



Appellate Court Rules Against Provena on Property Tax Exemption

The Illinois Appellate Court, Fourth District (Springfield), has overturned a favorable lower court decision and has reinstated the Illinois Department of Revenue's revocation of Provena Covenant Medical Center's property tax exemption. [Provena Covenant Medical Center v. Department of Revenue](#), 2008 WL 3989685 (Ill.App. 4 Dist. 2008). ([Provena press release](#).)

Background: The hospital's tax exemption had been removed by the Department of Revenue in 2003 after the local Board of Review in Champaign County recommended that the property no longer be exempt from property taxes. Thereafter, a Department administrative law judge (ALJ) recommended that the exemption be restored, but the Director of the Department rejected the ALJ's recommendation. Last summer, the circuit court in Sangamon County restored the exemption based on charitable and religious grounds. But, the appellate court has now reversed the lower court decision because it said it could find *no clear error* in the Director's decision.

Appellate Court Decision: The appellate court reviewed the Director's decision for "clear error," meaning that it would let the Director's decision stand unless it was left with the "definite and firm conviction that a mistake has been committed." The court chose not to apply the *de novo* standard of review, which would have meant taking a fresh look at facts that were established at the administrative hearing.

The Property Tax Code requires the satisfaction of two factors for a charitable exemption from property taxes: the property's owner must be an "institution of public charity" and the property itself must be used "exclusively" for "charitable purposes." (Courts have said that "exclusively" actually means "primarily.")

The appellate court first examined Provena's entitlement to a property tax exemption as the owner of the property. It considered the "distinctive characteristics of a charitable institution" as outlined by the Illinois Supreme Court in *Methodist Old Peoples Home v. Korzen*¹. It stated that some of the characteristics outlined in *Korzen* were actually "essential criteria" for tax exemption and others were mere guidelines, at least one of which had "waned in importance."

First, the Court found that not-for-profit status, apparently one of the essentials, did not, by itself, confer an exemption under the Property Tax Code. The court then went on to discuss the other factors of the *Korzen* test:

¹ 39 Ill. 2d 149 (1968)

1. The institution bestows benefits upon an indefinite number of persons for their general welfare so as to reduce the burdens on government.

In discussing this criteria, the court examined whether Provena was a “gift to the public” and whether Provena exercised “general benevolence as opposed to doing what a for-profit hospital does: selling medical services.” The court agreed with the Director’s view that charities must actually donate their services in order to relieve the government of a burden.

2. The funds of the organization are mainly from private and public charity.

According to the court, funding by charitable donations can help to establish the identity of an institution as charitable, but such a finding is not essential.

3. The institution provides charity to all who need it and apply for it and refrains from placing obstacles in the way of such charity.

The court discussed the meaning of the word “charity” in this clause and whether *a charity* is a gift, which is how the Illinois Supreme Court in 1893 began its definition of a charity, or whether *charity* is a gift, which, according to the court, implied an ongoing obligation to give gifts.

The court declared that the provision of medical care, unless given freely, did not constitute a charitable purpose. The court concluded that not only is *a charity* a gift, but that charity is a gift, an act of kindness or benevolence. It used the Merriam-Webster Collegiate Dictionary meaning of the word charity to conclude that to be charitable, an institution must “give liberally.”

According to the court, these factors were essential criteria because they went “to the heart of what it means to be a charitable institution.” Based on the Director’s conclusion that the record contained no evidence of the amount of charity that Provena had dispensed in 2002, the court concluded that the Director had not made a mistake in finding that Provena was not a charitable institution. Because of the standard of review applied by the court, it did not independently review the factual record.

The court continued discussing whether charity was a gift as it examined the second statutory prong, charitable use of the property. According to the court, billing someone for services – even at a discount - does not constitute a gift. The court further described the meaning of charity:

- “A charity is not defined by percentages, but it does not follow that percentages are irrelevant.”

The court acknowledged the Illinois Supreme Court’s declaration in *Quad Cities Open v. City of Silvis*² that a charity was not defined by percentages. But, the court went on to say

² 208 Ill.2d 498 (2004)

that a comparison of overhead costs and charitable expenditures *was* relevant. “The disparity between overhead and charitable expenditures can be so extreme that it would be disingenuous to maintain that such a vast amount of overhead was incurred for the purpose of generating such a minuscule (0.7% of revenues) amount of charity.”

- “But coming up with a fixed percentage, applicable to all charitable hospitals would be problematic.”

The court described an across-the-board “quantitative test” as an impossibility and agreed that the number of impoverished people seeking treatment can be highly variable depending upon the size and location of the hospital and the availability of medical insurance.

The court cited numerous journal articles to support its conclusion that the Director could have inferred that in 2002, Provena did not “dispense charity to all who needed it and that Covenant, therefore, was not used exclusively for charitable purposes.”

- “Basically, the charity care policy lacked nuance.”

The hospital’s charity care policy applied a discount from charges according to the patient’s income level. Though there was testimony that the policy was not rigidly applied, the court implied that Covenant had to show it billed its patients only as much as they could afford to pay, rather than billing in accordance with its written policy. As written, “the charity care policy posed an obstacle to the dispensation of charity to the needy” because it could deter them from seeking treatment.

- “Just because Covenant never turns a patient away because of the patient’s inability to pay, it does not follow that Covenant thereby provides charity.”

The Department had stipulated at the administrative hearing that no patient had ever been turned away. But, the court was unimpressed by this finding because it could still mean that a poor patient was held contractually liable to pay for the treatment.

- “...the Illinois standard for exemption from property taxes is different from the more diffuse ‘community benefit’ standard for exemption from the federal income tax.”

Because the analysis for a charitable property tax exemption focuses on use of the property, some of the benefits the hospital provided to the community could not justify the property tax exemption. For example, the ambulance service that the hospital provided might not be charitable use of the property if the ambulances were not garaged on the property.

The court briefly discussed an exemption based on religious grounds, but denied that as well. According to the court, “Covenant more resembles a business with religious overtones than property used primarily for religious purposes.”

Though the court acknowledged the obvious public benefit a modern hospital provides its community, it concluded that Provena could not prevail in its attempt to exempt itself from property tax.

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