

13-0120

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

UNITED HOSPITAL CENTER, INC., :  
Petitioner, :

v. :

Civil Action No. 11-C-124-1  
Judge John Lewis Marks, Jr.

THE HONORABLE CHERYL ROMANO, :  
ASSESSOR OF HARRISON COUNTY, :  
WEST VIRGINIA, :

and :

THE HONORABLE CRAIG GRIFFITH, :  
STATE TAX COMMISSIONER, :  
Respondents. :

**ORDER GRANTING RESPONDENTS' MOTIONS  
FOR SUMMARY JUDGMENT**

On March 19, 2012, came the Petitioner, United Hospital Center, Inc. ("UHC"), by and through its counsel, Michael S. Garrison, Esq., and Kelly Kimble, Esq.; the Respondent, The Honorable Cheryl L. Romano, Assessor of Harrison County, West Virginia ("Romano"), not in person but by and through James F. Armstrong, Assistant Prosecuting Attorney for Harrison County, West Virginia; and came the Respondent, The Honorable Craig A. Griffith, State Tax Commissioner ("Griffith"), not in person but by and through Charlene Fulton, Senior Assistant Attorney General for the State of West Virginia, for the purposes of a status/pretrial hearing and hearing on the Respondents' motions for summary judgment previously filed herein.

WHEREUPON, this Court noted that the Respondents had previously filed their respective motions for summary judgment, that the Petitioner had timely filed a response to said motions, and that the parties had agreed to use the instant proceedings to address the pending motions.

WHEREUPON, after having considered the issues raised by the Respondents in their respective motions, after having heard counsel's arguments, and after having reviewed pertinent legal authority, the Court does hereby make the following findings of fact and conclusions of law.

**Findings of Fact.**

1. That Respondent Romano is the Assessor of Harrison County, West Virginia; that Respondent Griffith is the Tax Commissioner for the State of West Virginia; and that Petitioner UHC is a corporation formed under West Virginia law as a nonprofit corporation for the purpose of providing medical care.

2. That UHC began construction of a new hospital facility in Harrison County, West Virginia, in the fall of 2006. Said facility opened for patients on October 3, 2010. The location of the new hospital facility is generally known as the "Jerry Dove Drive location."

3. That during Tax Year 2011, and inclusive of the July 1, 2010, ad valorem property tax assessment date, UHC was operating a fully-functioning hospital at Hospital Plaza, Clarksburg, West Virginia.

4. That on July 1, 2010, health care for UHC patients was being provided by the Hospital Plaza location. Such health care included, but was not limited to, inpatient treatment, emergency services, outpatient treatment, and community-based health care.

5. That on July 1, 2010, the Jerry Dove Drive location was not housing patients, was not providing any type of inpatient care, was not providing any type of

emergency services, was not providing outpatient care, and was not providing community-based health care.

6. That for Tax Year 2011, inclusive of the July 1, 2010, ad valorem property tax assessment date, the Hospital Plaza location of UHC was exempted from ad valorem property taxation on the basis that said facility was a charitable hospital.

7. That on October 3, 2010, transport of patients from UHC's Hospital Plaza location to the newly-opened Jerry Dove Drive location commenced. Soon thereafter, UHC's Hospital Plaza location ceased providing emergency services, inpatient services, outpatient services, and community-based health care.

8. That on or about October 3, 2010, UHC's new Jerry Dove Drive location began providing inpatient services, outpatient services, emergency services, and community-based healthcare.

9. That UHC's Hospital Plaza location ceased providing inpatient services, outpatient services, emergency services, and community-based healthcare shortly after transferring patients to the new hospital facility on or about October 3, 2010. Thus, UHC's Hospital Plaza location ceased providing such services and no longer functioned as a hospital approximately four months following the July 1, 2010, ad valorem property tax assessment date for Tax Year 2011.

10. That despite the fact that UHC's Hospital Plaza location ceased functioning as a hospital approximately four months following the July 1, 2010, ad valorem property tax assessment date for Tax Year 2011, said location was exempted from ad valorem property taxes for the entirety of Tax Year 2011.

11. That prior to October 3, 2010, and as confirmed by Petitioner UHC, UHC's new Jerry Dove Drive facility was not providing inpatient or outpatient health care, was not providing emergency services, and was not providing community-based health care. However, and as confirmed by Petitioner UHC, prior to October 3, 2010, UHC personnel began providing security for the facility; UHC's housekeeping staff worked at the facility, cleaning it and preparing it to receive patients; and UHC moved its Information Technology department, or data center, to the new facility and began running test environments for the new facility as well as live environments for the former facility where patients were being treated. In addition, UHC's engineering staff moved into the new facility in May of 2010 and began training on the new environmental control systems, the boilers, the air conditioning, and whatever had to be done to maintain the day-to-day environment of the hospital.

12. That on July 1, 2010, the date on which property within the State was to be assessed for Tax Year 2011, tangible personal property located on and incorporated into the new Jerry Dove Drive location hospital facility was assessed by Respondent Romano at a value of Sixty-two Million Eight Hundred Ninety-five Thousand Thirteen Dollars (\$62,895,013.00) and the land on which the new hospital facility is located was assessed by Respondent Romano at a value of One Million Two Hundred Nineteen Thousand Two Hundred-Sixty Dollars (\$1,219,260.00). The values of the personal property assessment and land assessment have been uncontested in this matter.

13. That subsequent to the assessment of the new Jerry Dove Drive location UHC facility, Douglas Coffman, Vice President of Finance and Chief Financial Officer for UHC, sent a letter dated October 18, 2010, to Respondent Romano advising her that it

was UHC's position that the assessed property was being used for charitable purposes on July 1, 2010, and as such, the assessed property was exempt from tax liability. Following receipt of Mr. Coffman's October 18, 2010, correspondence, Respondent Romano responded by advising Mr. Coffman that the new hospital facility property was taxable because the property was not being used for a charitable purpose on July 1, 2010.

14. That following receipt of Mr. Coffman's October 18, 2010, correspondence, Ms. Romano sought the opinion of the State Tax Department about the 2011 Tax Year tax liability issue of the new hospital facility. By ruling issued February 28, 2011, Respondent Griffith, by Mark Morton, General Counsel for Revenue Operations, determined that the new hospital facility was ineligible for exemption from ad valorem property taxation for Tax Year 2011 because the facility did not meet the criteria for ad valorem property tax exemption on July 1, 2010.

15. That there is a piece of property located in Fayette County, West Virginia, which was purchased by the Boy Scouts of America for the purpose of constructing an outdoor recreation and training center ( "Boy Scout property").

16. That the Boy Scouts of America is a nonprofit charitable organization.

17. That during construction of the facility on the Boy Scout property, the Fayette County Assessor apparently exempted the property from ad valorem property taxes.

18. That no evidence exists to demonstrate that the Fayette County Assessor applied to the West Virginia Tax Commissioner for an opinion or ruling on the taxability of the Boy Scout property.

## Conclusions of Law.

### A. Conclusions of law pertaining generally to the taxability of charitable organizations.

1. That “tax exemptions are strictly construed against people claiming them.”

In re Hillcrest Memorial Gardens, 146 W.Va. 337, 119 S.E.2d 753 (1961).

2. That “if any doubt arises as to the exemption, that doubt must be resolved against the one claiming it.” Syl. Pt. 2, Maplewood Community v. Craig, 216 W.Va. 273, 607 S.E.2d 379 (2004). See also In re Hillcrest Memorial Gardens, *supra*.

3. That W.Va. Code § 11-3-1(a) [1923] provides, in pertinent part, that “[a]ll property shall be assessed annually as of the first day of July at its true and actual value.”

4. That W.Va. Code § 11-3-9(a)(12) [1923] provides that “[a]ll property, real and personal, described in this subsection, and to the extent limited by this section, is exempt from taxation [including] [p]roperty used for charitable purposes and not held or leased out for profit.”

5. That W.Va. Code § 11-3-9(a)(17) [1923] provides that all property, real and personal, described in that subsection, and to the extent limited by that section, is exempt from taxation including property belonging to any public institution for the education of the deaf, dumb or blind or any hospital not held or leased out for profit.

6. That W.Va. Code St. R. tit. 110, §3-4.1 provides in pertinent part that “[s]ection § 11-3-9 of the West Virginia Code exempts specific property from ad valorem property taxation, pursuant to the grant of authority in W.Va. Const. Art. X, § 1.”

7. That in light of the plain meanings of W.Va. Code § 11-3-9(a)(12) [1923] and W.Va. Code § 11-3-9(a)(17) [1923], said Code sections generally exempt from ad

valorem property taxation property used for charitable purposes and not held or leased out for profit and property belonging to any public institution for the education of the deaf, dumb or blind or any hospital not held or leased out for profit.

8. That pursuant to W.Va. Code St. R. tit. 110, §3-4.2.2, the exemption from ad valorem property taxation for property owned by charitable corporations or organizations is not applicable unless "such property...is used primarily and immediately for the purposes of such corporations or organizations."

9. That the term "primary use" is defined by as "use which is chief, main or principal." W.Va. Code St. R. tit. 110, § 3-2.48.

10. That the term "immediate use" is defined by W.Va. Code St. R. tit. 110, § 3-2.31 as "use which is direct and not separated in time, relationship or connection."

11. That the exemption of property from taxation depends on its use. W.Va. Code St. R. tit. 110, § CSR 3-24.8.6; W.Va. Const. art. X, § 1; and State ex rel. Farr v. Martin, 105 W.Va. 600, 143 S.E.2d 356 (1928). "To warrant such an exemption, the use must be primary and immediate, not secondary or remote." Id.

**B. Application of the findings of fact and conclusions of law concerning tax exemptions generally pertaining to charitable organizations.**

1. That for property to be generally exempt from ad valorem property taxes, the specific item or parcel of property must be used for charitable purposes and not held or leased out for profit; or the property must belong to a public institution for the education of the deaf, dumb, or blind; or the property must be a hospital not held or leased out for profit.

2. That UHC is a charitable hospital, which property is not held or leased out for profit.

3. That, generally, UHC is exempt from ad valorem property taxes because it is a charitable hospital not held out or leased for profit.

4. That, specifically, and in order for UHC to be exempt from ad valorem property taxation, the property for which it seeks an exemption must be property that is used primarily and immediately for the purposes of UHC.

5. That for UHC to be exempt from ad valorem property taxation, the property for which it is seeking an exemption must be property for which the use is chief, main, or principal for the purposes of UHC.

6. That because the chief, main, or principal purpose of UHC is to provide inpatient medical care, outpatient medical care, emergency services, and community-based health care, any property for which it claims an exemption must be used chiefly, mainly, and principally for the purpose of providing inpatient medical care, outpatient medical care, emergency services, and community-based health care.

7. That for UHC to be exempt from ad valorem property taxation, the property for which it is seeking an exemption must be property for which the use is direct and not separated in time, relationship, or connection from the purpose of UHC.

8. That because the chief, main, or principal purpose of UHC is to provide inpatient medical care, outpatient medical care, emergency services, and community-based health care, any property for which it claims an exemption must be used directly for the provision of inpatient medical care, outpatient medical care, emergency services, and community-based health care.

9. That because the chief, main, or principal purpose of UHC is to provide inpatient medical care, outpatient medical care, emergency services, and community-

based health care, any property for which it claims an exemption must not be separated in time, relationship, or connection from the provision of inpatient medical care, outpatient medical care, emergency services, and community-based health care.

10. That on July 1, 2010, the new UHC hospital facility located at Jerry Dove Drive was not providing inpatient medical care, outpatient medical care, emergency services, or community-based health care.

11. That on July 1, 2010, the new UHC hospital facility located at Jerry Dove Drive was not being chiefly, mainly, and principally used to provide inpatient medical care, outpatient medical care, emergency services, or community-based health care.

12. That approximately 94 days elapsed between the July 1, 2010, assessment date for Tax Year 2011 and the October 3, 2010, opening date of the new UHC hospital facility located at Jerry Dove Drive.

13. That in light of the fact that the new UHC hospital facility was not chiefly, mainly, and principally used to provide inpatient medical care, outpatient medical care, emergency services, or community-based health care for approximately 94 days following the July 1, 2010, tax assessment date, the use of the new facility property on July 1, 2010, was not directly associated with the purposes of UHC and the use of the property on July 1, 2010, was separated in time from the purposes of UHC.

14. That, generally, the new UHC hospital facility being built at Jerry Dove Drive on July 1, 2010, did not qualify for an exemption from ad valorem property taxes for Tax Year 2011.

**C. Conclusions of law regarding tax exemptions for charitable hospitals.**

1. That W.Va. Code St. R. tit. 110, §3-4.1 provides in pertinent part that “[s]ection § 11-3-9 of the West Virginia Code exempts specific property from ad valorem property taxation, pursuant to the grant of authority in W.Va. Const. Art. X, § 1.”

2. That W.Va. Code St. R. tit. 110, §3-4.1.12 provides that “[p]roperty used for charitable purposes, and not held or leased out for profit” is exempt from ad valorem property taxation.

3. That W.Va. Code St. R. tit. 110, §3-4.1.18 provides that “[p]roperty belonging to any hospital not held or leased out for profit” shall be exempt from ad valorem property taxation.

4. That W.Va. Code St. R. tit. 110, §3-24.2 provides in pertinent part that “[a] hospital to be eligible for ad valorem property tax exemption may attain such exemption by using property owned or leased in a charitable manner. For purposes of this Section 24, charitable use is defined as...[t]he provision of health services on an inpatient or outpatient basis to individuals who cannot afford to pay for such services...[or] [t]he provision of activities which promote the health of the community served by the hospital and/or decrease the burdens of state, county or municipal governments....”

5. That W.Va. Code St. R. tit. 110, §3-19.1 provides in pertinent part that “in order for the property to be exempt, the primary and immediate use of the property must be for one or more exempt purposes.”

6. That the term “primary use” is defined by W.Va. Code St. R. tit. 110, §3-2.48 as “use which is chief, main or principal.”

7. That the term "immediate use" is defined by W.Va. Code St. R. tit. 110, §3-2.31 as "use which is direct and not separated in time, relationship or connection."

8. That W.Va. Code St. R. tit. 110, §3-24.17.3 provides that "[i]f construction is begun on a tract for the purpose of making improvements to be used for hospital purposes, such property shall not be exempt under this section until it has been put to such actual use as to make the primary and immediate use of the property charitable in accordance with Section 19 of these regulations."

**D. Application of the findings of fact and conclusions of law regarding tax exemptions relating to charitable hospitals and the effect of those exemptions on the new UHC facility.**

1. That for UHC to be eligible for an ad valorem property tax exemption for a specific item or parcel of hospital property, UHC must use the property it owns or leases in a charitable manner.

2. That for UHC to be eligible for an ad valorem property tax exemption for a specific item or parcel of hospital property, UHC must use the property for the provision of health services on an inpatient or outpatient basis to individuals who cannot afford to pay for such services or use the property for the provision of activities that promote the health of the community served by the hospital and/or decrease the burdens of state, county, or municipal governments.

3. That for UHC to be eligible for an ad valorem property tax exemption for a specific item or parcel of hospital property, UHC must primarily and immediately use the property for one or more exempt purposes--namely, the provision of health services on an inpatient or outpatient basis to individuals who cannot afford to pay for such services

or the provision of activities that promote the health of the community served by the hospital and/or decrease the burdens of state, county, or municipal governments.

4. That for UHC to be eligible for an ad valorem property tax exemption for a specific item or parcel of hospital property, UHC must chiefly, mainly, and principally use the property for the provision of health services on an inpatient or outpatient basis to individuals who cannot afford to pay for such services or use the property for the provision of activities that promote the health of the community served by the hospital and/or decrease the burdens of state, county, or municipal governments.

5. That for UHC to be eligible for an ad valorem property tax exemption for a specific item or parcel of hospital property, UHC's use of the property must be direct and not separated in time, relationship, or connection from the provision of health services on an inpatient or outpatient basis to individuals who cannot afford to pay for such services or from the provision of activities that promote the health of the community served by the hospital and/or decrease the burdens of state, county, or municipal governments.

6. That although UHC began construction of a new hospital facility at the Jerry Dove Drive location for making improvements to be used for hospital purposes, the property was not exempt from ad valorem property taxes because said property had not been put to such actual use as to make the primary and immediate use of the property charitable.

7. That despite construction beginning on the new hospital facility on July 1, 2010, the new hospital facility was not exempt from ad valorem property taxes on July

1, 2010, because the property was not put to such actual use as to make the primary and immediate use of the property charitable until October 3, 2010.

**E. Conclusions of law concerning the legality of W.Va. Code St. R. tit. 110, §3 and the comport of W.Va. Code St. R. tit. 110, §3 with Legislative intent and the West Virginia citizenry.**

1. That W.Va. Code § 11-3-9(e) [1923] provides that “[t]he Tax Commissioner shall, by issuance of rules, provide each assessor with guidelines to ensure uniform assessment practices statewide to effect the intent of this section.”

2. That the West Virginia Constitution does not of itself exempt any property from taxation—rather, the Constitution merely authorizes the Legislature to create exemptions for certain types of property. State v. Kittle, 87 W.Va. 526, 105 S.E. 775 (1921); In re Hillcrest Memorial Gardens, *supra*. See also W.Va. Const. art. X, § 1, in pertinent part, “but property used for educational, literary, scientific, religious or charitable purposes... may by law be exempted from taxation...”(emphasis added).

3. That Title 110, Series 3 of the West Virginia Code of State Rules is a compilation of legislative regulations. The term “rule” includes “regulation” pursuant to W.Va. Code § 29A-1-2(i) [1982].

4. That the term “legislative rule” is defined, in relevant part, by W.Va. Code 29A-1-2(d) [1982], as “every rule, as defined by subsection (i) of this section, proposed or promulgated by an agency pursuant to this chapter.” “Legislative rule includes every rule which, when promulgated after or pursuant to authorization of the legislature, has (1) the force of law, or (2) supplies a basis for the imposition of civil or criminal liability, or (3) grants or denies a specific benefit.” Id. “Every rule which, when effective, is

determinative on any issue affecting private rights, privileges or interests is a legislative rule." Id.

5. That W.Va. Code § 29A-3-9 [1995] provides in pertinent part that "[w]hen an agency proposes a legislative rule, other than an emergency rule, it shall be deemed to be applying to the Legislature for permission, to be granted by law, to promulgate such rule as approved by the agency for submission to the Legislature or as amended and authorized by the Legislature by law."

6. That, pursuant to W.Va. Code § 29A-3-11(a) and (b) [1995], when an agency finally approves a proposed legislative rule for submission to the Legislature (pursuant to W.Va. Code 29A-3-9), the legislative committee shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon.

Such review shall include, but not be limited to, a determination of: (1) Whether the agency has exceeded the scope of its statutory authority in approving the proposed legislative rule; (2) **Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific**; (3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency; (4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the rule was proposed for promulgation; (5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it; (6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and (7) Whether the proposed legislative rule was proposed for promulgation in compliance with the requirements of this article and with any requirements imposed by any other provisions of this code [emphasis added].

Id. at W.Va. Code § 29A-3-11(b)(1-7) [1995].

7. That pursuant to W.Va. Code §29A-3-11(d) [1995] and W.Va. Code § 29A-3-12(a) [1996], after the legislative committee has undertaken review of a proposed

legislative rule and found such proposed legislative rule to be proper, the committee shall recommend “that a rule be authorized...by the Legislature” and the “cochairmen of the legislative rule-making review committee shall submit to the clerk of the respective houses of the Legislature copies of [the proposed rule]... .”

8. That pursuant to W.Va. Code § 29A-3-12 [1996], and at the conclusion of the procedures delineated in W.Va. Code § 29A-3-9 [1995] and W.Va. Code § 29A-3-11 [1995], and if approved by the Legislature, the agency originally proposing the legislative rule is then authorized to adopt the rule.

**F. Application of the findings of fact and conclusions of law pertaining to the legality and constitutionality of W.Va. Code St. R. tit. 110, §3 and to the comport of W.Va. Code St. R. tit. 110, §3 with the intent of the Legislature and citizens of West Virginia.**

1. That because there is no constitutional authority for tax exemptions, only constitutional authority for the legislative body to create tax exemptions, the Legislature is vested with the power to determine which property is exempt and under which circumstances such property is exempt.

2. That because the Legislature is vested with the power to determine which property is exempt and under what circumstances such property is exempt and because the West Virginia Legislature has specifically and explicitly authorized the West Virginia State Tax Commissioner to promulgate rules for determining exemptions from taxation, the West Virginia Tax Commissioner acted within the bounds of the constitutional and statutory authority vested in him to promulgate W.Va. Code St. R. tit. 110, §3.

3. That because the West Virginia State Tax Commissioner acted within the bounds of the constitutional and statutory authority vested in him to promulgate W.Va.

Code St. R. tit. 110, §3, reliance upon such rules by county tax assessors is proper and lawful.

4. That because the West Virginia Constitution does not exempt property from taxation but merely authorizes the Legislature to enact exemptions, W.Va. Code St. R. tit. 110, §3-24.17 does not contravene W.Va. Const. Art. X, § 1.

5. That because the West Virginia Constitution does not exempt property from taxation but merely authorizes the Legislature to enact exemptions, W.Va. Code St. R. tit. 110, §3-24.17 cannot be contrary to the intentions of the citizens of the State of West Virginia at the time W.Va. Const. Art. X, § 1 was ratified as it is clear that the citizens of the State of West Virginia did not intend for the West Virginia Constitution to provide specific exemptions from ad valorem property taxation.

6. That because the West Virginia Code prescribes strict guidelines for the promulgation and enactment of legislative rules (See W.Va. Code § 29A-3-9 [1995], W.Va. Code § 29A-3-11 [1995], and W.Va. Code § 29A-3-12 [1996]) and because one facet of said guidelines is that a legislative rule conform with the legislative intent of the statute that the rule is intended to implement, extend, apply, interpret, or make specific, it is clear that W.Va. Code St. R. tit. 110, §3-24.17 is not contrary to W.Va. Code § 11-3-9 [1923].

7. That because the Legislature has approved the legislative rules contained in W.Va. Code St. R. tit. 110, § 3, it is clear that said rules do not contradict the intent of the statute that the rule is intended to implement, extend, apply, interpret, or make specific.

8. That because the Legislature has approved the legislative rules contained in W.Va. Code St. R. tit. 110, § 3, it is clear that the West Virginia State Tax Commission did not exceed the scope of its statutory authority in approving the proposed legislative rule.

9. That because the Legislature has approved the legislative rules contained in W.Va. Code St. R. tit. 110, § 3, it is clear that W.Va. Code St. R. tit. 110, § 3-24.17 does not conflict with any other provision of the West Virginia Code or with any other rule adopted by the same or a different agency.

10. That because the Legislature has approved the legislative rules contained in W.Va. Code St. R. tit. 110, § 3, it is clear that W.Va. Code St. R. tit. 110, § 3-24.17 is necessary to fully accomplish the objectives of the statute under which the rule was proposed for promulgation.

11. That because the Legislature has approved the legislative rules contained in W.Va. Code St. R. tit. 110, § 3, it is clear that W.Va. Code St. R. tit. 110, § 3-24.17 is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it.

12. That because the Legislature has approved the legislative rules contained in W.Va. Code St. R. tit. 110, § 3, it is clear that W.Va. Code St. R. tit. 110, § 3-24.17 was proposed for promulgation in compliance with the requirements of Article 3, Chapter 29A of the West Virginia Code and with other requirements imposed by other provisions of the West Virginia Code.

**G. Conclusions of law relating to the constitutionality of W.Va. Code St. R. tit. 110, § 3-24.17 as it respects equal protection of the entities affected by W.Va. Code St. R. tit. 110, § 3-24.17.**

1. That W.Va. Const. art. III, § 10 provides that “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers.” This provision, commonly known as the “due process clause”, also incorporates the notion that similarly-situated persons shall be afforded equal protection under the law.

2. That W.Va. Const. art. X, § 1 provides in pertinent part that “[s]ubject to the exceptions in this section contained, taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value...but property used for educational, literary, scientific, religious or charitable purposes, all cemeteries, public property...may be exempted from taxation[.]”

3. That “classifications, including those which involve economic rights, are subjected to the least level of scrutiny, the traditional equal protection concept that the legislative classification will be upheld if it is reasonably related to the achievement of a legitimate state purpose.” Lewis v. Canaan Valley Resorts, Inc., 185 W.Va. 684, 691, 408 S.E.2d 634, 641 (1991).

4. That “[t]o establish that a taxing statute, valid on its face, is so unreasonable or arbitrary as to amount to a denial of due process of law when applied in a particular case, the taxpayer must prove by clear and cogent evidence facts establishing unreasonableness or arbitrariness.” Syl. Pt. 4, Norfolk and Western

Railway Company v. Field, 143 W.Va. 219, 100 S.E.2d 796 (1957); Syl. Pt. 2, State ex rel. Haden v. Calco Awning and Window Corp., 153 W.Va. 524, 170 S.E.2d 362 (1969).

5. That “practical equality” is the standard to be applied in determining whether a violation of due process respecting taxation has occurred and “this standard is satisfied when the tax system is free of systematic and intentional departures from this principle.” Mountain America LLC v. Huffman, 224 W.Va. 669, 689, 687 S.E.2d 768, 788 (2009).

6. That “[t]he principles of equal protection are not invoked solely because a law, properly enacted, has a disproportionate impact. Without proof of a discriminatory purpose underlying the law’s enactment, a disproportionate impact on one classification will not on its own create a violation of this state’s equal protection provision. W.Va. Const. art. III, § 10.” Syl. Pt. 6, City of Weston, 209 W.Va. 145, 544 S.E.2d 72 (2001). Further, “[c]ritical to understanding any equal protection claim is the recognition that [e]qual protection of the law is implicated when a classification treats similarly situated persons in a disadvantageous manner.” Id. at 77, 150 (internal citations omitted).

7. That “[w]here economic rights are concerned, [the West Virginia Supreme Court] look[s] to see whether the classification is a rational one based on social, economic, historic or geographic factors, whether it bears a reasonable relationship to a proper governmental purpose, and whether all persons within the class are treated equally. Where such classification is rational and bears the requisite reasonable relationship, the statute does not violate Section 10 of Article III of the West Virginia Constitution, which is our equal protection clause.” Syl. Pt. 2, City of Weston, 209 W.Va. 145, 544 S.E.2d 72 (2001) (internal citations omitted).

8. That W.Va. Code St. R. tit. 110, § 3-24.17.3 provides that “[i]f construction is begun on a tract for the purpose of making improvements to be used for hospital purposes, such property shall not be exempt under this section until it has been put to such actual use as to make the primary and immediate use of the property charitable in accordance with Section 19 of these regulations.”

9. That W.Va. Code St. R. tit. 110, § 3-15.6 provides that “[f]amily owned cemeteries are exempt from ad valorem property tax. However, when a family cemetery is part of a larger parcel of property, the parcel shall not be exempt from tax unless the primary and immediate use of the parcel, as a whole, is as a cemetery.”

10. That W.Va. Code St. R. tit. 110, § 3-16.1 provides that “[p]roperty used for educational, literary, scientific, religious or charitable purposes under this section must be property in actual direct use, and such use must be primary and immediate and not secondary or remote.”

11. That W.Va. Code St. R. tit. 110, § 3-18.1 provides, with respect to public and family libraries, “[a] parcel of realty and the buildings thereon are exempt from ad valorem property taxation if the primary and immediate use of the parcel, as a whole, is as a public or family library.”

12. That pursuant to W.Va. Code St. R. tit. 110, § 3-4.2.2, the exemption from ad valorem property taxation for property owned by charitable corporations or organizations is not applicable “unless such property...is used primarily and immediately for the purposes of such corporations or organizations.”

**H. Application of the findings of fact and conclusions of law concerning the constitutionality of W.Va. Code St. R. tit. 110, § 3-24.17 and the equal protection of the entities affected by W.Va. Code St. R. tit. 110, § 3-24.17.**

1. That the actual use of a specific piece of property defines its exemption from ad valorem taxation. See, e.g., W.Va. Code St. R. tit. 110, § 3-4.2.2; W.Va. Code St. R. tit. 110, § 3-15.6; W.Va. Code St. R. tit. 110, § 3-16.1; W.Va. Code St. R. tit. 110, § 3-18.1; and W.Va. Code St. R. tit. 110, § 3-24.17.3.

2. That a piece of property belonging to a charitable organization must be used primarily and immediately for the charitable purpose of that organization in order for that piece of property to receive an exemption if provided by law.

3. That W.Va. Code St. R. tit. 110, § 3-24.17.3 merely reiterates in more specific wording the requirement applicable to all charitable organizations that a piece of property owned by such organizations be used immediately and primarily for the charitable purpose of the organization.

4. That because W.Va. Code St. R. tit. 110, § 3-24.17.3 merely reiterates in more specific wording the requirement applicable to all charitable organizations that a piece of property owned by such organizations be used immediately and primarily for the charitable purpose of the organization, W.Va. Code St. R. tit. 110, § 3-24.17.3 does not impose upon Petitioner UHC an increased burden with respect to receiving a charitable exemption from ad valorem property taxes when compared to a class composed of other charitable organizations.

5. That because W.Va. Code St. R. tit. 110, § 3-24.17.3 does not impose upon Petitioner UHC an increased burden with respect to receiving a charitable exemption from ad valorem property taxes when compared to other charitable

organizations, W.Va. Code St. R. tit. 110, § 3-24.17.3 does not deprive Petitioner UHC of equal protection under the law.

6. That W.Va. Code St. R. tit. 110, § 3-24.17.3 is not unreasonable or arbitrary because all charitable organizations are subject to the mandate that property owned by such organizations be used immediately and primarily for the charitable purpose of the organization, because a charitable hospital under construction cannot be used primarily and immediately for the purposes of providing health services on an inpatient or outpatient basis to individuals who cannot afford to pay for such services, and because a charitable hospital under construction cannot provide activities that promote the health of the community served by the hospital and/or decrease the burdens of state, county or municipal governments.

7. That because all charitable organizations are subject to the mandate that property owned by such organizations be used immediately and primarily for the charitable purpose of the organization and because W.Va. Code St. R. tit. 110, § 3-24.17.3 is merely a more definite statement of this principle, W.Va. Code St. R. tit. 110, § 3-24.17.3 is neither a systematic and intentional departure from practical equality nor does it treat a charitable hospital any differently than other charitable organizations.

8. That because W.Va. Code St. R. tit. 110, § 3-24.17.3 is simply a more definite statement of the principle that property owned by a charitable organization must be used primarily and immediately for the purpose of the organization, W.Va. Code St. R. tit. 110, § 3-24.17.3 bears a reasonable relationship to and is rationally based upon the expressed purpose of the West Virginia Legislature and the West Virginia State Tax Commission that property owned by a charitable organization be used primarily and

immediately for the purpose of the charitable organization in order for such property to receive an exemption from taxation.

9. That the exemption from ad valorem property taxation of the Boy Scout property located in Fayette County was an isolated decision made by a local tax assessor without the participation of the West Virginia State Tax Commission and, as such, the decision in that particular circumstance does not constitute a systematic and intentional departure from the principle of practical equality.

10. That because any exemption granted to the Boy Scout property located in Fayette County did not constitute a systematic and intentional departure from the principle of practical equality, such an exemption does not provide a basis for an equal protection violation claim by Petitioner UHC.

**I. Conclusions of law pertaining to summary judgment.**

1. That W.Va. R. Civ. Pro. 56(b) [1998] provides “[a] party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party’s favor as to all or any part thereof.”

2. That “[s]ummary judgment is required when the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Jochum v. Waste Management of West Virginia, Inc., 224 W.Va. 44, 48, 680 S.E.2d 59, 63 (2009).

**J. Application of the findings of fact and conclusions of law concerning summary judgment.**

1. That despite Petitioner UHC’s characterization to the contrary, it is clear that on July 1, 2010, the new UHC hospital being built at the Jerry Dove Drive location

was not being used primarily and immediately for the purpose of providing health services on an inpatient or outpatient basis to individuals who could not afford to pay for such services or for providing activities that promoted the health of the community served by the hospital and/or decreased the burdens of state, county or municipal governments.

2. That on July 1, 2010, it is clear that the then-existing Hospital Plaza facility operated by Petitioner UHC was providing health services on an inpatient or outpatient basis to individuals who could not afford to pay for such services or was providing activities that promoted the health of the community served by the hospital and/or decreased the burdens of state, county, or municipal governments.

3. That on July 1, 2010, the new UHC hospital being built at the Jerry Dove Drive location was subject to ad valorem property taxation.

4. That Title 110, Series 3 of the West Virginia Code of State Rules is not contrary to the intentions of the citizens of this State.

5. That Title 110, Series 3 of the West Virginia Code of State Rules is consistent with the West Virginia Constitution and the West Virginia Code.

6. That W.Va. Code St. R. tit. 110, § 3-24.17.3 is not discriminatory and does not deprive Petitioner UHC of equal protection under the law.

7. That the decision of the Fayette County Assessor is not a systematic and intentional departure from the principle of practical equality and, therefore, does not provide Petitioner UHC with a valid equal protection claim.

8. That the application of W.Va. Code St. R. tit. 110, § 3-24.17.3 to Petitioner UHC is not a systematic and intentional departure from the principle of practical equality and, therefore, does not provide Petitioner UHC with a valid equal protection claim.

9. That W.Va. Code St. R. tit. 110, § 3-24.17.3 is consistent with and furthers the principle that property used by a charitable organization be used primarily and immediately for the charitable purpose of the organization in order for such property to receive an exemption from ad valorem property taxation and, as such, application of W.Va. Code St. R. tit. 110, § 3-24.17.3 to Petitioner UHC is not a violation of equal protection.

#### **Rulings.**

It is, therefore, accordingly **ORDERED** that the motions for summary judgment filed by Respondents Romano and Griffith be and the same are hereby **GRANTED** for the reasons set forth in this Order.

It is, further, **ORDERED** that the new UHC hospital facility located at Jerry Dove Drive shall be and the same is **NOT EXEMPT** from ad valorem property taxes for **Tax Year 2011**.

The Circuit Clerk is **DIRECTED** to send certified copies of this Order to the following:

Michael S. Garrison, Esq.  
Spilman, Thomas & Battle  
48 Donley Street, Suite 800  
PO Box 615  
Morgantown, WV 26507-0615

James F. Armstrong, APA  
Harrison County Courthouse  
301 West Main Street, Suite 201  
Clarksburg, WV 26301

Kathy Schultz, Esq.  
Office of the Attorney General  
State Capitol Complex, Bldg. 1, Room W435  
Charleston, WV 25305

The Circuit Clerk is, further, **DIRECTED** to remove this case from the Court's docket.

ENTER: January 7, 2013

John Lewis Marks, Jr.  
The Hon. John Lewis Marks, Jr., Judge

STATE OF WEST VIRGINIA  
COUNTY OF HARRISON, TO-WIT:

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18<sup>th</sup>  
Family Court Circuit of Harrison County, West Virginia, hereby certify the  
foregoing to be a true copy of the ORDER entered in the above styled action

on the 7 day of January, 2013.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix

Seal of the Court this 7 day of January, 2013.

Donald L. Kopp II sk  
Fifteenth Judicial Circuit & 18<sup>th</sup> Family Court  
Circuit Clerk  
Harrison County, West Virginia