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No. 20-0901



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

At Charleston

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**WAR MEMORIAL HOSPITAL, INC., Petitioner Below,
*Petitioner,***

v.

**THE WEST VIRGINIA HEALTH CARE AUTHORITY, Respondent Below,
*Respondent.***

***From the Circuit Court of Kanawha County, West Virginia
Civil Action No. 20-AA-69***

PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
REPLY.....	1
1. WMH’s exemption application met the criteria in W.Va. Code § 16-2D-11(c)(27)	2
2. There is no “primary hospital location” requirement in the statutory exemption.	3
CONCLUSION	4

TABLE OF AUTHORITIES

West Virginia Supreme Court Cases:

<i>Appalachian Power Co. v. State Tax Dept. of West Virginia</i> , 195 W.Va. 573, 466 S.E.2d 424 (1995).....	2, 4
--	------

Other Jurisdictions:

<i>Kmart Corp. v. Cartier, Inc.</i> , 486 U.S. 281, 108 S.Ct. 1811 (1988)	4
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West Virginia Code Provisions:

W.Va. Code § 16-2D-1(9)	3
.Va. Code § 16-2D-11	2
W.Va. Code § 16-2D-11(c)(27).....	1, 2, 3
W.Va. Code § 29A-5-4(g)	4

REPLY

Petitioner, War Memorial Hospital, Inc. (“WMH”), hereby submits this reply to the Response Brief filed by the West Virginia Health Care Authority (the “WVHCA”) on March 24, 2022. Simply stated, the WVHCA fails to defend its impermissible creation and addition of a location-based requirement that is plainly not contemplated by the text of the relevant exemption. Pursuant to W.Va. Code § 16-2D-11(c)(27): “Notwithstanding section eight and ten and except as provided in section nine of this article, the Legislature finds that a need exists, and these health services are exempt from the certificate of need process . . . (27) The acquisition and utilization of one computed tomography scanner and/or magnetic resonance imaging scanner with a purchase price up to \$750,000 by a hospital.” See W.Va. Code § 16-2D-11(c)(27) (emphasis added). The exemption places limits on the equipment being acquired, including the number (one scanner), type (computed tomography scanner and/or magnetic resonance imaging scanner), maximum purchase price (up to \$750,000) and the type of acquiring health care entity (by a hospital). *Id.* WMH’s application met all those criteria and should have been approved.

The WVHCA went one step further, however, and required that the acquired scanner be acquired by a hospital for use at its “primary hospital location.” J.A. at 15. The term “primary hospital location” is not defined anywhere and was conceived by the WVHCA to explain its denial of WMH’s proposal to acquire a magnetic resonance scanner to be located in a medical office building. See J.A. at 15 (“The Legislature did not intent for hospitals to purchase and utilize CT scanner in medical office buildings that are not part of a hospital’s primary location.”). The WVHCA is not permitted to create additional criteria, however, and WMH’s application that otherwise satisfied the criteria in the exemption should have been approved.

1. WMH's exemption application met the criteria in W.Va. Code § 16-2D-11(c)(27).

It is axiomatic that when statutory text answers the interpretive question, the language must prevail and further inquiry is foreclosed. *Appalachian Power Co. v. State Tax Dept. of West Virginia*, 195 W.Va. 573, 466 S.E.2d 424 (1995). Pursuant to W.Va. Code § 16-2D-11(c)(27): “Notwithstanding section eight and ten and except as provided in section nine of this article, the Legislature finds that a need exists, and these health services are exempt from the certificate of need process . . . (27) The acquisition and utilization of one computed tomography scanner and/or magnetic resonance imaging scanner with a purchase price up to \$750,000 by a hospital.” See W.Va. Code § 16-2D-11(c)(27) (emphasis added). No interpretation is necessary to determine the purpose of that exemption, and “further inquiry is foreclosed” in accordance with *Appalachian Power Co. v. State Tax Dept. of West Virginia*.

The relevant section, W.Va. Code § 16-2D-11, includes a list of exempt services and should have been given full force and effect by the WVHCA. The statute states the criteria for the exemption with no obscurity or opportunity for multiple constructions and WMH's application should have been approved. WMH is a critical access hospital licensed and located in West Virginia that planned to acquire and use a magnetic resonance imaging scanner for a purchase price of less than \$750,000, precisely as contemplated by the statute. However, the WVHCA improperly decided to add an additional requirement to the exemption by requiring that WMH's MRI scanner be located at WMH's primary hospital location. J.A. 11-16. The WVHCA manufactured this new criterion which does not exist. Such an interpretation is unwarranted and unlawful. Further, the Circuit Court noted in its order that “it is clear the Legislative intent was to allow hospitals to add MRI devices below a certain threshold price at their facility without the necessity and expense of CON review.” J.A. at 144. Even if the WVHCA or the Circuit Court

were permitted here to “further inquire” regarding Legislative intent, how can the Legislature’s “intent” be clear when not expressed anywhere? The WVHCA decision is clearly in violation of statutory provisions, to wit, W.Va. Code § 16-2D-11(c)(27), and must be reversed.

2. There is no “primary hospital location” requirement in the statutory exemption.

WMH’s exemption application satisfied the criteria in the statutory exemption, W.Va. Code § 16-2D-11(c)(27). WMH is a hospital that proposed to acquire and use one magnetic resonance imaging scanner for an acquisition price below \$750,000. The WVHCA only denied WMH’s application when it created a new requirement that the proposed scanner be located at the “primary hospital location.” J.A. at 15 (“The [WVHCA] finds that in creating W.Va. Code § 16-2D-11(c)(27), the Legislature intended to create an exemption for a hospital to acquire and utilize a CT scanner at its primary hospital location. The Legislature did not intent for hospitals to purchase and utilize CT scanner in medical office buildings that are not part of a hospital’s primary location. Such an interpretation would lead to absurd results.”). It bears repeating that the WVHCA’s arbitrary construct – “primary hospital location” – is not defined and does not exist anywhere. If the West Virginia Legislature had intended to include a location requirement in the exemption statute, it easily could have done so, as easily illustrated by the other limitations in other sections. *See e.g.* W.Va. Code § 16-2D-1(9) (providing a definition for the term hospital “campus” used elsewhere in the certificate of need law); *see also* W.Va. Code § 16-2D-11 (limiting certain renovations “within a hospital” without first obtaining a certificate of need). Clearly, the West Virginia Legislature knows how to include such a limitation without one being arbitrarily added by the Health Care Authority. Does “primary hospital location” mean within the hospital? On the hospital campus? On the same street? Within a mile?

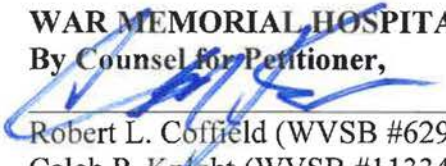
Here, WMH intended to locate the scanner in a medical office building staffed by WMH employees and treated as an outpatient, off-campus department of WMH. There is simply no requirement in the applicable statutory exemption that the MRI scanner be located at the “primary hospital location” of the hospital, whatever that definition is intended by the WVHCA to mean. The Legislature did not add such a limitation to the statutory exemption, and the WVHCA cannot arbitrarily add its own requirements. The WVHCA does not have the authority to add a new location requirement where the West Virginia Legislature did not. *See e.g. Appalachian Power Co.*, 195 W. Va. at 586; *citing Kmart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 108 S.Ct. 1811, 1818 (1988). Under the plain meaning of the statutory exemption above, WMH satisfied the criteria and its application for an MRI should have been approved. The WVHCA decision and two appeal decisions affirming the WVHCA decision must be reversed.

CONCLUSION

WHEREFORE, for the foregoing reasons, War Memorial Hospital, Inc. respectfully requests that this Court review and reverse the WVHCA decision issued on February 3, 2020 as well as the subsequent two appellate decisions as set forth in W.Va. Code § 29A-5-4(g), and grant such other relief as it deems necessary.

Respectfully Submitted,

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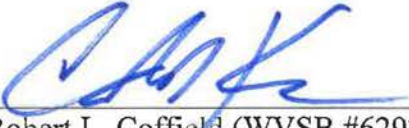
v.

THE WEST VIRGINIA HEALTH CARE AUTHORITY, Respondent Below,
Respondent.

CERTIFICATE OF SERVICE

I, Caleb P. Knight, counsel for the Petitioner, War Memorial Hospital, Inc., do hereby certify that I have served the foregoing *Petitioner's Reply Brief* upon counsel of record this 13th day of April, 2022, addressed as follows:

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