

February 7, 2020

**ILLINOIS HEALTH AND HOSPITAL ASSOCIATION  
M E M O R A N D U M**

**SUBJECT:      Circuit Court rules in *Carle* Case; Grants Property Tax Exemption**

**Overview:**

In a highly anticipated case, *The Carle Foundation v. The Illinois Department of Revenue*, late Wednesday a judge ruled in favor of the Carle Foundation in finding that it was entitled to property tax exemptions for four parcels in Urbana for the tax years 2005-2011, but not for the tax year 2004. The judge ordered the Champaign County Treasurer to issue Carle a tax refund of \$6.24 million. In addition, the defendants in the lawsuit – the city of Urbana, Cunningham Township, several local taxing districts, and the Illinois Dept. of Revenue – were ordered to pay for the cost of the litigation, excluding Carle’s attorney fees.

The ruling established that Carle Foundation Hospital satisfied both Section 15-86 (the 2012 law establishing a “charitable ownership” test of charitable activities in excess of estimated property tax liability) and the “charitable use” facts and circumstances test as outlined in the *Korzen* case. The judge indicated that some of the *Korzen* factors relate to use and others related to ownership. Those related to ownership were only relevant if they impacted the way in which the property was used.

This favorable ruling, in a case begun by Carle in 2007, supports the continuing line of Illinois cases, such as the Supreme court ruling in the *Oswald* case which upheld the 2012 hospital property tax-exemption law, that recognize when nonprofit hospitals provide valuable charitable care and community services they are entitled to property tax exemption.

**Summary:**

In a lengthy 145-page written opinion issued late Wednesday afternoon, Sixth Judicial Circuit Court Judge Randall Rosenbaum found that the Carle Foundation is entitled to property tax exemptions for four parcels in Urbana for the tax years 2005-2011, but not for the tax year 2004. The judge ordered the Champaign County Treasurer to issue Carle a tax refund of \$6.24 million. In addition, the defendants in the lawsuit – the city of Urbana, Cunningham Township, several local taxing districts, and the Illinois Dept. of Revenue – were ordered to pay for the cost of the litigation, excluding Carle’s attorney fees.

Judge Rosenbaum made a point of stating what the case was not about: “This case is not about whether our country has a broken health care system. It is not about whether Universal Healthcare is a solution. It is not about high health insurance premiums. It is not about Medicaid/Medicare rates. It is not about highly-paid doctors. It is not about whether hospitals make too much profit. It is not about Carle continuing to build new facilities. It is not about

personal experiences (both good and bad) at local hospitals. It is not about how much an individual pays in property tax.”

Instead, the judge said the issue is “whether the Plaintiff Carle Foundation is entitled to property tax exemptions (full or partial) from 2004-2011 for four parcels because they have met both of the following: a) the statutory requirements of the Illinois Property Tax Code...and b) the Illinois Constitutional requirements outlined in *Methodist Old Peoples Home v. Korzen*.” He concluded that “After consideration of all the facts in this matter, and giving due weight to prior case law, this Court finds that Carle Foundation has met its burden of proof, entitling it to property tax exemptions on the four parcels for 2005-2011.” Concerning the 2004 tax year and due to the timing issue of the tax code working on a calendar year and hospital reports based on their fiscal year, the judge said there was “insufficient evidence to show how much charity care and charitable activities and services took place during the last 6 months of 2003 vs the first 6 months of 2004.”

The judge was complimentary of the generous charity policy and significant value of the charitable activities provided by the hospital. He did point out that the only metrics in case law related to charity care is charity cost in relation to net patient revenue and number of charity patients. He pointed out that in several cases, including *Provena*, that charity at cost less than 1% of net patient revenue seemed too low for a charitable entity. However, he ultimately noted that each case must be decided on its own facts and “the critical issue is the use to which the property itself is devoted, not the financial issues alone.”

Judge Rosenbaum also noted that there is a difference between profit and net income and that a hospital needs to operate in the black to survive. He mentioned the concept of relieving the burden of government and noted that if the hospital did not provide some of the services, the burden would fall on the government or individuals to do so.

Particularly telling for Judge Rosenbaum was the fact that Carle had received tax exemption on these parcels for the years prior and after those years being contested. As the judge stated: “It begs the question: Why should Carle Foundation be exempt in 2003 and not 2004? Why should Carle Foundation be exempt in 2012 and not 2011? If anything, Carle Foundation increased its charity care over the years, advertising it in numerous ways to reach more people. The substance of the program expanded to increase the financial threshold, to give people more time to apply, to apply to family, to last one year, etc.”

**Analysis and Next Steps:**

Overall, the Circuit Court of the 6<sup>th</sup> Judicial District’s decision in favor the Carle Foundation bodes well for Illinois non-profit hospitals, however, there are some take-aways for hospitals to consider.

First, early in the decision, when discussing the constitutional issue, Judge Rosenbaum states that the appellate courts have been "all over the place" and that the Supreme Court has "provided little guidance", but he notes that in *Provena* and *Midwest Palliative* there is "a suggestion, but not a line in the sand" that charity care of less than 1% of net patient revenue suggests that the organization is not meeting the charitable use test. However, by the end of the decision, the judge seems to be applying a 1% rule as part of his rationale for ruling against Carle for the 2004 tax year. Specifically, he states that "to the extent" that there is a 1% rule, Carle did not meet it for that year. This apparent reliance on a 1% metric, while not specifically stated as a rule, is troubling. Hospitals are urged to continue to review their charity policies to ensure they meet the needs of their community to provide charity to all who need and apply, particularly in the context of this suggestion.

Second, it is possible that this case will be appealed. As Judge Rosenbaum correctly noted, this litigation, which has been contested for over a decade, has taken a huge financial toll on all parties and local taxpayers. Although Judge Rosenbaum urged both Carle and taxing authorities to set aside their differences and think about creating a mutually beneficial future, he acknowledged that if they are unable to, "the court suspects there will be continuing litigation year after year after year." Thus, this decision may not be the final one and hospitals should continue to remain diligent regarding their charity care policies and changes in the law/legal decisions.