> "[17] We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligency are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The constitution may impose certain procedural safeguards upon systems of welfare administration, Goldberg v. Kelly, 397 U.S 254, 25 L.Ed.2d 287, 90 S.Ct. 1011. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. Dandridge v. Williams, 397 U.S. 471, 25 L.Ed 2d 491, 503, 90 S.Ct. 1153 (1970).

14/ This Court may take judicial notice of the voluminous rules and regulations generated by tne medicaid program to get some idea of the issues involved in reimbursing medical care for indigents. See Generally, Rules 10C-7 and 10C-8, F.A.C.

The lower Court, likewise, lacked guidance to determine if, and to what extent, public assistance benefits should be distributed in the absence of some constitutional or statutory authority.

CONCLUSION

It is herein submitted that the Respondent has established no obligation of Dade County to provide universal medical care for its citizens. Respondent has combed words and phrases from the laws of Florida, cobbled together the words County, legal duty and indigent medical care without regard to their context, and cited them for the proposition that Dade County is legally obligated to reimburse Respondent for indigent medical care.

The Petitioners respectfully urge this Court to reverse the decision of the Third District Court of Appeal with appropriate instructions to enter a judgment for the Petitioners.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief was mailed to Darrey A. Davis, Esquire, Steel Hector and Davis, 4000 Southeast Financial Center, 200 South Biscayne Boulevard, Miami, Florida 33131-2398; Thomson, Zeder, Bohrer, Werth, Adorno and Razook, 1000 Southeast Bank Building, Miami, FL 33131 and Paul Curran, Esquire, 425 Park Avenue, New York, NY 10022, this 2nd day of April, 1985.

Respectfully submitted,

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