

1992

# Kathleen C. Howell v. County Board of Equilization of Cache County : Brief of Respondent

Utah Court of Appeals

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920604

KATHLEEN C. HOWELL, Cache )  
County Assessor, )

Petitioner, )

**vs.**

COUNTY BOARD OF EQUALIZATION )  
OF CACHE COUNTY, STATE OF )  
UTAH, ex rel. IHC HOSPITALS, )  
INC., )

Respondent. )

Supreme Court Nos. 920604  
930010  
930011  
930012  
930013  
930014  
930023

Priority No. 15

BRIEF OF RESPONDENT  
IHC HOSPITALS, INC.

*Appeal from Orders of the  
Utah State Tax Commission*

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**FILED**

SEP 20 1993

CLERK SUPREME COURT  
UTAH

IN THE UTAH SUPREME COURT

KATHLEEN C. HOWELL, Cache	)	
County Assessor,	)	
	)	
Petitioner,	)	
	)	Supreme Court Nos. 920604
vs.	)	930010
	)	930011
COUNTY BOARD OF EQUALIZATION	)	930012
OF CACHE COUNTY, STATE OF	)	930013
UTAH, ex rel. IHC HOSPITALS,	)	930014
INC.,	)	930023
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### COMPLETE LIST OF PARTIES

In Appeal No. 920604, the parties are KATHLEEN C. HOWELL, as Cache County Assessor, the COUNTY BOARD OF EQUALIZATION OF CACHE COUNTY, the UTAH STATE TAX COMMISSION, and IHC HOSPITALS, INC., owner of Logan Regional Hospital.

In Appeal No. 930023, the parties are RONALD M. SMITH, as Utah County Assessor, the COUNTY BOARD OF EQUALIZATION OF UTAH COUNTY, the UTAH STATE TAX COMMISSION, and IHC HOSPITALS, INC., owner of Utah Valley Regional Medical Center, Orem Community Hospital, and American Fork Hospital.

In Appeal Nos. 930010, 930011, 930012, 930013 and 930014 the parties are ROBERT L. YATES, as Salt Lake County Assessor, the COUNTY BOARD OF EQUALIZATION OF SALT LAKE COUNTY, the UTAH STATE TAX COMMISSION, and IHC HOSPITALS, INC., as owner of LDS Hospital, Primary Children's Medical Center, Cottonwood Hospital Medical Center, Wasatch Canyons Hospital, and Alta View Hospital.

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### STATEMENT OF JURISDICTION

The Utah Supreme Court has jurisdiction of these appeals pursuant to section 63-46b-14, Utah Code Ann. (1992), and section 78-2-2 (3)(e)(ii), Utah Code Ann. (Supp. 1993).

### STATEMENT OF ISSUES FOR REVIEW AND STANDARD OF REVIEW

1. Do the county assessors have standing or authority to bring these appeals?

Standard of Review--Although the issue relating to the Assessors' standing was raised in proceedings below (R. 135, 315, 598, 846, 1061 & 1320), the Utah State Tax Commission did not rule on it in deciding these cases. This Court, therefore, must consider the issue de novo. Standing is jurisdictional and may be considered for the first time on appeal. See, e.g., Harris vs. Springville City, 712 P.2d 188, 190 (Utah 1986) (on rehearing).

2. Do exemption standards adopted by the Utah State Tax Commission comport with the requirements of Article XIII Section 2 of the Utah Constitution?

Standard of Review--Under sections 63-46b-16(4)(a) & (d), Utah Code Ann. (1992), Section 59-1-610, Utah Code Ann. (1993 Supp.), and this Court's cases on the subject, the standard of review for questions of law, including constitutional construction, is a correction of error standard. See, e.g., Questar Pipeline Co. vs. Utah State Tax Comm'n, 817 P.2d 316, 317-18 (Utah 1991). In interpreting an unclear constitutional provision, courts nevertheless consider the practical construction by administrative officers required to apply the

provision.<sup>1</sup> The Tax Commission's interpretation of the constitution's tax article is especially pertinent in the present cases. The Utah Constitution charges the Tax Commission with the duty to administer and supervise the state's tax laws, including Article XIII Section 2 of the Constitution, and the duty to regulate and control the counties in their administration of the property taxes. Utah Const. Art. XIII §11. The Commission's construction, arising out of its practical experience in administering the tax laws, merits serious consideration by the Court.

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<sup>1</sup> The general rule is as follows: "In determining the meaning of an ambiguous constitutional provision, the courts may properly seek extrinsic aid by ascertaining the construction given such provision, at the time of its adoption and since, by those whose duty it has been to construe, execute, and apply it in practice." 16 C.J.S. Constitutional Law § 33 (1984); accord, Parsippany-Troy Hills Educ. Ass'n vs. Board of Educ., 457 A.2d 15, 18 (N.J. Super. Ct. App. Div. 1983) (state commissioners' interpretation of constitutional language accorded "certain deference"), cert. denied, 468 A.2d 182 (N.J. 1983); Thomas vs. Department of Motor Vehicles, 131 Cal. Rptr. 164, 171 (Cal. Ct. App. 1976) (interpretation of constitutional provision by state department entitled to substantial weight); Three Rivers Jr. College Dist. of Poplar Bluff vs. Statler, 421 S.W.2d 235, 243 (Mo. 1967) (regarding constitutionality of tax levy; construction of constitutional provision by legislature and the executive "while not binding or conclusive, is entitled to weight, if the meaning of the constitutional provisions are doubtful, and should not be departed from unless manifestly erroneous."); State ex rel. West Virginia Bd. of Educ. vs. Sims, 101 S.E.2d 190, 196 (W. Va. 1957) ("Even if doubtful, such interpretation [of a constitutional provision] by those administering it should be given great weight by the courts."); City of Roanoke vs. James W. Michael's Bakery Corp., 21 S.E.2d 788, 796-97 (Va. 1942) (in tax assessment case, interpretation of constitutional provision by assembly and state tax commissioner given deference).

### DETERMINATIVE CONSTITUTIONAL PROVISIONS

Sections 2(2) and 11 of Article XIII of the Utah Constitution, which are set forth verbatim in Addendum I to this brief, are determinative of the issues on appeal.

### STATEMENT OF THE CASE

#### A. Nature of the Case

These consolidated appeals from decisions of the Utah State Tax Commission (hereinafter the "Tax Commission") concern the tax-exempt status of nine hospitals owned by IHC Hospitals, Inc. (hereinafter "IHC"). The Tax Commission held unanimously that all of the hospitals were exempt under Article XIII Section 2 of the Utah Constitution. In each case, the county assessor has appealed the Tax Commission's decision on the ground that the standards utilized by the Tax Commission do not conform to the requirements of the Constitution.

#### B. Proceedings Below

After exemption hearings at the county level in 1991, the Salt Lake County Board of Equalization and the Cache County Board of Equalization ruled that IHC's hospitals were tax exempt for the years 1986-91. (R. 165, 447, 756, 971, 1213 & 1451.) The Utah County Board of Equalization was deadlocked on the exempt status of the three IHC hospitals in that county. With one member of the Board of Equalization abstaining, commissioners voted one to one on the exempt status of the hospitals. The secretary to the Utah County Board of

Equalization wrote IHC advising it that the county's deadlock vote constituted a denial of the exemption. (R. 1653.)

The Cache County Assessor and the Salt Lake County Assessor appealed the decisions of the Boards of Equalization in those counties. (R. 172, 325, 636, 856, 1071 & 1330.) IHC appealed the determination of the secretary of the Utah County Board of Equalization that the deadlock vote resulted in a denial of the exemption. (R. 1654.)<sup>2</sup> All of these appeals were consolidated, with others from Weber County, before the Tax Commission. In November, 1991, IHC moved for summary judgment as to all pending appeals. (R. 140 & 1622.) In support of its motion, IHC established that each of its hospitals complied with the Tax Commission Standards. On December 17, 1992, the Tax Commission granted each of IHC's motions for summary judgment holding unanimously that each of the nine hospitals was tax exempt for each of the years in question. (R. 43, 240, 468, 773, 986, 1245 & 1477.) Following the issuance of these decisions, the county assessors of Salt Lake, Cache and Utah Counties (hereinafter the "County Assessors") filed notice of these appeals. The assessor of Weber County did not appeal.

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<sup>2</sup> In IHC's view, Utah County's tie vote was insufficient to "revoke" the hospitals' previously granted exemptions under section 59-2-1101(3)(b), Utah Code Ann. (Supp. 1993). So long as appropriate annual affidavits are filed, exemptions continue until the county board of equalization decides to end them. The Utah County Board of Equalization had granted an exemption to the hospitals for all previous years. Sections 59-2-1101, 59-2-1102, and 59-2-1103, Utah Code Ann. (1992 & Supp. 1993) all necessitated an affirmative vote to withdraw the exemption.

C. Facts

The statement of facts appearing in the Assessors' Brief omits undisputed facts that were central to the decisions of the county boards of equalization and the Tax Commission in these cases. In addition, the Assessors' brief is replete with factual allegations that were unsupported in proceedings below and have no bearing on this appeal. To set the record straight, IHC sets forth the following facts, all of which were undisputed in proceedings below.

1. *History of the Hospitals' Exemptions and the Formulation of Tax Commission Standards (1990)*

In Utah County vs. Intermountain Health Care, Inc., 709 P.2d 265 (Utah 1985), this Court nullified statutes that had previously governed property tax exemptions for non-profit hospitals and substituted, in their place, a series of "guidelines" adapted from the Minnesota courts.<sup>3</sup> The Utah County decision was, by its terms, prospective only, taking effect on January 1, 1986. In its 1986 General Session, the Utah Legislature resolved to amend Article XIII Section 2 of the Utah Constitution. The amendments, which would have rendered the Court's Utah County decision moot, were submitted to the

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<sup>3</sup> The Utah County guidelines were borrowed from North Star Research Institute v. County of Hennepin, 236 N.W.2d 754, 757 (Minn. 1975). Although the Minnesota courts still apply the North Star guidelines in cases involving charitable institutions other than hospitals, see, e.g., Chicago Health Services vs. Commissioner of Revenue, 462 N.W.2d 386, 391 (Minn. 1990), Minnesota has never applied the guidelines to non-profit hospitals.



voters as Proposition One in November of 1986.<sup>4</sup> Proposition One was narrowly defeated by 50.1% of the votes cast.

In the spring of 1987, IHC's hospitals prepared and presented to the boards of equalization of thirteen different counties applications for property tax exemption. The applications were uniform in that they all addressed the issues raised by the Utah County decision. After the hearings on those applications in 1987, all of the county boards of equalization, with the exception of Salt Lake County, granted exemptions to IHC's hospitals. In Salt Lake County, the board of equalization determined that LDS Hospital, Primary Children's Medical Center and Wasatch Canyons Hospital would be exempt, but that Cottonwood Hospital and Alta View Hospital would not be exempt.

On August 25, 1988, while appeals from some of these decisions were pending, the Tax Commission directed county boards of equalization to suspend all hospital exemption proceedings to allow the Tax Commission the opportunity to promulgate uniform standards. In the Tax Commission's view, the guidelines announced in the Utah County case and Yorgasen vs.

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<sup>4</sup> The Legislature's resolution would have amended Article XIII Section 2 of the Utah Constitution to include the words "hospital" and "nursing home" in the list of exempt uses of property, as follows:

"(2) The following are property tax exemptions:

(c) Property owned by a nonprofit entity which is used exclusively for religious, charitable, hospital, nursing home, or educational purposes . . .".

County Bd. of Equalization, 714 P.2d 653 (Utah 1986), could not readily be applied by the counties to individual cases. As the Tax Commission said:

These cases have presented a difficult problem for both county boards of equalization and the Tax Commission. Although they provide general guidance and signal the need for increased scrutiny, they do not provide counties or the Tax Commission with objective standards by which to measure the sufficiency of particular exemption applications. As a result, for 1986 and subsequent years, different counties proceeded to decide hospital and nursing home applications on the basis of widely divergent standards.

(R. 77.) The Tax Commission therefore decided to study the Utah Supreme Court's decisions, confer with county and institutional representatives, and "provide county officials and property owners with a definitive set of guidelines in this area." (R. 78.) In hearings beginning in late 1988 and proceeding through 1989, the Tax Commission conferred with representatives of the counties, county assessors, non-profit hospitals and nursing homes, and for-profit hospitals. A series of public hearings followed. After considering the lengthy debates and written submissions of the parties, the Tax Commission issued its "Non-profit Hospital and Nursing Home Charitable Property Tax Exemption Standards" (hereinafter the "Tax Commission Standards") on December 18, 1990. (R. 70.)

2. *Hearings Before County Boards of Equalization on the Hospitals' Compliance With the Standards (1991)*

In an effort to comply with the Tax Commission Standards, each of IHC's hospitals prepared and submitted to county boards

of equalization new exemption applications for the years 1986 through 1991.<sup>5</sup> The applications followed a common format patterned after the Tax Commission Standards themselves. The first part related to the hospital's organization, its governance and its history. The second part dealt with issues of private inurement, specifically the uses of its revenue, its federal tax exemption, payments to officers, employees and others, and the nature and business of IHC's affiliates. The third part of the application dealt with the hospital's policies and practices relating to the availability of service, particularly its admissions and charity policies, and its efforts to inform the public about the availability of service.

The fourth part of each application related to the composition of the hospital's governing board of trustees, IHC's board of trustees, and the hospital's charity plan, which was to be submitted annually to the county. The fifth part detailed the hospital's "total gift to the community" in accordance with the measurement requirements imposed by the Tax Commission. Each hospital was required to quantify, in accordance with the Standards, the unreimbursed value of indigent care, community and professional education and service, medical program discounts, donations of time, donations of money, and other items that constituted the hospital's gift to the community.

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<sup>5</sup> IHC's applications are included with the record in binders, but are not numbered consecutively with the remainder of the record. Each of the applications will be referred to by hospital name, volume, and page.

The sixth and final part described off-site facilities for which an exemption was sought.

In 1991, each county in which IHC owns a hospital held a board of equalization hearing on the applications. With the exception of Utah County, each county board of equalization voted to grant the exemption to each of IHC's hospitals. (R. 165, 447, 756, 971, 1213 & 1451.) In Utah County, the board of equalization, with one member recusing himself, voted one-to-one on the exemption issue. (The county commissioner who voted against the exemption nevertheless agreed that all three hospitals complied with Tax Commission Standards.) The secretary to the Utah County Board of Equalization, in a written communication to the hospitals and the county assessor, took the position that a one-to-one deadlock constituted a vote to deny the exemption. (R. 1653.)

### 3. *The Hospitals and the Nature of Their Service to the Community*

The nine hospitals that are the subject of this appeal vary greatly in size and scope of service. They range in size from American Fork Hospital (a 72-bed acute care medical facility serving residents of rural Utah County) to LDS Hospital (a 520-bed urban referral center for patients from more than 75 other health care institutions in six states). The hospitals' exemption applications present a detailed picture of each hospital's relations with its patients and the community. None of the facts set forth in the sworn applications was ever disputed in proceedings below. Although the applications

describe many differences among the hospitals, the hospitals' similarities are more directly relevant to the exemption questions raised in these appeals. Following is a brief description of the features shared by these hospitals as they are relevant to the property tax exemption under Article XIII Section 2 of the Utah Constitution.

(a) Ownership and organization

IHC, which owns and operates the hospitals, is a non-profit corporation organized under Utah law, and each of the hospitals is organized and operated on a non-profit basis. IHC has no stock and no investors. It pays no dividends and distributes no profits. IHC's Articles of Incorporation prohibit the payment of profits to the trustees, officers or employees of IHC or to any other person. Each of the hospitals was organized to provide for the care and treatment of the sick, the afflicted, the infirm, the aged and the injured. See, e.g., Logan Reg. Hosp. App. at 5-7.

Each of the hospitals is governed by a local board of trustees whose members serve without pay and without financial interest of any sort in the hospital. IHC and its parent company, Intermountain Health Care, Inc., are likewise governed by a board of trustees whose members serve on a completely voluntary basis, without pay, and without a financial interest. The IHC Board of Trustees is ultimately responsible for the hospitals' services, their financial condition, and their long-term stability as essential public institutions. Id. at 6-7.

(b) Revenue, expenses and compensation

For each relevant year, each hospital's revenues were used entirely for hospital or health care purposes and for no other purpose. Id. at 8. Some of the hospitals produced net earnings during relevant periods, and some did not. The exact amount of each hospital's annual revenues, expenses and capital expenditures was set forth in the applications.<sup>6</sup> During the entire period covered by the applications, IHC received a federal exemption under section 501(c)(3) of the Internal Revenue Code. A copy of IHC's most recent grant of tax exempt status from the Internal Revenue Service was annexed to the applications.

The IHC Board of Trustees has the responsibility to set compensation for the officers and employees of the system and to make sure that payments to vendors and suppliers are reasonable. In the applications, IHC described the specific steps taken by IHC's Board of Trustees to assure the reasonableness of

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<sup>6</sup> The Assessors have seriously misinterpreted the hospitals' financial information to conclude that the hospitals' "profits and reserves" increased collectively by nearly \$100 million between 1986 and 1991 (Assessors' Brief at 40-41 & 45), with the implication that the hospitals have enormous sums of available cash. The "reserve" figures selected by the Assessors actually represent each hospital's "fund balance," as reported on its balance sheet. See, e.g., Logan Reg. Hosp. App. Ex. 5. The fund balance is merely the difference between assets (including the undepreciated value of buildings and other capitalized assets) and liabilities. Thus, for example, most of the fund balance for Primary Children's Medical Center for 1990 (\$79,420,300) represents the undepreciated value of that hospital's new building and equipment, rather than cash. Prim. Child. Med. Ctr. App., Vol. 3, Ex. 22.

compensation and other payments. See, e.g., Logan Reg. Hosp. App. at 10-13. For example, with information and advice from independent consultants, the Trustees set total compensation levels for all executives and administrators that are at or below the fiftieth percentile of salaries paid to similarly situated executives in other non-profit hospital systems in the employment marketplace. Id. at 12 & Ex. 8 thereto.

On the basis of this record, it was undisputed that IHC's payments to officers, employees and vendors did not result in "private inurement" within the meaning of section 501(c)(3) of the Internal Revenue Code.<sup>7</sup> (R. 45, 242, 470, 521, 773, 1018, 1247 & 1480.)

(c) Admissions policy and Care for the Indigent

These hospitals serve all patients on the basis of medical need, without regard to race, religion, gender or ability to pay. The decision to admit or not to admit a patient is based entirely upon the clinical judgment of the admitting physician.

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<sup>7</sup> The applications also described each of IHC's corporate affiliates, stating the nature of the affiliate's business and the uses to which revenues of the affiliates were put. See, e.g., Logan Reg. Hosp. App. at 13-16. With two exceptions, all of IHC's affiliated companies are non-profit entities. One for-profit subsidiary is IHC Insurance Company, Inc., which was formed in 1987 to enable IHC's hospitals to obtain low cost reinsurance coverage. As noted in the applications, IHC saves well over \$100,000 per year in insurance commissions through this company; all of the savings and profits from this entity are paid to IHC for the benefit of its non-profit affiliates. Id. at 16. The other exception, now called Affiliated Services, Inc., is a company that administers AmeriNet, a hospital supply purchasing program that saves IHC's hospitals millions of dollars every year. Any profits from this affiliate go directly to its non-profit affiliates. Id.

The applications set forth the provisions of the hospitals' bylaws and policies regarding admissions. For example, Logan Regional Hospital's bylaws provide:

All patients shall be served by the hospital regardless of race, religion, creed, national origin, sex, or ability to pay, with the exception of patients who need custodial care only.

Logan Reg. Hosp. App. at 17 & Ex. 10 thereto. Other hospitals' bylaws have similar provisions. IHC's Admissions, Collection and Charity Policy, which applies to every hospital in the IHC system, provides in part:

We are committed to providing health care to all those who need it, regardless of whether they can afford to pay for it. Our commitment to charitable services also includes (1) providing health care in under-served urban areas and rural communities, even to the extent that subsidization becomes necessary, (2) community education programs and other aids in maintaining public health, and (3) education and research in the field of medical science for physicians, nurses and other allied health professionals.

Id. at 18 & Ex. 11 thereto. Elsewhere the Policy states:

In order to relieve the patient of worry over bills he cannot pay and in order to relieve our collection system of accounts that cannot be collected, charity accounts should be identified as soon as possible . . . . If the patient qualifies for a charity writeoff, the patient or his guardian should be notified of the decision immediately . . . . Most of the patients who qualify for charity are distressed and embarrassed by their financial condition. The hospital personnel who interview such patients must treat them with understanding and compassion. It is our objective to honor the dignity of these people and all others whom we serve.



Id. The evidence was undisputed that these provisions accurately reflected the practice at each of the hospitals in question.

In each of the applications, the hospitals described their efforts to inform patients and public that the hospitals provide care to all those in need without regard to ability to pay. Since 1988, IHC has distributed an annual report to over 350,000 households in Utah to describe the nature of its charitable services. See, e.g., Logan Reg. Hosp. App. Ex. 12. Each year, dozens of newspaper articles and other materials advertise the availability of free and discounted care. Id. Ex. 12. Hospital counsellors have the duty to determine whether patients qualify for a reduced charge or free care and, if so, to notify them that they will have no obligation to the hospital. See, e.g., Logan Reg. Hosp. App. at 19-20. Signs placed throughout the hospitals advise patients and the public that the hospitals "provide charity care or other assistance to those in medical need." Id. at 20. The hospitals' publications routinely contain the statement that the hospitals' "mission is to provide quality health care to those with medical needs regardless of their ability to pay." Id.

IHC's urban hospitals (LDS Hospital, Cottonwood Hospital and Alta View Hospital) operate indigent care clinics in central city and poor neighborhoods to assist indigent people with their

primary health care needs.<sup>8</sup> These clinics operate on a walk-in basis and provide free care to people of all ages. Indigent people with serious medical problems are referred directly to an IHC hospital for free hospital care. See, e.g., LDS Hosp. App., Vol. I, at 25-27.

Each of the applications set forth the value of the hospitals' free care or reduced charge care to the medically indigent for each of the years in question. See, e.g., Logan Reg. Hosp. App. at 21-22 & Ex. 14 thereto. At each hospital, the amount of unreimbursed care to indigent patients increased significantly during the period 1986 through 1991. The applications also detailed the unreimbursed value of hospital care for Medicare and Medicaid patients. Id. The increase in these shortfalls since 1986 was staggering. For example, in 1990 alone LDS Hospital provided care under the Medicare, Medicaid, and the Utah Medical Assistance Program with unreimbursed discounts (based upon the Tax Commission's measurement of value) equalling \$22.3 million. LDS Hosp. App., Vol I, at 24 & Ex. 15 thereto. This sum represents a 961% increase in the unreimbursed amount of these shortfalls since 1986. Facts set forth in the applications compel the conclusion that, with each passing year, these hospitals are shouldering the financial burden of medical care for the poor and the

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<sup>8</sup> Since the hospitals' initial applications were filed in early 1991, Logan Regional Hospital and Utah Valley Regional Medical Center have also opened indigent-care clinics in low-income neighborhoods.

elderly, a burden for which government has traditionally been responsible.

(f) Charity plans

Beginning in 1991, the Tax Commission Standards required each hospital to confer annually with the county on whether it was meeting the hospital needs of the people. In addition, to comply with the Tax Commission Standards, each of the hospitals submitted to the county board of equalization a "charity plan." The charity plan details ways in which the hospital intends to address the needs of the community, including health care and educational needs, and the particular needs of indigent patients. In each instance, the hospitals invited the county to make suggestions as to ways in which the hospital's charity plan could be improved.

(g) Total gift to the community

Each hospital, for each year in question, calculated its "total gift to the community" in accordance with the Tax Commission Standards and then compared its total gift with its potential property taxes. Each hospital's total gift to the community was comprised of the reasonable value of unreimbursed care to medically indigent patients, the reasonable value of volunteer and community service rendered by the hospital, the reasonable value of unreimbursed care for patients covered by

Medicare, Medicaid or similar government entitlement programs,<sup>9</sup> the reasonable value of volunteer assistance donated by individuals to the hospital, and the value of monetary donations given to the hospital during the year.<sup>10</sup>

In each year, and for each hospital, the "total gift to the community" far exceeded potential taxes. For example, for 1990 Logan Regional Hospital's total gift to the community equalled more than \$5.4 million, whereas its potential property tax equalled about \$370,000. Logan Reg. Hosp. App. at 28 & Ex. 16 thereto. For 1990, LDS Hospital's total gift to the community exceeded \$30.2 million, as compared to a potential property tax of \$1.8 million. LDS Hosp. App., Vol I, at 31 & Ex. 17 thereto. Utah Valley Regional Medical Center's total gift to the community in 1990 equalled more than \$17.6 million, as compared to a potential property tax of \$653,000. Utah Valley Reg. Med. Ctr. App., Vol I, at 30 & Ex. 29 thereto. The "total gift to

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<sup>9</sup> The value of indigent care and of medical program discounts was calculated in accordance with the Tax Commission's Standards. The value was measured by "the [hospital's] standard charges, reduced by the average of reductions afforded to all patients who are not covered by government entitlement programs, plus expenses directly associated with special . . . indigent clinics." Tax Commission Standard V.

<sup>10</sup> Under Tax Commission Standard V, "where donations are spent on depreciable items, the value of the gift should be amortized over the useful life of facilities purchased; where donations are spent on patient care and non-depreciable items, the full amount of the donations should be counted in the year of donation; and where donations are retained and invested, annual capital appreciation from the donation should be counted towards the gift."

the community" does not include bad debt. Rather, it includes only those items of community benefit deemed appropriate by the Tax Commission.

(h) Offsite facilities

Each exemption application described facilities associated with the hospital but located away from the hospital campus for which exemptions were sought. These offsite facilities included indigent care clinics located in central city neighborhoods, Instacare facilities, and centralized offices for purchasing, management and recruiting. Each of these offsite facilities was operated in accordance with the same policies relating to charity as the hospitals they serve. Each of these offsite facilities was necessitated by either the needs of patients or the desirability of achieving economies of centralization.

### SUMMARY OF ARGUMENT

The county must speak with one voice on exemption issues, through its board of equalization, subject to the supervision of the Tax Commission. County assessors have no statutory responsibilities relating to the determination of exemptions and thus lack standing to challenge the county's exemption decisions, especially where those decisions have been confirmed by the Tax Commission. As a result, the Assessors may not lawfully pursue these appeals.

Although this Court's exemption decisions required closer scrutiny of relevant factors, they did not provide county boards of equalization with clear and objective standards for application to specific cases. As a consequence, in hearings held in 1987 and 1988, the counties applied divergent criteria in rulings on hospital exemptions. To give the counties concrete guidance, and to avoid piecemeal litigation for years, the Tax Commission properly undertook the task of fashioning objective standards that would be faithful to this Court's decisions.

The Assessors urge the Court to go farther than any state supreme court has ever gone in restricting the property tax exemption for hospitals. They do so on the basis of two assumptions having no support in the law. First, they incorrectly assume that "exclusively charitable purposes" under Article XIII Section 2 are limited to free hospital care for the poor; they assume that, if hospitals accept payment from those

who can pay, they are for that reason "commercial" rather than "charitable." This is not the law in Utah or any other jurisdiction in the United States. Modern authorities agree that charity includes the provision of health care on a nonprofit basis, to rich and poor alike, so long as the services are made available to everyone without regard to financial condition. Second, the Assessors incorrectly assume that this Court's "material reciprocity" requirement prevents hospitals from recovering the costs of indigent care from donations or from charges to other patients. If this view prevails, no financially viable institution could possibly be "charitable" because every charitable institution must obtain--from the community, from entitlement programs, or from insurance--the resources to fund operations. Nonprofit hospitals, like other public charities, are conduits for the community's resources.

The Tax Commission Standards represent a painstaking effort to hold hospitals accountable and, most importantly, to encourage charitable giving. Each hospital must meet each standard in order to qualify for the exemption. The standards are more rigorous than any exemption standards developed by courts for application to hospitals in the United States. Each of the Tax Commission Standards finds its source in this Court's decisions. The only one of the Standards that the Assessors seriously challenge is Standard V, relating to the hospitals' "total gift to the community." After careful consideration of all of the Assessors' contentions, the Tax Commission correctly

adopted a formula for valuation of the hospitals' gift, correctly included donations in the gift, and correctly decided to measure the gift against potential property tax liability.

#### ARGUMENT

##### POINT I THE ASSESSORS LACK STANDING TO BRING THIS APPEAL

These appeals raise fundamental and, in this state, unanswered questions concerning the authority of the county assessor to pursue litigation at odds with decisions of county commissioners and the Tax Commission. Although this Court has entertained tax exemption appeals by county assessors, the Court has never been asked to address the question whether a county assessor may challenge a property tax exemption where both the county board of equalization and the Tax Commission have squarely upheld the exemption. Statutes defining the assessors' duties and this Court's decisions on standing make it clear that the county assessors may not lawfully pursue this appeal.

In this state, the corporate powers of county government may be exercised only by those with authority under statute. Lund vs. Salt Lake County, 58 Utah 546, 200 P. 510, 516 (1921). A county's powers may only be exercised by the county commissioners or by other officials acting under the commissioners' authority or under a specific grant of statutory authority. Utah Code Ann. § 17-4-2 (Supp. 1993). Under a specific grant of authority, the county commissioners, sitting as the board of equalization, may grant or deny property tax exemptions on locally assessed property. Utah Code Ann. § 59-2-



1102(1) (1992). The board of equalization's authority to determine exemptions is subject only to the supervisory authority of the Tax Commission, exercised on appeal from the exemption decisions of the board of equalization, and to judicial review before this Court.<sup>11</sup>

In contrast to the county board of equalization, the county assessor's duties are limited to assessing the fair market value of non-exempt property. Utah Code Ann. §§ 59-2-301, 59-2-303 & 59-2-303.1 (1992 & Supp. 1993). Nothing in the statutes authorizes the assessor to investigate exemptions, to decide exemptions, or to challenge the determinations of the board of equalization relative to exemptions. To the contrary, the statutes make it clear that the county must speak with one voice on property tax issues; otherwise the differing views of county commissioners and county officers will lead to repetition, inefficiency, confusion and needless public expense. To insure a degree of order in the county's administration of the property tax, the board of county commissioners has the duty to supervise the county assessor. Stillman vs. Lynch, 56 Utah 540, 544-45 192 P. 272, 274 (1920) (under the predecessor to section 59-2-1002(2), the board of county commissioners has jurisdiction to

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<sup>11</sup> Section 59-2-1006 provides in part that a "person [having] an interest, may appeal [the board of equalization's] decision to the commission" under procedures established in that statute. Utah Code Ann. § 59-2-1006(1) (1992). This authority is a specific example of the general power of the Tax Commission to "administer and supervise the tax laws of the state" under section 59-1-210(5), Utah Code Ann. (1992), and other statutes.

direct the assessor as to the method he or she shall employ in the assessment of property); see also, Utah Code Ann. § 59-2-303.1 (Supp. 1993).

This Court has established a three-part test for determining standing:

The first general criterion is that the "[p]laintiff must be able to show that he has suffered some distinct and palpable injury that gives him a personal stake in the outcome of the legal dispute."

Second, if a plaintiff does not have standing under the first criterion, he must have standing if no one else has a greater interest in the outcome of the case and the issues are unlikely to be raised at all unless that particular plaintiff has standing to raise the issue.

Third, even though standing is not found to exist under the first two criteria, plaintiff may nonetheless have standing if the issues are unique and of such great public importance that they ought to be decided in furtherance of the public interest.

Terracor Inc. vs. Utah Bd. of State Lands, 716 P.2d 796, 799 (Utah 1986) (emphasis added, citations omitted).

The Court has applied the same standing test in tax cases, requiring that a plaintiff demonstrate a legally protectable interest in the controversy before proceeding. In Kennecott Corp. vs. Salt Lake County, 702 P.2d 451 (Utah 1985), the Court considered whether a county had standing to challenge assessment determinations by the Tax Commission on state-assessed property in the county. Citing a "palpable injury that gives [the county] a personal stake" in the outcome of the litigation, and statutory authority to sue and be sued, the Court upheld the county's standing. Kennecott, 702 P.2d at 454. The Court noted

that "[i]f counties do not have standing to challenge under-assessments of state-assessed properties, then under-assessments could be effectively insulated from challenges, which would not likely be made by either a state-assessed property owner, by the Tax Commission (which made the under-assessment), or by any county-assessed tax payer." Id. at 455.

Unlike the county in Kennecott, the assessor has no legally protectable interest in the exemption decisions that are the subject of these appeals. If the county (as distinguished from the county assessor) is dissatisfied with a decision of the Tax Commission, the county may challenge the decision before this Court. This is, therefore, not a case in which standing should be granted to a litigant merely because "there are no more likely appellants, and the issue is otherwise unlikely to be raised." Olson vs. Salt Lake City School District, 724 P.2d 960, 962-63 n.1. (Utah 1986). For similar reasons, based upon similar statutory schemes, courts of other jurisdictions have declined to allow county assessors to appeal from decisions of local taxing authorities.<sup>12</sup> Precisely the same result should follow in this case.

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<sup>12</sup> See, e.g., In re Forsyth County, 410 S.E.2d 533, 533-34 (N.C. Ct. App. 1991), rev. denied, 413 S.E.2d 551 (N.C. 1992); In re Moravian Home, Inc., 382 S.E.2d 772, 774-75 (N.C. Ct. App. 1989), rev. denied and appeal dismissed, 388 S.E.2d 457 (N.C. 1989); Fadell vs. Kovacik, 181 N.E.2d 228, 230 (Ind. 1962).

POINT II THE TAX COMMISSION HAS THE AUTHORITY AND THE  
OBLIGATION TO ISSUE OBJECTIVE AND CLEAR EXEMPTION  
STANDARDS

A. *The Tax Commission Had Constitutional Authority to Issue the Standards*

Under Article XIII Section 11 of the Utah Constitution, the Tax Commission is obligated "to administer and supervise the tax laws of the State," including the provisions of Article XIII, and to regulate and control the counties with respect to county-assessed property taxes. Under section 59-1-210(3), Utah Code Ann. (1992), the Tax Commission has the power and the duty to "adopt rules and policies consistent with the Constitution and laws of this state, to govern county boards and officers in the performance of any duty relating to assessment, equalization, and collection of taxes." It also has the duty, under the same statute, "to exercise general supervision over assessors and county boards of equalization, and over other county officers in the performance of their duties relating to the assessment of property and collection of taxes . . . ."

Utah Code Ann. § 59-1-210(7) (1992). In Mountain States Tel. & Tel. Co. vs. Garfield County, 811 P.2d 184, 190 (Utah 1991), this Court reviewed the Tax Commission's authority over the counties and concluded: "These statutory provisions are by no means exhaustive. They do illustrate, however, that the Tax Commission, under Article XIII, has to a large degree assumed control of the local administration of the property tax system."

For county boards of equalization efficiently to determine property tax exemptions each year, the standards for

granting or denying exemptions must be clear and objective. If the prevailing legal rules for determining exemptions are not clear and objective, and have not been consistently applied throughout the state, the Tax Commission has the constitutional obligation to formulate uniform rules. Pursuant to this obligation, the Tax Commission issued the standards that are the subject of these appeals.

B. *Objective Standards Were Necessary*

In Utah County, this Court announced a series of factors adapted from the Minnesota courts that could be applied as "useful guidelines" to determine a hospital's exemption. Utah County, 709 P.2d at 270. The Court cautioned, however, that "each case must be decided on its own facts, and that all six factors are not all of equal significance, nor must an institution always qualify under all six before it will be eligible for an exemption." Id. The factors announced by the Court did not contain objective criteria by which compliance could be measured. For example, although the Court stated that it would be significant to determine "whether the entity is supported, and to what extent, by donations and gifts," id. at 269, the Court did not explain the amount of donations or gifts that would be dispositive. Although counties should examine "whether the recipients of the [institution]'s 'charity' are required to pay for the assistance received, in whole or part," id., the Court did not explain the extent to which charitable exemptions would be limited at facilities that receive payment

for services. Utah County, in short, "declined to describe the activities and policies of a qualifying institution, finding only that . . . [the two defendant hospitals fell] short . . . of the constitutional standard." Id. at 274 n.14. Certainly Utah County sensitized county boards to the issues and mandated more scrutiny, but the case led to confusion because it did not provide concrete guidance in specific cases.

Yorgasen, which came six months later, did not clarify the law. In that case, the Court referred to Utah County's six guidelines in passing, but emphasized that "these factors operate as guidelines only and should not be read to be exclusive or as equally beneficial in each case." Yorgasen, 714 P.2d at 657 n.16.<sup>13</sup> Instead, the Court reverted to a more "traditional" analysis to determine whether low-cost housing would be exempt: "The test of charitable purpose is a public benefit or contribution to the common good or the public welfare. It is also necessary that there be an element of gift to the community." Id. at 657 (citations omitted). To analyze whether a "gift" was conferred, the Court used a "material reciprocity" test. The Court said, "If rental payments are insufficient to cover the cost of the complex and are adjusted

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<sup>13</sup> A concurring opinion in Yorgasen cautioned that Utah County's six factors "may be of limited utility in determining whether any specific piece of property . . . is entitled to an exemption unless reference is also made to specific facts of cases dealing with analogous institutions." Yorgasen, 714 P.2d at 661 n.1 (Zimmerman, J., concurring).

to reflect each tenant's ability to pay, then a charitable exemption is available; otherwise, it is not." Id. at 659.

In the wake of these decisions, the Tax Commission, county boards of equalization, and charitable institutions lacked clear guidance on the specific standards that should be applied to non-profit hospitals. As the Tax Commission stated, "These cases have presented a difficult problem for both county boards of equalization and the Tax Commission. Although they provide general guidance and signal the need for increased scrutiny, they do not provide counties or the Tax Commission with objective standards by which to measure the sufficiency of particular exemption applications." (R. 77.)<sup>14</sup> As a result, in hearings held for 1986 and 1987, counties proceeded to decide hospital and nursing home applications on the basis of divergent standards. The Tax Commission correctly perceived its obligation to study the Court's decisions, confer with counties and institutional representatives, and derive a set of objective standards that could be used efficiently by the Tax Commission

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<sup>14</sup> The Tax Commission made a similar observation in its petition for rehearing in the Utah County case in 1985. The Tax Commission contended that this Court's decision did not provide specific guidance on exemption issues and "misapprehended the enormous administrative burdens and practical problems [that the] decision will generate for non-profit hospitals, other charitable organizations, county assessors, county boards and the Tax Commission, all of whom are annually involved in the process . . . ." Defendant Tax Commission's Petition for Rehearing (Sept. 3, 1985), Utah County vs. Intermountain Health Care, Inc., Case No. 17699 (Utah Sup. Ct.).

and by the counties. This was the origin of the Standards that are the subject of this appeal.

POINT III THE TAX COMMISSION'S STANDARDS COMPLY WITH  
ARTICLE XIII SECTION 2 OF THE UTAH CONSTITUTION

The Tax Commission Standards represent a painstaking effort to hold hospitals accountable for their exemptions, to provide concrete guidance to counties, to encourage charitable giving, and to be faithful to the requirements of the law. In a memorandum accompanying the Standards (Addendum IV to this brief), the Tax Commission explained the legal sources of each of its Standards and the assumptions upon which the Standards themselves were based. In these appeals, the Assessors and the Tax Commission disagree on many of those assumptions, but their two most significant disagreements concern the very nature of "charity."

First, contrary to the views of the Tax Commission, the Assessors believe that "charity" is limited to the provision of free care to the poor. They argue that "medical services and medical care provided for compensation are presumptively commercial." Assessors' Brief at 19. Second, contrary to the Tax Commission, the Assessors and their amicus curiae believe that tax-exempt institutions, in order to remain "charitable," may not utilize patient revenue or donations to cover deficits resulting from free or discounted care to indigent persons. According to the Assessors, if hospitals ultimately recover the value of free care to the poor from paying patients or donors,



there is "material reciprocity," which should disqualify the hospitals from receiving the exemption.

These disagreements go to the heart of the present appeals. Therefore, before dealing with the constitutional authority underlying each of the Tax Commission Standards, we first address the Assessors' basic assumptions.

A. *Payment from Patients, Government and Insurers Does Not Prohibit the Exemption*

In Utah, charity is the "contribution or dedication of something of value to the common good." Utah County, 709 P.2d at 269. In Yorgasen, 714 P.2d at 657, the Court held that "the test of charitable purpose is public benefit or contribution to the common good. It is also necessary that there be an element of gift to the community." Yorgasen made it clear that "exclusively charitable purposes" within the meaning of Article XIII Section 2 of the Utah Constitution, are not limited to free care for indigent persons. This Court said:

This Court has adopted the general rule that the language of the clause exempting property "used exclusively . . . for charitable purposes" from taxation should be strictly construed. This does not mean, however, that purposes exclusively charitable are limited to the mere relief of the destitute or the giving of alms. In fact, what qualifies as a purpose exclusively charitable is "subject to judgment in the light of changing community mores."

714 P.2d at 656 (citations omitted) (quoting, Salt Lake County vs. Tax Comm'n ex rel. Greater Salt Lake Recreational Facilities, 596 P.2d 641, 643 (Utah 1979)).

Full service, non-profit hospitals cannot operate without revenue from patients, insurers, and government entitlement programs. Although donations are critical, they are likely to be inadequate to fund the advanced technology, facilities and services upon which patients depend for their lives. If hospitals did not accept payment from those who can pay, they would consume their assets and be forced to close their doors. In Utah County, this Court said that its opinion was "not intended to imply that an institution must consume its assets in order to be eligible for tax exemption -- the requirement of charitable giving may obviously be met before that point is reached." Utah County, 709 P.2d at 276.

No federal or state jurisdiction in the United States denies non-profit hospitals or nursing homes a tax exemption on the ground that they have received payment from insurance or from patients who have the resources to pay. Modern authorities agree that the provision of health care on a non-profit basis is "charitable" so long as services are made available to both rich and poor. The fact that patients who can pay are required to do so does not diminish the "charitable" nature of the institution, so long as the hospital cares for all those who cannot pay.

Modern cases have rejected the Assessors' assumption - that payment automatically disqualifies the charitable exemption. See, e.g., Medical Center Hosp. vs. City of Burlington, 566 A.2d 1352, 1356 (Vt. 1989) ("[I]t is unreasonable to suggest that because modern medical institutions

no longer operate in precisely the same manner as they did many years ago, they should lose their tax-exempt status.");

Sebastian County Equalization Bd. vs. Western Arkansas Couns. & Guid. Ctr., Inc., 752 S.W.2d 755, 757-58 (Ark. 1988) ("[P]aying patients would not destroy the concept that the money was being used exclusively for charitable purposes, as long as the money received is devoted altogether to the charitable object which the institution is intended to further."); SHARE vs.

Commissioner of Revenue, 363 N.W.2d 47, 52 (Minn. 1985) ("The term 'charitable' as applied to health care facilities has been broadened since earlier times, when it was limited mainly to almshouses for the poor."); Evangelical Lutheran Good Samaritan Soc'y vs. County of Gage, 151 N.W.2d 446, 449 (Neb. 1967).

("[T]he courts have defined 'charity' to be something more than mere alms-giving or the relief of poverty and distress, and have given it a significance broad enough to include practical enterprises for the good of humanity operated at a moderate cost to those who receive the benefits.")

Modern cases have also rejected the contention that an arbitrary percentage or amount of free care is a prerequisite to the exemption. For example, in Medical Center Hospital vs. City of Burlington, 566 A.2d 1352 (Vt. 1989), a local taxing authority contended that the hospital should lose its exemption because it failed to prove that it dispensed an amount of free care in excess of the revenues received from paying patients. The Vermont Supreme Court acknowledged that tax exemptions are

to be strictly construed against the party claiming them, but it cautioned that they must be construed "reasonably and not in a manner that would defeat the purposes" of the exemption. Id. at 1354. The court observed that Vermont "has never required a certain percentage of free care to be rendered before finding an organization to be a tax-exempt charity . . . ." Id. at 1355.

The court stated:

In our opinion, pegging charitability to a stated amount of free care rendered would not be workable in determining an organization's taxable status. Instead, uncertainty would reign, with taxability determined on a yearly basis depending on economic factors not within the control of any one person or organization . . . . The better inquiry, it seems to us, is the one used by the trial court in this case: whether health care was made available by the plaintiff to all who needed it regardless of their ability to pay.

Id. Other recent cases have reached the same conclusion.<sup>15</sup>

Like Vermont, Utah has never required a percentage of free care to be rendered before finding an organization to be a tax-exempt charity. The more socially relevant inquiry is whether the hospital, like all of the hospitals in these appeals, makes technologically advanced health care available to all who need it, regardless of their ability to pay, and in doing so confers a gift on the community.

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<sup>15</sup> See, e.g., Rideout Hosp. Found. vs. County of Yuba, 10 Cal. Rptr. 2d 141, 143 (Cal. Ct. App. 1992); In re Foundation Health Sys. Corp., 386 S.E.2d 588, 591 (N.C. Ct. App. 1989), review dismissed, 401 S.E.2d 358 (N.C. 1991); Calloway Community Hosp. Ass'n vs. Craighead, 759 S.W.2d 253, 255-56 (Mo. Ct. App. 1988).

**B.     *The Tax Commission Standards Comply With the Court's "Material Reciprocity" Requirement***

Tax Commission Standard V requires each hospital to quantify, on an annual basis, the "gift" it confers on the community in terms of free care to indigent patients, the value of discounts to Medicare, Medicaid, and Utah Medical Assistance Program patients, the unreimbursed value of health science research, physician education, and public health education, and the value of donations that enhance the hospital's mission. Pursuant to this Standard, the hospitals attempted to show that they contribute "something of value to the common good," that there exists "a substantial imbalance in the exchange between the charity and the recipient of its services," that there is a lack of "material reciprocity" between the hospital and recipients of hospital services. Utah County, 709 P.2d at 269.

The Assessors and their amicus curiae, however, claim that none of the hospitals' gifts is a "gift" at all. They claim that because hospitals recover the costs of indigent care, research and education from paying patients, insurance and government payments, and donors, there is no "imbalance in the exchange." The Assessors argue: "Uncompensated care and community services are merely components of a rate structure passed on to others with health insurance or the means to pay hospital bills. In that sense, it is arguable that no gift to the community occurs through the operation of an IHC hospital . . . ." Assessors' Brief at 47.

If the Assessors' viewpoint prevails, no financially viable hospital could possibly be "charitable" because every hospital must obtain from somewhere the resources to provide the most advanced service to the community, now and in the future. Hospitals cannot print money. Rather, like all other charitable institutions, they act as a conduit for the community's resources, to take care of the health care needs of the community today and tomorrow. They must cover the cost of indigent care with money from donors, government, insurance, and paying patients; otherwise they would quickly go out of service. The "material reciprocity" requirement does not compel charities to operate at a deficit.<sup>16</sup> In his concurring opinion in Yorgasen, Justice Zimmerman made precisely the same point:

[The material reciprocity requirement] does not weigh all monies received from all sources, on the one hand, and the cost of services provided, on the other, and determine that a gift occurs only when the result is a net material flow of wealth to the recipient. Such a test would be useless

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<sup>16</sup> This Court borrowed the phrase "material reciprocity" from United Presbyterian Ass'n vs. Board of County Commissioners, 448 P.2d 967, 976 (Colo. 1968), in which the court said: "[W]here material reciprocity between alleged recipients and their alleged donor exists -- then charity does not." See Friendship Manor Corp. vs. Tax Comm'n, 26 Utah 2d 227, 487 P.2d 1272, 1279 (1971). In United Presbyterian Ass'n, the Colorado court was primarily concerned with the alleged charity's refusal to provide financial assistance to persons who could not pay for its services. 448 P.2d at 970. The Colorado cases construing United Presbyterian Ass'n have repeatedly upheld the charitable exemption where the charity charges a fee for services to those who are able to pay. E.g., Brandt vs. West Foundation, 652 P.2d 564, 568 (Colo. 1982); American Water Works Ass'n vs. Board of Assessment Appeals, 563 P.2d 359, 362-63 (Colo. Ct. App. 1977).

because it could not be satisfied by any viable charitable entity. Only those entities that could demonstrate a fatal hemorrhaging of assets and their candidacy for sure bankruptcy could show a lack of material reciprocity. By looking rather at the transactions between the provider of . . . services and the recipient, the test seeks to identify those making a gift to individuals.

Yorgasen, 714 P.2d at 662-63.

Tax Commission Standard V looks at "the transactions between the provider of . . . services and the recipient." Each hospital's "total gift to the community" provides an accounting of its gifts to individuals (in the form of free or discounted patient care) and to the community as a whole (in the form of unreimbursed expenses for physician education, public health research, and public health education). The hospitals' significant contributions to the public good should not be ignored merely because hospitals must use the resources at their disposal to serve the community

C. *Each of the Standards Complies With Article XIII Section 2*

The Assessors challenge five of the Tax Commission's six standards on the ground that they do not comply with this Court's decision interpreting Article XIII Section 2. Although Utah County and Yorgasen do not directly address some of the issues raised by the Assessors, it is clear nevertheless that the Assessors' challenges are based entirely upon assumptions that have no support in the law. The Tax Commission Standards represent a thoughtful effort, after months of hearings, to

establish clear and objective standards faithful to the requirements of this Court's decisions.

1. The "Organizational" Standard

Standard I generally requires that the institution be organized on a non-profit basis for appropriate purposes, and that its property be dedicated to its charitable purpose. This Standard derives directly from Article XIII Section 2, which requires the owner of the exempt property to be a "non-profit entity." In Utah County, this Court held that a hospital seeking an exemption must show that its "stated purpose" is to provide a significant service to others "without immediate expectation of material reward." 709 P.2d at 269. Specifically, the Court examined the institution's corporate purposes and the restrictions on the distribution of assets to private interests as set forth in its Articles of Incorporation. Id. at 272-73. Tax Commission Standard I requires exactly the same inquiry.

The Assessors do not suggest that the Tax Commission's Standard is incorrect, but that, standing alone, it is not enough to qualify an institution for an exemption. We agree. Tax Commission Standard I was designed to deal with organizational issues. Other Standards deal with questions of charitable operation, availability of services, and the amount of the institution's "gift to the community." As a Standard relating to the organizational requirements of the law, Tax



Commission Standard I accurately reflects the requirements imposed by the Utah Constitution and this Court.<sup>17</sup>

2. The "Private Inurement" Standard

Standard II requires the institution to show that net earnings and donations do not inure to the benefit of any private shareholder or individual, as interpreted under federal tax law. The standard provides that proof of a hospital's compliance with section 501(c)(3) of the Internal Revenue Code creates a rebuttable presumption that its operations do not result in "private inurement." In addition to proving compliance with section 501(c)(3), hospitals must provide the counties with annual statements of expenditures and revenues, balance sheets, and detailed descriptions of the manner in which compensation is set and payments to vendors are monitored.

The Assessors' complaints concerning this Standard fall generally into two categories. First, they complain that compliance with section 501(c)(3) "has never been sufficient to establish a basis for property tax exemption."

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<sup>17</sup> The Assessors and their amicus suggest repeatedly that there is no significant difference between the operations of these non-profit hospitals and the operations of for-profit hospitals in Utah. Although this Court's cases and the Tax Commission Standards do not require non-profit hospitals to compare themselves with for-profit hospitals, it is obvious that for-profit hospitals could not qualify for the exemption. Most obviously, for-profit hospitals could not possibly meet Standard I or Standard II because, by definition, they are organized and operated to distribute surplus revenue to investors as profit; they are not required, as are these non-profit hospitals, to use any and all surplus revenue for the enhancement of the institution's health care mission. Non-profit hospitals have an exclusively public purpose.

Appellants' brief at 20. Second, the Assessors complain that the informational requirements of the Standard are too "loose," although the Assessors do not now suggest -- and they have never suggested -- any other "private inurement" standard that should be applied in place of section 501(c)(3).

The source of Tax Commission Standard II is again the Utah County case, which held that counties must consider "whether private interests are benefitted by the organization or operation" of hospitals that apply for the exemption, 709 P.2d at 276, and "whether income received from all sources produces a 'profit' to the entity . . . ." Id. at 269. Compliance with this Standard alone is insufficient to obtain the exemption. Again, Standard II is one of six Standards, and compliance with all six Standards is necessary for any institution to obtain the exemption. For the limited purpose of determining whether an institution's payments constitute "private inurement" in specific fact situations, the Tax Commission incorporated the federal rules relating to private inurement under section 501(c)(3) because they constitute a "ready made and well-established body of law" for that purpose.

Section 501(c)(3) allows the charitable exemption if "no part of the net earnings . . . inures to the benefit of any private shareholder or individual . . . ." The United States Treasury Department has construed this provision authoritatively in regulations, 26 C.F.R. 1.501(c)(3)-1, et seq. (1992), and in many revenue rulings that directly concern

hospitals, in relation to fact situations that recur in these and other institutions. See, e.g., Revenue Ruling 69-545, 1969-2 C.B. 117. The federal courts, in turn, have interpreted and applied these rules in many hospital cases, with the result that there now exists a body of law on private inurement in the health care context. See cases cited in Stand. Fed. Tax Rep. (CCH) ¶ 22,609.30 (1992) and id. ¶¶ 42,598-99. The Tax Commission had no reason to invent a new body of law on the private inurement issue, especially where the federal standard has been so widely and exhaustively applied in the hospital context.

3. The "Admissions and Treatment" Standard

Standard III, which the Assessors do not even discuss, requires each hospital to establish three things. First, the hospital must show that it admits patients without regard to race, religion or gender. Second, the hospital must show that the decision to treat or admit a patient is based upon the clinical judgment of the admitting physician, and not upon the patient's financial condition. Third, the hospital must show that indigent people who require hospital services receive them for a reduced charge or for no charge in accordance with their ability to pay. In addition, under this Standard the hospital must provide evidence of its efforts to inform the public of its open-access policy and of the availability of services for the indigent.

This Standard derives from three of Utah County's guidelines, specifically those concerning (1) "whether the recipients of the 'charity' are required to pay for the assistance received, in whole or part"; (2) "whether the beneficiaries of the 'charity' are restricted and, if restricted, whether the restriction bears a reasonable relationship to the entity's charitable objective"; and (3) "whether the stated purpose of the entity is to provide a significant service to others without regard to immediate expectation of material reward." 709 P.2d at 269.

#### 4. The "Public Interest" Standard

Standard IV requires hospitals to show that their policies reflect the public interest. They must do so by demonstrating that their governing boards have broad based membership and function in a generally open atmosphere, and that they seek to address the health care needs of the community. The Standard sets forth several ways in which these goals must be accomplished, including annual conferences between the hospital and the county concerning the community's clinical hospital needs and annual submission of a hospital 'charity plan' to the county. The Standard derives from the legal principle, announced in a number of this Court's cases, that the "act of giving", which is essential to charity, may be identified "in the lessening of a government burden through the charity's operation." Utah County, 709 P.2d 269; Salt Lake

County vs. Tax Comm'n ex rel. Laborers' Local No. 295, 658 P.2d 1192, 1198 (Utah 1983)(Oaks, J., concurring).

Although the precise nature of their challenge to this Standard is not clear (see Assessors' Brief at 21-22), the Assessors apparently believe that this Standard should prohibit a hospital system from utilizing revenues derived from hospital operations in one county to assist hospitals in another county. Nothing in Article XIII Section 2, however, compels such a limitation on the operation of a hospital system. If IHC were not allowed to direct capital to hospitals on an as-needed basis, the needs of many hospitals could simply not be met. The hospitals in the system would, in effect, be deprived of the benefits of the system itself.<sup>18</sup> Hardest hit would be IHC's hospitals in rural Utah, which operate at a deficit every year. Nothing in the Constitution or in the decisions of this Court requires a statewide hospital system (or any other statewide or

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<sup>18</sup> IHC's hospitals operate as a system to save patients money and to improve the quality of care. Dr. Kenneth Thorpe, one of President Clinton's health care advisors, has commented that IHC's system-wide approach to health care quality places it "at the forefront" of health care reform. J. Melby, "Clinton Advisor Points to Western Hospital Chain As Model for Quality During Cost Reduction," Quality Matters (January 1993). IHC clinical research conducted on hospital procedures and applied system-wide have been proven to save lives and millions of dollars in cost. See D. C. Classen, "The Timing of Prophylactic Administration of Antibiotics and the Risk of Surgical Wound Infections," New England Journal of Medicine, Jan. 30, 1991, at 281; D. C. Classen, "Computerized Surveillance of Adverse Drug Events in Hospital Patients," Journal of the American Medical Ass'n, Nov. 27, 1991, at 2847.

national charity) to waste money by operating its hospitals (or local chapters) as isolated entities.

5. The "Total Gift to the Community" Standard

The Assessors' principal objection is to Tax Commission Standard V, which requires the quantification of an institution's "total gift to the community." The hospital must enumerate and total the various ways in which it provides unreimbursed service to the community according to measurement criteria set forth in the Standard. For example, the value of unreimbursed care to indigent patients must be measured by the hospital's normal billing rates, reduced by the average of reductions afforded to all patients who are not covered by government entitlement programs, plus expenses directly associated with special indigent clinics.<sup>19</sup> Under the Standard, quantifiable portions of the gift are totaled, and the total must exceed, on an annual basis, the hospital's property tax liability for the year.

This Standard, like Standard IV, derives from the need to prove a "gift" by showing "a substantial imbalance in the exchange between the charity and the recipient of the services" or by showing "the lessening of a government burden." Utah County, 709 P.2d at 269. In Yorgasen, 714 P.2d at 660 & n.29, this Court utilized a gift-to-tax comparison similar to

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<sup>19</sup> The discounts averaged under this Standard are primarily "contractual allowances" negotiated with insurance carriers and employee groups. The average of discounts does not include those provided to indigents.

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the one used in Standard V. The individual elements of the gift, as set forth in Standard V, also reflect factors deemed important by the Court's Utah County opinion, including unreimbursed care to indigents, elderly and other patients, and the quantification of donations to the institution. Standard V assists the counties in providing an objective and appropriate yardstick against which to measure each hospital's gift to the community.

The objections to this Standard fall into four general categories. We address them in turn.

First, the Assessors argue that the value of hospital service should be measured by "cost" rather than the Tax Commission's value formula (i.e., normal billing rates discounted by the average of discounts afforded to patients other than those covered by government entitlement programs). This issue was the subject of exhaustive debate before, and careful study by, the Tax Commission during hearings in 1988 and 1989. As the Assessors know from that debate, the task of establishing the "cost" of a particular patient's hospital stay is difficult and expensive. The effort required to establish the "cost" of each service provided to each of hundreds of thousands of patients every year would outstrip the accounting resources of the hospitals; the allocation of costs from all of an institution's departments to individual patients would probably raise more accounting questions than it would answer. It is doubtful, moreover, that such an exercise would come any

closer to the value of hospital service than the Tax Commission's formula, which is much simpler to administer.

Second, the Assessors argue that donations of time and money to the hospitals should not count as part of the hospitals' gift because such donations are not made by a hospital, but are made to a hospital. Ultimately, however, all of a charity's gifts to the community come from the community. A charitable institution is nothing more than the conduit for the community's charity; it is organized to marshall and administer the community's resources to provide essential services for everyone regardless of wealth. Standard V requires each hospital to compute donations of time and money in terms that explain exactly how much patients saved, during the year, as a consequence of donations.<sup>20</sup>

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<sup>20</sup> In related arguments, the Assessors claim that the hospitals either do not receive enough donations or do not actually rely on donations they receive. As the Assessors contend: "[T]he operating surpluses and increases in hospital reserves show that . . . donations did not reduce patient costs or reliance on patient charges." Assessors' Brief at 37. To this argument we have three brief responses.

First, the IHC Board of Trustees carefully budgets the amount of reserves on an annual basis in accordance with a written policy. (The written policy is attached as Ex. 2 to Alan L. Sullivan's letter to John G. Avery, dated September 27, 1991, included in a file entitled "Responses to Information Requests" in the record.) IHC reserve balances (for working capital, building and equipment replacement, self-insurance, and operating risks) are necessary to ensure that the hospitals will be able to continue in operation. We respectfully suggest that, on this issue, it is not for the Assessors to second-guess the financial judgment of those having the fiduciary duty to maintain IHC's system of hospitals.



Third, the Assessors argue that discounts afforded to Medicare patients (the difference between value of service and Medicare reimbursement) should not count towards the hospitals' gift because Medicare is not "means-tested" and the hospitals' participation in the Medicare program is "voluntary." Care for the elderly, however, is central to IHC's mission. It cannot seriously be doubted that in caring for sick or injured elderly people, and in accepting Medicare reimbursement as full payment, the hospitals provide an important gift to the community. At Utah Valley Regional Medical Center, for example, this portion of the gift totaled \$11,120,953 in 1990. Utah Valley Reg. Med. Ctr. App., Vol. 3, Ex. 29.

Finally, amicus curiae argues that Standard V is defective because it does not require hospitals to show that their patient charges are "below market" as the result of donations or their non-profit status. See Amicus Brief at 33. In the context of these appeals, this contention is extremely unfair. The hospitals did not present charge comparisons to the counties because the Tax Commission Standards did not require

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Second, it is absurd for the Assessors to suggest that donations do not reduce patient costs. The applications describe in detail the exact amounts of donations devoted to identified projects at each hospital or for patient care. If donations were not received, the funds for these efforts would necessarily have come from patient charges.

Third, the only case that the Assessors cite to prove the alleged insufficiency of donations is SEMECO v. Tax Commission, 209 Utah Adv. Rep. 73 (Utah 1993), a religious exemption case in which this Court did not even consider the charitable exemption.

such information. In addition, as the Assessors know, until recently charge comparison information was impossible to obtain in a statistically meaningful and verifiable form. (R. 144-45.) In late 1991, for the first time, data from the Health Care Financing Administration, the federal agency that administers Medicare, enabled IHC and other health care providers to compare their charges with those of other hospitals on a local, state and national basis. (R. 146.) When these data became available, IHC presented them to the Tax Commission to show that charges at IHC's hospitals were significantly lower than at other hospitals, in Utah and elsewhere, for comparable services. (R. 140.) The Assessors objected to the admission of charge comparisons and moved to strike them on the ground, among others, that they were irrelevant. (R. 122.) Thereafter, all parties stipulated that the charge comparisons did not bear upon the issues before the Tax Commission, and they were withdrawn. (R. 86.)

6. The "Off-Site Facilities" Standard

Standard VI provides that satellite health care facilities and centralized support facilities are entitled to property tax exemption if it is shown that these facilities enhance and improve the governing hospital's mission. This Standard relates primarily to IHC's indigent care clinics and "Instacare" facilities, each of which is operated as a part of the hospital with which it is associated, and IHC's central offices, which provide management, planning, accounting, and

related support to each of the hospitals. The Assessors object to this Standard on the ground that satellite facilities should independently demonstrate that they, "in their own separate operation, qualify for property tax exemption." Assessors' Brief at 29.

In the applications relating to each of the hospitals, we showed that each of the satellite facilities was necessary to fulfillment of the hospital's mission. We described the reasons for the location of each facility and the governance of each facility by the hospital's board of trustees and administration. For example, IHC's Instacare facilities are located in neighborhoods for patient convenience and to reduce the costs of emergency care. E.g., LDS Hosp. App., Vol. I, at 53-54. Each satellite facility is governed by the same policies relating to care for indigents and admissions as the hospitals with which it is associated. Id. The relevant financial information relating to each satellite facility was reported to the relevant board of equalization as part of the hospital's application for property tax exemption.

Although this Court has not specifically passed on the availability of a property tax exemption for satellite facilities of charitable institutions, other courts have uniformly held that, so long as the satellite facility is "reasonably necessary" to the hospital's purpose, and is governed by the same policies relating to admissions, it shares the exempt status of the hospital. In St. Elizabeth Hospital,

Inc. vs. City of Appleton, 416 N.W.2d 620 (Wis. Ct. App. 1987), the Wisconsin court considered whether a primary care clinic operated by an exempt hospital would share in the exemption of the hospital. The hospital showed that the clinic was governed by the same charity-care policies as governed the hospital and that the clinic advanced the charitable purposes of the hospital's trustees. The court upheld the exemption with respect to the clinic as follows:

We conclude that under the facts of this case, the operation of the . . . unit at issue is a reasonably necessary function of St. Elizabeth Hospital. The [clinic's] service is a direct function of the hospital's broad purpose of diagnosing and treating the sick or injured. By means of the "triage" classification, patients who need urgent care are treated immediately. Additionally, persons presenting less minor injuries are also seen by a physician more quickly and at less expense. In this manner care is delivered to all patients more efficiently, avoiding the traditional delays in emergency room services.

416 N.W.2d at 622. The court concluded that "providing episodic services to these patients in a clinic-type environment also furthers the hospital's fundamental purpose." Id. More generally, the courts have held that parking lots, laundry space, and office space reasonably necessary for the functioning of the hospital are exempt, if the hospital is exempt.<sup>21</sup> These

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<sup>21</sup> See, e.g., Medical Center Hosp. vs. City of Burlington, 566 A.2d 1352 (upholding tax-exempt status of real property devoted to parking for employees and patients, offices for anesthesiologists and radiologists, hospital data processing, and laboratories); Northwestern Memorial Found. vs. Johnson, 490 N.E.2d 161, 164 (Ill. App. Ct. 1986) (parking lot

authorities provide ample support for the Tax Commission's conclusion that satellite facilities and central offices that support and advance the purposes of the hospital should share the hospital's exemption.

#### CONCLUSION

If the system is to work fairly and efficiently, hospitals and counties need clear rules that can be applied with certainty to concrete facts. The Tax Commission has carefully fashioned exemption standards capable of practical application by busy county boards of equalization. The standards are the most rigorous of any court-fashioned exemption rules in the nation. They are faithful to the requirements of the Constitution. This Court should sustain the Tax Commission Standards, and the decisions of the Tax Commission should be affirmed in every particular.

DATED this 20<sup>th</sup> day of September, 1993.

VAN COTT, BAGLEY, CORNWALL & McCARTHY  
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By



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run in connection with the hospital found to be tax exempt); Hotel Dieu vs. Williams, 410 So. 2d 1111, 1112 (La. 1982) (office building and parking garage, used for purposes of the hospital, found to be exempt); Methodist Hosps. vs. Assessment Appeals Comm'n, 669 S.W.2d 305, 307 (Tenn. 1984) (non-profit hospital's parking lot was exempt as an essential and integral part of the hospital).

CERTIFICATE OF MAILING

I hereby certify that I caused two true and correct copies of the within and foregoing BRIEF OF RESPONDENT IHC HOSPITALS, INC. to be mailed, postage prepaid, this 20<sup>th</sup> day of September, 1993, to the following:

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## ADDENDUM I

ADDENDUM I

Utah Constitution, Article XIII Section 2(2):

"(2) The following are property tax exemptions:

(c) Property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes . . . ."

Utah Constitution, Article XIII Section 11:

"There shall be a State Tax Commission consisting of four members, not more than two of whom shall belong to the same political party. The members of the Commission shall be appointed by the Governor, by and with the consent of the Senate, for such terms of office as may be provided by law. The State Tax Commission shall administer and supervise the tax laws of the State. It shall assess mines and public utilities and adjust and equalize the valuation and assessment of property among the several counties. It shall have such other powers of original assessment as the Legislature may provide. Under such regulations in such cases and within such limitations as the Legislature may prescribe, it shall review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment and valuation of property within the counties. The duties imposed upon the State Board of Equalization by the Constitution and Laws of this State shall be performed by the State Tax Commission.

"In each county of this State there shall be a County Board of Equalization consisting of the Board of County Commissioners of said county. The County Boards of Equalization shall adjust and equalize the valuation and assessment of the real and personal property within their respective counties, subject to such regulation and control by the State Tax Commission as may be prescribed by law. The State Tax Commission and the County Boards of Equalization shall each have such other



powers as may be prescribed by the  
Legislature."

## ADDENDUM II

12/17/92 -

BEFORE THE UTAH STATE TAX COMMISSION

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CACHE COUNTY ASSESSOR,	)	
	:	
Petitioner,	)	ORDER
	:	
v.	)	
	:	
COUNTY BOARD OF EQUALIZATION	)	Appeal No. 92-0332
OF CACHE COUNTY,	:	
STATE OF UTAH,	)	Tax Type: Property
ex rel.: IHC HOSPITALS, INC.,	:	
	)	Re: Logan Regional Hospital
Respondent.	:	

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STATEMENT OF CASE

This matter came before the Utah State Tax Commission for a hearing on IHC Hospitals, Inc.'s Motion for Summary Judgment on April 28, 1992. Commissioners, R. H. Hansen, Roger O. Tew, Joe B. Pacheco, and S. Blaine Willes, heard the matter for and on behalf of the Commission. Present and representing IHC Hospitals were Alan L. Sullivan, Esq. and Ronald G. Moffitt, Esq. Present and representing the Petitioner was Bill Thomas Peters, Esq.

Based upon the arguments of counsel for the respective parties and the memoranda submitted in support of those arguments, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is property tax.
2. The years in question are 1989, 1990 and 1991.
3. On September 10, 1991 the Board of Equalization of Cache County, Utah considered the application for property tax

Appeal No. 92-0332

exemption submitted by IHC Hospitals, Inc., for the Logan Regional Hospital for the tax years 1989, 1990 and 1991.

4. After full consideration of the evidence presented, the Board of Equalization of Cache County issued its Findings and Determination on January 14, 1992.

5. In its findings and determination, the Board of Equalization of Cache County applied the Nonprofit Hospital and Nursing Home Charitable Property Tax Exemption Standards established by the Utah State Tax Commission. The determination of the Board of Equalization was that pursuant to the Tax Commission's standards the IHC Hospitals, Inc. and the Logan Regional Hospital property qualified for exemption from the property tax.

6. The standards were issued by the Utah State Tax Commission on December 18, 1990, and a copy of those standards are attached to this order. (Exhibit "A").

7. The standards were developed by the Utah State Tax Commission after an extensive analysis of applicable state law, court decisions, and input from local government officials, institutional representatives and the public.

8. The Utah State Tax Commission developed and issued the standards to provide an objective and relatively simple framework for determining property tax exemptions for nonprofit hospitals and nursing homes. The primary objective in the development of the standards was the establishment of uniform statewide standards of review and analysis which are both legally

Appeal No. 92-0332

supportable and administratively feasible. A document entitled "Memorandum of Points and Authorities In Support of Property Tax Exemption Standards for Nonprofit Hospitals and Nursing Homes" which was issued by the Utah State Tax Commission together with the standards is attached to and incorporated as part of this order. The document outlines in detail the legal rationale and administrative need for the standards. (Exhibit "B").

9. The Petitioner filed its appeal to the Utah State Tax Commission from the determination of the Cache County Board of Equalization on February 12, 1992.

10. On April 28, 1992, a hearing was held on IHC Hospitals' Motion for Summary Judgment. At that hearing all parties agreed that IHC Hospitals, Inc., Logan Regional Hospital met the non-profit hospital and nursing home charitable property tax exemption standards promulgated by the Tax Commission. The Petitioner argued however, that such standards did not satisfy the requirements of Section 2, Article XIII, of the Utah Constitution.

#### CONCLUSIONS OF LAW

1. In the present case there exists no genuine issue as to any material fact regarding IHC Hospitals having met the non-profit hospital, nursing home charitable property tax exemption standards promulgated by the Tax Commission.

2. Because the Cache County Board of Equalization had considered all the evidence prior to its decision and because there is no issue between the parties that IHC Hospitals, Inc. had met

Appeal No. 92-0332

the standards promulgated by the Commission, the Commission affirms the determination of the Cache County Board of Equalization.

3. The standards promulgated by the Commission comport with Section 2, Article XIII, of the Utah Constitution.


4. There being no genuine issue as to any material fact regarding the hospitals having met the standards promulgated by the Tax Commission, IHC Hospitals, Inc. is entitled judgment as a matter of law.


DECISION AND ORDER


Based upon the foregoing, the Tax Commission hereby grants IHC Hospitals, Inc.'s Motion for Summary Judgment and affirms the determination of the County Board of Equalization of Cache County. It is so ordered.


DATED this 17<sup>th</sup> day of December 1992.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

  
R. H. Hansen  
Chairman

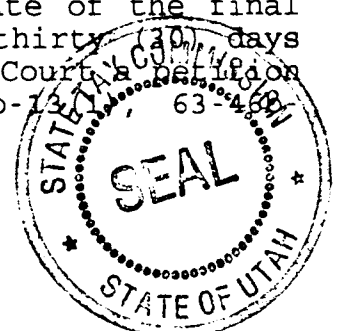
  
Roger D. Few  
Commissioner

  
Joe B. Pacheco  
Commissioner

  
S. Blaine Willes  
Commissioner

NOTICE: You have twenty (20) days after the date of the final order to file a request for reconsideration or thirty (30) days after the date of final order to file in Supreme Court a petition for judicial review. Utah Code Ann. §§63-46b-13, 63-46b-14(2)(a).

PR/sd/92-0332.ord



Appeal No. 92-0332

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing  
Decision to the following:

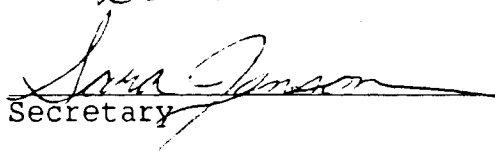
Cache Cnty Assessor / IHC Hospitals  
c/o Bill Thomas Peters  
Special Deputy Attorney  
310 South Main Street, Suite 1100  
Salt Lake City, UT 84101

Kathleen Howell  
Cache County Assessor  
Cache County Courthouse  
Logan, UT 84321

Tamara Stones  
Cache County Auditor  
County Courthouse  
Logan, UT 84321

Alan L. Sullivan  
Van Cott, Bagley, Cornwall & McCarthy  
50 South Main Street, #1600  
Salt Lake City, Utah 84145

DATED this 17<sup>th</sup> day of December, 1992.

  
Secretary

### ADDENDUM III



BEFORE THE UTAH STATE TAX COMMISSION

---

SALT LAKE COUNTY ASSESSOR,	)	
	:	
Petitioner,	)	ORDER
	:	
v.	)	
	:	
COUNTY BOARD OF EQUALIZATION	)	Appeal No. 92-0312
OF SALT LAKE COUNTY,	:	
STATE OF UTAH,	)	Tax Type: Property
ex rel.: IHC HOSPITALS, INC.,	:	
	)	Re: Cottonwood Hospital
Respondent.	:	

---

STATEMENT OF CASE

This matter came before the Utah State Tax Commission for a hearing on IHC Hospitals, Inc.'s Motion for Summary Judgment on April 28, 1992. Commissioners, R. H. Hansen, Roger O. Tew, Joe B. Pacheco, and S. Blaine Willes, heard the matter for and on behalf of the Commission. Present and representing IHC Hospitals were Alan L. Sullivan, Esq. and Ronald G. Moffitt, Esq. Present and representing the Petitioner were Bill Thomas Peters, Special Deputy County Attorney, and Karl Hendrickson, Deputy County Attorney.

Based upon the arguments of counsel for the respective parties and the memoranda submitted in support of those arguments, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is property tax.
2. The years in question are 1986, 1987, 1988, 1989, 1990 and 1991.

3. On July 22 and 23, 1991 the Board of Equalization of Salt Lake County, Utah considered the application for property tax exemption submitted by IHC Hospitals, Inc., for the Cottonwood Hospital for the tax years 1986, 1987, 1988, 1989, 1990 and 1991.

4. After full consideration of the evidence presented, the Board of Equalization of Salt Lake County issued its Findings and Determination on January 6, 1992.

5. In its findings and determination, the Board of Equalization of Salt Lake County applied the Nonprofit Hospital and Nursing Home Charitable Property Tax Exemption Standards established by the Utah State Tax Commission. The determination of the Board of Equalization, by a vote of 2 to 1, was that pursuant to the Tax Commission's standards the IHC Hospitals, Inc. and the Cottonwood Hospital property qualified for exemption from the property tax.

6. The standards were issued by the Utah State Tax Commission on December 18, 1990, and a copy of those standards are attached to this order. (Exhibit "A").

7. The standards were developed by the Utah State Tax Commission after an extensive analysis of applicable state law, court decisions, and input from local government officials, institutional representatives and the public.

8. The Utah State Tax Commission developed and issued the standards to provide an objective and relatively simple

framework for determining property tax exemptions for nonprofit hospitals and nursing homes. The primary objective in the development of the standards was the establishment of uniform statewide standards of review and analysis which are both legally supportable and administratively feasible. A document entitled "Memorandum of Points and Authorities In Support of Property Tax Exemption Standards for Nonprofit Hospitals and Nursing Homes" which was issued by the Utah State Tax Commission together with the standards is attached to and incorporated as part of this order. The document outlines in detail the legal rationale and administrative need for the standards. (Exhibit "B").

9. The Petitioner filed its appeal to the Utah State Tax Commission from the determination of the Salt Lake County Board of Equalization on February 5, 1992.

10. On April 28, 1992, a hearing was held on IHC Hospitals' Motion for Summary Judgment. At that hearing all parties agreed that IHC Hospitals, Inc. and Cottonwood Hospital met the non-profit hospital and nursing home charitable property tax exemption standards promulgated by the Tax Commission. The Petitioner argued however, that such standards did not satisfy the requirements of Section 2, Article XIII, of the Utah Constitution.

#### CONCLUSIONS OF LAW

1. In the present case there exists no genuine issue as to any material fact regarding IHC Hospitals having met the non-

profit hospital, nursing home charitable property tax exemption standards promulgated by the Tax Commission.

2. Because the Salt Lake County Board of Equalization had considered all the evidence prior to its decision and because there is no issue between the parties that IHC Hospitals, Inc. had met the standards promulgated by the Commission, the Commission affirms the determination of the Salt Lake County Board of Equalization.

3. The standards promulgated by the Commission comport with Section 2, Article XIII, of the Utah Constitution.

4. There being no genuine issue as to any material fact regarding the hospitals having met the standards promulgated by the Tax Commission, IHC Hospitals, Inc. is entitled judgment as a matter of law.

#### DECISION AND ORDER


Based upon the foregoing, the Tax Commission hereby grants IHC Hospitals, Inc.'s Motion for Summary Judgment and

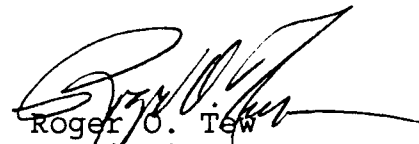
Appeal No. 92-0312

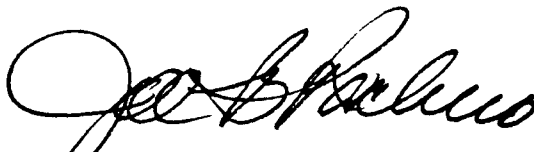
affirms the determination of the County Board of Equalization of Salt Lake County. It is so ordered.


DATED this 17<sup>th</sup> day of December, 1992.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

  
R. H. Hansen  
Chairman

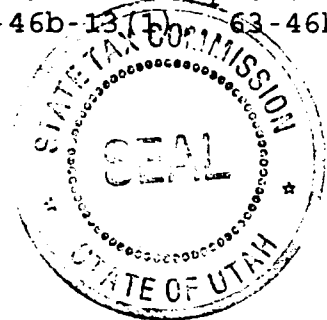
  
Roger O. Tew  
Commissioner

  
Joe B. Pacheco  
Commissioner

  
S. Blaine Willes  
Commissioner

NOTICE: You have twenty (20) days after the date of the final order to file a request for reconsideration or thirty (30) days after the date of final order to file in Supreme Court a petition for judicial review. Utah Code Ann. §§63-46b-13(1), 63-46b-14(2)(a).

PFI/sd/92-0312.ord



Appeal No. 92-0312

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing  
Decision to the following:

S L County Assessor / Cottonwood Hosp.  
c/o Bill Thomas Peters  
Special Deputy Attorney  
310 South Main Street, Suite 1100  
Salt Lake City, UT 84101

Robert L. Yates  
Salt Lake County Assessor  
2001 South State #N2323  
Salt Lake City, UT 84190

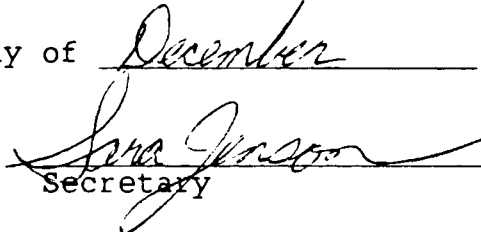
Mike Reed  
Salt Lake County Auditor  
2001 South State Street, #N2200  
Salt Lake City, UT 84190

Karl Hendrickson  
Salt Lake County Attorney  
2001 South State Street, S3600  
Salt Lake City, UT 84190

Marc B. Johnson  
Tax Administrator  
Government Center  
Salt Lake City, UT 84190

Alan L. Sullivan, Esq.  
Van Cott, Bagley, Cornwall & McCarthy  
50 South Main Street, #1600  
Salt Lake City, Utah 84145

DATED this 17<sup>th</sup> day of December, 1992.

  
Secretary

## ADDENDUM IV

RECEIVED BY

DEC 18 1992

BILL THOMAS PETERS

BEFORE THE UTAH STATE TAX COMMISSION

IHC HOSPITALS, INC.,	)	
	:	
Petitioner,	)	ORDER
	:	
	)	
v.	:	Appeal Nos. 91-1721
	)	to 91-1749
	:	Tax Type: Property
	)	
COUNTY BOARD OF EQUALIZATION	:	Re: Utah Valley Regional
OF UTAH COUNTY,	)	Medical Center, Orem
STATE OF UTAH,	:	Community Hospital,
	)	American Fork Hospital,
	:	Springville Instacare
Respondent.	)	Facility

STATEMENT OF CASE

This matter came before the Utah State Tax Commission for a hearing on IHC Hospitals, Inc.'s Motion for Summary Judgment on April 28, 1992. Commissioners, R. H. Hansen, Roger O. Tew, Joe B. Pacheco, and S. Blaine Willes, heard the matter for and on behalf of the Commission. Present and representing IHC Hospitals were Alan L. Sullivan, Esq. and Ronald G. Moffitt, Esq. Present and representing the Petitioner was Bill Thomas Peters, Esq.

Based upon the arguments of counsel for the respective parties and the memoranda submitted in support of those arguments, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is property tax.
2. The years in question are 1986, 1987, 1988, 1989, 1990 and 1991.



Appeal Nos. 91-1721 to 91-1749

3. On September 30, 1991 the Board of Equalization of Utah County, Utah considered the application for property tax exemption submitted by IHC Hospitals, Inc., for the above referenced hospitals for the tax years in question.

4. After full consideration of the evidence presented, the Board of Equalization of Utah County issued its Findings of Fact, Conclusions of Law, and Decision on June 30, 1992.

5. In its findings and determination, the Board of Equalization of Utah County applied the Nonprofit Hospital and Nursing Home Charitable Property Tax Exemption Standards established by the Utah State Tax Commission. The determination of the Board of Equalization was that IHC Hospitals, Inc. and the above referenced hospitals met the criteria set forth in those standards. That finding notwithstanding, the Board, by a one to one vote with one member of the board recusing himself, denied the Petitioner's application for exemption.

6. The standards were issued by the Utah State Tax Commission on December 18, 1990, and a copy of those standards are attached to this order. (Exhibit "A").

7. The standards were developed by the Utah State Tax Commission after an extensive analysis of applicable state law, court decisions, and input from local government officials, institutional representatives and the public.

Appeal Nos. 91-1721 to 91-1749

8. The Utah State Tax Commission developed and issued the standards to provide an objective and relatively simple framework for determining property tax exemptions for nonprofit hospitals and nursing homes. The primary objective in the development of the standards was the establishment of uniform statewide standards of review and analysis which are both legally supportable and administratively feasible. A document entitled "Memorandum of Points and Authorities In Support of Property Tax Exemption Standards for Nonprofit Hospitals and Nursing Homes" which was issued by the Utah State Tax Commission together with the standards is attached to and incorporated as part of this order. The document outlines in detail the legal rationale and administrative need for the standards. (Exhibit "B").

9. The Petitioner filed its appeal to the Utah State Tax Commission from the determination of the Utah County Board of Equalization on October 15, 1991.

10. On April 28, 1992, hearing was held on IHC Hospitals' Motion for Summary Judgment. At that hearing all parties agreed that IHC Hospitals, Inc., and the above referenced hospitals met the non-profit hospital and nursing home charitable property tax exemption standards promulgated by the Tax Commission. The Respondent argued, however, that such standards did not satisfy the requirements of Section 2, Article XIII, of the Utah Constitution.

Appeal Nos. 91-1721 to 91-1749

CONCLUSIONS OF LAW

1. In the present case there exists no genuine issue as to any material fact regarding IHC Hospitals having met the non-profit hospital, nursing home charitable property tax exemption standards promulgated by the Tax Commission.

2. Because the Utah County Board of Equalization had considered all the evidence prior to its decision and because there is no issue between the parties that IHC Hospitals, Inc. had met the standards promulgated by the Commission, the Commission reverses the determination of the Utah County Board of Equalization.

3. The standards promulgated by the Commission comport with Section 2, Article XIII, of the Utah Constitution.

4. There being no genuine issue as to any material fact regarding the hospitals having met the standards promulgated by the Tax Commission, IHC Hospitals, Inc. is entitled judgment as a matter of law.

DECISION AND ORDER


Based upon the foregoing, the Tax Commission hereby grants IHC Hospitals, Inc.'s Motion for Summary Judgment and


Appeal Nos. 91-1721 to 91-1749

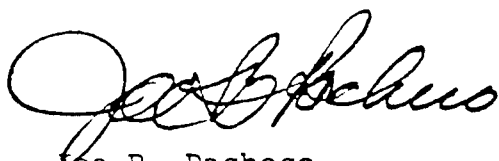
reverses the determination of the County Board of Equalization of Utah County. It is so ordered.

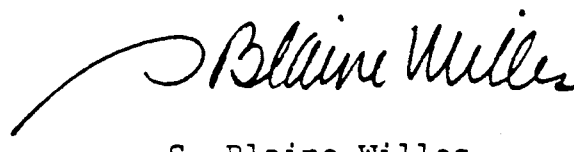
DATED this 17<sup>th</sup> day of December, 1992.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

  
R. H. Hansen  
Chairman

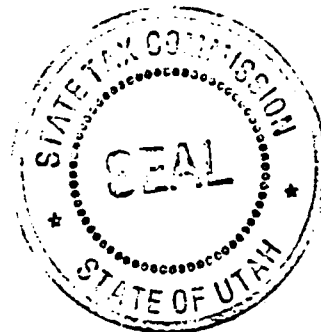
  
Roger O. Tew  
Commissioner

  
Joe B. Pacheco  
Commissioner

  
S. Blaine Willes  
Commissioner

NOTICE: You have twenty (20) days after the date of the final order to file a request for reconsideration or thirty (30) days after the date of final order to file in Supreme Court a petition for judicial review. Utah Code Ann. §§63-46b-13(1), 63-46b-14(2)(a).

PFI/md/91-1721.ord



Appeal Nos. 91-1721 to 91-1749

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing  
Decision to the following:

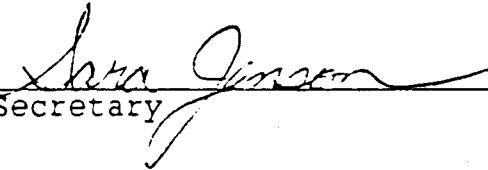
IHC Hospitals, Inc.  
c/o Alan L. Sullivan  
VAN COTT, BAGLEY, CORNWALL & MCCARTHY  
P.O. Box 45340  
Salt Lake City, UT 84145

Ronald M. Smith  
Utah County Assessor  
Utah County Building  
Provo, UT 84601

Bruce J. Peacock  
Utah County Auditor  
Utah County Building  
Provo, UT 84601

Bill Thomas Peters  
Special Deputy Attorney  
310 South Main Street, Suite 1100  
Salt Lake City, UT 84101

DATED this 17<sup>th</sup> day of December, 1992.

  
Secretary

ADDENDUM V

# EXHIBIT NONPROFIT HOSPITAL AND NURSING HOME CHARITABLE PROPERTY TAX EXEMPTION STANDARDS

Utah State Tax Commission

December 18, 1990

**STANDARD I:** The institution owning the property for which the exemption is sought must establish that it is organized on a nonprofit basis to (a) provide hospital or nursing home care; (b) promote health care, or (c) provide health related assistance to the general public. The institution's property must be dedicated to its charitable purpose, and upon dissolution its assets must be distributable only for exempt purposes under Utah law, or to the government for a public purpose.

COMMENTS: An institution needs to show that it is properly organized and operating in good standing under appropriate Utah law governing nonprofit organizations. Instruments of organization and operation should reflect the health care-related purpose for which the institution is organized and contain the appropriate limitations on asset distribution.

**STANDARD II:** The institution owning the property for which the exemption is sought must establish that none of its net earnings and no donations made to it inures to the benefit of private shareholders or other individuals, as the private inurement standard has been interpreted under Section 501(c)(3) of the Internal Revenue Code.

COMMENTS: Compliance with and operation under the provisions of Section 501(c)(3) creates a rebuttable presumption that an institution's operations are reasonable. An institution is required to provide the following: (a) affidavits and financial statements showing all revenue and expenditures and describing the uses to which revenue has been put, and the amount, nature and uses of donated funds; (b) proof of federal tax exempt status under section 501(c)(3) of the Internal Revenue Code; (c) affidavits or other evidence that payments made to officers, employees, contractors and suppliers are reasonable and not a covert means of making payments to private persons.



**STANDARD III:** The institution owning the property for which the exemption is sought must establish: (a) that it admits and treats members of the public without regard to race, religion or gender; (b) that hospital or nursing home service, including admission to the institution, is based on the clinical judgment of the physician and not upon the patient's financial ability or inability to pay for services; and (c) that indigent persons who, in the judgment of the admitting physician, require the services generally available at the hospital or nursing home, receive those services for no charge or for a reduced charge, in accordance with their ability to pay. The institution must also provide evidence of its efforts to affirmatively inform the public of its open access policy and the availability of services for the indigent.

COMMENTS: The open access requirements outlined in this standard must be established as a formalized policy of the institution. More importantly, however, are the efforts of the institution to inform the public of the open-access policy. This situation is particularly important with regard to services for the indigent. The exempt institution must provide evidence of its efforts to affirmatively inform the public of the availability of these services.

**STANDARD IV:** The institution owning the property for which the exemption is sought must establish that its policies integrate and reflect the public interest. A rebuttable presumption of compliance with this standard is assumed if it is shown that (a) the institution's governing board has a broad-based membership from the community served by the institution, as required by federal tax law; (b) the institution confers at least annually with the county board of equalization or its designee concerning the community's clinical hospital needs that might be appropriately addressed by the institution; and (c) the institution establishes and maintains a "charity plan" to ensure compliance with Standard III and Standard IV. However, all policy decisions relating to the institution's governance and operation shall remain under the direction of the institution's governing body. (Note: Compliance with subsections (b) and (c) are prospective only beginning with tax year 1991.)

COMMENTS: Judicial decisions on property tax exemptions highlight the importance of charitable institutions contributing to the common good. In addition, the courts have indicated that charitability must require an element of "gift" and have stated that such a gift may be met through the lessening of a governmental responsibility. In meeting this standard the membership and operation of governing boards is important. Governing boards should have a broad-based membership and function in a generally open atmosphere. Where governing boards of individual institutions are part of a larger corporate structure, there must also be evidence that the corporate board incorporates the interests of individual governing boards into its policies. There should also be a showing that exempt institutions seek to address the health care needs of the community. The standard imposes a requirement that the institution confer at least annually with county officials to assess the clinical hospital needs of the community which might be addressed by the institution. In addition, the institution must develop a "charity plan" to ensure compliance with Standard III (the open-access requirement) and Standard IV (the public interest requirement). Two important points of caution: First, the term "community" may well be narrower or broader than an individual county's geographic boundaries. Efforts to meet charitable standards are not disqualified simply because they involve rendering services outside a specific county's boundaries or to non-residents of a specific county. Second, all policy decisions relating to the governance and operation of the institution are ultimately under the direction of the institution's governing board. For example, a county may not require as a condition of exemption that a nonprofit hospital fund specific programs.

STANDARD V: The institution owning the property for which exemption is sought must establish that its total gift to the community exceeds on an annual basis its property tax liability for that year. The Utah Supreme Court has defined gift to the community as follows: "A gift to the community can be identified either by a substantial imbalance in the exchange between the charity and the recipient of its services or in the lessening of a government burden through the charity's operation." Utah County v. Intermountain Health Care, Inc., 709 P.2d 265, 269 (Utah 1985)

The following quantifiable activities and services are to be counted towards the nonprofit entity's total gift to the community:

a. Indigent care -- The reasonable value of the hospital's unreimbursed care to medically indigent patients. The term "medically indigent" refers generally to patients who are financially unable to pay for the cost of the care they receive. Measurement: The value of the institution's unreimbursed care to patients, as measured by standard charges, reduced by the average of reductions afforded to all patients who are not covered by government entitlement programs, plus expenses directly associated with special indigent clinics.

b. Community education and service -- the reasonable value of volunteer and community service (including education and research) rendered for and by the hospital or nursing home. Measurement: unreimbursed expense. "Unreimbursed expense" is defined as the identifiable costs and expenses incurred by an institution in performing a specific service, including any overhead attributable to the service, less any reimbursement for the service from recipients, government or any other source. Overhead does not include any capital costs for buildings or equipment unless purchased or built solely for the activity in question. Community education does not include in-house training for employees.

c. Medical discounts -- The reasonable value of unreimbursed care for patients covered by Medicare, Medicaid, or other similar government entitlement programs. Measurement: the difference between (i) standard charges, as reduced by the average of reductions afforded to all patients who are not covered by government entitlement programs, and (ii) actual reimbursement.

d. Donations of time -- The reasonable value of volunteer assistance donated by individuals to a nonprofit hospital or nursing home. Measurement: volunteer hours times a reasonable rate for services performed.

e. Donations of money -- The value of monetary donations given to a nonprofit hospital or nursing home. Measurement: Where donations are spent on depreciable items, the value of the gift should be amortized over the useful life of facilities purchased; where donations are spent on patient care and non-depreciable items, the full amount of the donations should be counted in the year of donation; and where donations are retained and invested, annual capital appreciation from the donation should be counted towards the gift.

The institution's charitable gift to the community also includes the community value, whether or not precisely quantifiable, of (a) the operation of tertiary care units or other critical services or programs that may not otherwise be offered to the community, or (b) the continued operation of hospitals where revenues are insufficient to cover costs, such as a primary care hospital in a rural community.

COMMENTS: Standard V outlines general categories of qualifying activities. It is not meant as an exhaustive listing. Institutions seeking exemption are required to show: (a) accounting data establishing the amount and value of unreimbursed care to medically indigent persons, and subsidized patients; (b) accounting data establishing the unreimbursed value of community education and service programs, including research and professional education programs; (c) accounting data establishing the amount and uses of volunteer time and donated funds; and (d) descriptions of intangible or unquantifiable community gifts. Standard V does not specify how those activities classified as intangible or unquantifiable are to be measured. That issue will be examined on a case by case basis.

**STANDARD VI:** Satellite health-care facilities and centralized support facilities are entitled to property tax exemption if it is shown that such facilities enhance and improve the governing hospital's mission. These facilities should be tested as part of the hospital or nursing home that operates the support facility.

COMMENT: Property tax exemption standards should not mandate operational inefficiencies. Where it is shown that a nonprofit facility better meets its stated mission through the existence of these facilities they may be included in the governing hospital or nursing home's exemption. The exemption does not apply to off-site facilities which are not directly related to the specific mission of the institution, such as individual physicians' offices.

## ADDENDUM VI

# MEMORANDUM OF POINTS AND AUTHORITIES

Utah State Tax Commission

December 18, 1990

**MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF PROPERTY TAX EXEMPTION STANDARDS  
FOR NONPROFIT HOSPITALS AND NURSING HOMES**

The Utah Tax Commission has issued "Nonprofit Hospital and Nursing Home Charitable Property Tax Standards" to county boards of equalization across the state. The purposes of the standards are:

- (1) to suggest an objective and relatively simple framework for determining property tax exemption applications for hospitals and nursing homes, and
- (2) to provide counties, property owners and other interested parties with notice of the standards that the Tax Commission intends to observe in deciding appeals from county boards of equalization concerning the exempt or nonexempt status of nonprofit hospitals and nursing homes.

The purpose of this memorandum is to explain the legal basis of the standards issued by the Tax Commission.

The Need for Standards

The standards have been drafted to comply with the requirements of Utah law under Article 13, Section 2 of the Utah Constitution and Section 59-2-1101(1)(d) of the Utah Code. These provisions have most recently been interpreted in relation to hospitals and similar institutions in Yorgason v. County Board, 714 P.2d 653 (Utah 1986), and Utah County v. Intermountain Health Care, Inc., 709 P.2d 265 (Utah 1985). These cases have presented a difficult problem for both county boards of equalization and the Tax Commission. Although they provide general guidance and signal the need for increased scrutiny, they do not provide counties or the Tax Commission with objective standards by which to measure the sufficiency of particular exemption applications. As a result, for 1986 and subsequent years different counties proceeded to decide hospital and nursing home applications on the basis of widely divergent standards. Some counties felt the need to conduct exhaustive and time consuming hearings and to investigate the financial and charitable activities of hospitals and nursing homes in detail. Other counties conducted only cursory investigation of the relevant issues. Some counties emphasized the importance of indigent care, while other counties emphasized the relief of government burdens.

Under these circumstances, the hospitals and nursing homes had only a vague idea of the standards that would be used to decide their exemptions on an annual basis. They did not have a clear idea of the nature of the information they should submit to the counties. The Tax Commission therefore decided to study the Supreme Court's decisions, confer with county and institutional representatives, and derive a set of objective standards that could be used efficiently by the Tax Commission to decide the exemption appeals that would come before it.

### The Tax Commission's Authority

Under Article 13, Section 11 of the Utah Constitution and Section 59-1-210 of the Utah Code, the Tax Commission has the responsibility to adopt policies and guidelines to govern county boards of equalization and county assessors in the performance of their duties relating to equalization. Under the same constitutional and statutory provisions, the Tax Commission has the duty to supervise the tax laws, to exercise general supervision over county boards and to direct assessors and county boards in matters relating to the equalization of property. The Tax Commission has had these powers and duties since statehood, and they have frequently been confirmed in the courts. See, e.g., Friendship Manor Corp. v. Tax Commission, 487 P.2d 1272, 1276 (Utah 1971); University Heights, Inc. v. State Tax Commission, 364 P. 2d 661, 662 (Utah 1961); County Board of Equalization v. State Tax Commission, 50 P.2d 418, 421 (Utah 1935).

The Tax Commission felt keenly the responsibility to provide county officials and property owners with a definitive set of guidelines in this area. The standards issued by the Tax Commission fulfill its responsibilities to counties, property owners and the public.

### General Assumptions

Under Article 13, Section 2 of the Utah Constitution, the property of nonprofit institutions should be exempt from property tax if it is "used exclusively" for "charitable" purposes. In Utah, "charity" means "the contribution or dedication of something of value to the common good." Utah County v. Intermountain Health Care, Inc., 709 P.2d 265, 269 (Utah 1985). As the Utah Supreme Court said in Yorgason v. County Board, 714 P.2d 653, 657 (Utah 1986), "The test of charitable purpose is public benefit or contribution to the common good. It is also necessary that there be an element of gift to the community."



Perhaps the most significant threshold question faced by the Tax Commission was whether the receipt of payment from patients, insurers or government entitlement programs would permit an institution to retain its charitable exemption. Nearly all of the public nonprofit hospitals and nursing homes in Utah cover most of their expenses with the revenue from such payments.

The Tax Commission concluded that nonprofit hospitals and nursing homes should not be disqualified from receiving a property tax exemption simply because much of the cost of their providing medical service is recovered through fees charged to persons able to pay. In Utah "exclusively charitable" purposes have never been confined to the unreimbursed care of indigent patients. To the contrary, in Yorgason the Utah Supreme Court held:

"This court has adopted the general rule that the language of the clause exempting property 'used exclusively . . . for charitable purposes' from taxation should be strictly construed. This does not mean, however, that purposes exclusively charitable are limited to the mere relief of the destitute or the giving of alms. In fact, what qualifies as a purpose exclusively charitable is 'subject to judgment in the light of changing community mores.'"

714 P.2d at 656 (emphasis added; citations omitted), quoting Salt Lake County v. Tax Commission ex rel. Greater Salt Lake Recreational Facilities, 596 P.2d 641, 643 (Utah 1979). Our research discloses no U.S. jurisdiction that denies nonprofit hospitals or nursing homes a property tax exemption on the ground that they receive payment from patients who can pay, from insurance, or from government entitlement programs.

Another important threshold question we faced was the following:-- should an institution's property tax exemption hinge on its providing free care to indigents in amounts equal to a certain percentage of its gross revenue or net revenue? The Tax Commission answered this question in the negative for two reasons. First, we could find no Utah authority for imposing an absolute requirement that an institution's indigent care had to equal a certain percentage of revenue. Were the Tax Commission to come up with a percentage, it would be totally arbitrary. Second, imposing such a rule on institutions would foster uncertainty and confusion. The amount of subsidized care needed by the community fluctuates from year to year with trends in employment and the economy. An institution's exemption would depend more on economic conditions outside its control than on

its service to community needs. In Medical Center Hospital v. City of Burlington, \_\_\_\_ A.2d \_\_\_\_ (Vt. 1989), the Vermont Supreme Court rejected this percentage approach for reasons we believe to be sound:

"In our opinion, pegging charitability to a stated amount of free care would not be workable in determining an organization's taxable status. Instead, uncertainty would reign, with taxability determined on a yearly basis depending on economic factors not within the control of any one person or organization."

\_\_\_\_ A.2d at \_\_\_\_.

A third important threshold question we faced was whether institutions should receive exemptions only in proportion to the free indigent care they provide. This approach would allow a total exemption only for facilities or portions of facilities that are totally dedicated to the provision of free care; other facilities would only receive partial exemptions in the proportion to which they are dedicated to non-paying patients. We rejected this approach for both legal and practical reasons. In the first place, we could find no authority in Utah or elsewhere for apportionment of exemptions on this basis. In the second place, this approach would tend to return hospitals and nursing homes to the early 19th Century, encouraging the establishment of poor wards and other segregated modes of care for rich and poor. In addition, this approach is based on an unreasonably narrow concept of charity: it would discourage the efforts of full-service hospitals to provide such other community benefits as community education, community health screening, health science research, and physician and nursing education.

Finally, we considered carefully whether an institution's activities should be disqualified from being considered "charitable" simply because some for-profit businesses engage in the same activities. We could find no legal support for the proposition that charity must be confined only to endeavors that are never duplicated by for-profit businesses. Such a restriction would discourage, rather than encourage, many types of undeniably charitable work.

#### Authority for Standard I

Under this standard, the institution owning the property for which the exemption is sought must establish that it is organized on a nonprofit basis for appropriate purposes, and its property must be dedicated to its charitable purpose. This

standard derives directly from Article 13, Section 2 of the Utah Constitution, which requires the owner of exempt property to be a "nonprofit entity." In Utah County, the Utah Supreme Court held that a hospital seeking an exemption must show that its "stated purpose" is to provide a significant service to others "without immediate expectation of material reward." 709 P.2d at 269. In applying this standard, the Court examined the institution's corporate purposes and the restrictions on the distribution of assets to private interests, as set forth in its articles of incorporation. Id. at 272-73. The present Standard I is issued to require exactly the type of inquiry suggested by the Supreme Court in Utah County.

#### Authority for Standard II

Under this standard, the institution must show that none of its net earnings and none of the donations made to it inures to the benefit of any private shareholder or individual, as interpreted under federal tax law. The source of this standard is again the Utah County case, which held that counties must consider:

- (1) "whether private interests are benefited by the organization or operation" of hospitals that apply for the exemption, 709 P.2d at 276, and
- (2) "whether income received from all sources . . . produces a 'profit' to the entity. . . ." Id. At 269.

For the limited purpose of determining what is or is not "private inurement" in specific fact situations, the Tax Commission incorporated the federal rules relating to private inurement under section 501(c)(3) of the Internal Revenue Code. These rules constitute a ready-made and well-established body of law. These federal rules are well-known to hospitals, nursing homes and other public charities. Section 501(c)(3) allows the charitable exemption only if "no part of the net earnings . . . inures to the benefit of any private shareholder or individual . . . ." This provision has been construed authoritatively by the Treasury Department in Section 1.501(c)(3)-1 of the Internal Revenue Regulations and in many revenue rulings and court decisions that directly concern hospitals. See, e.g., Revenue Ruling 69-545, 1962-2 C.B. 117. The Tax Commission could see no practical reason to invent a new body of law in this limited area when the federal standard has been so widely and exhaustively applied.

### Authority for Standard III

This standard requires that the entity applying for the exemption establish three things:

First, the hospital or nursing home must show that it admits members of the public without regard to race, religion or gender.

Second, the institution must show that the decision to treat or admit a patient or nursing home resident is based upon the clinical judgment of the admitting physician and not upon the patient's financial status.

Third, the institution must prove that, as a result of the foregoing, medically indigent persons who need those services generally available at a hospital or nursing home receive them for a reduced charge or for no charge in accordance with their ability to pay.

This standard derives from three of the Utah Supreme Court's guidelines concerning:

- (1) "whether the recipients of the 'charity' are required to pay for the assistance received, in whole or part,"
- (2) "whether the beneficiaries of the 'charity' are restricted and, if restricted, whether the restriction bears a reasonable relationship to the entity's charitable objective," and
- (3) "whether the stated purpose of the entity is to provide a significant service to others without immediate expectation of material reward." Utah County, supra, 709 P.2d at 269.

Consistent with Utah County, institutions who wish to comply with this standard must prove that they have a formalized policy of open access. The institution must also demonstrate that it has made a genuine effort to inform the public of the open access policy.

### Authority for Standard IV

This standard requires institutions to show that their policies integrate and reflect the public interest. They must do so by demonstrating that their governing boards have broad-based membership and function in a generally open atmosphere, and that

they seek to address the health care needs of the community. The means of complying with this standard are specifically outlined. However, all policy decisions relating to an institution's governance and operation remain in the hands of the institution's governing body. This standard derives from the principle that the "act of giving," which is essential to charity, can be identified "in the lessening of a government burden through the charity's operation." Utah County, 709 P.2d at 269; Salt Lake County v. Tax Comm'n. ex rel. Laborers Local No. 295, 658 P.2d 1192, 1198 (Utah 1983) (Oaks, J., concurring).

#### Authority for Standard V

This standard requires that the institution must establish annually that its "total gift to the community" exceeds its potential property tax liability for the year. The standard sets forth a partial list of the activities and services that may count towards an institution's "total gift."

Like Standard IV, Standard V is based on the need to prove a "gift," by showing "a substantial imbalance in the exchange between the charity and the recipient of its services," or by showing "the lessening of a government burden." Utah County, 709 P.2d at 269. In Yorgason v. County Board, 714 P.2d at 660 & n.29, the Utah Supreme Court utilized a gift-to-tax comparison like the one in Standard V.

The components of the "gift" listed in the standard reflect specific ways in which institutions have traditionally demonstrated their charity. The list is also intended to reflect factors deemed important by the Utah Supreme Court. For example, the unreimbursed value of care to indigent, elderly and other patients is "[o]ne of the most significant factors to be considered in review of a claimed exemption." Utah County, 709 P.2d at 274. The institution's reliance on donations of time and money, and the quantifiable impact of those donations on patients, are also important factors, according to the Court. Id. at 273. In addition, Standard V recognizes the contribution to the common good discharged in the marshalling of community resources to assist in charitable activities. While the focus of Standard V is on defining and quantifying the value of certain activities, it is important to remember that the process of determining the total gift to the community is more than a mere accounting exercise.

### Authority of Standard VI

Standard VI provides that satellite health care facilities and centralized support facilities are entitled to the exemption if they enhance and improve an exempt institution's charitable mission. This standard merely recognizes the need for operational flexibility. For example, a hospital or nursing home may serve the community through the establishment of neighborhood clinics. Hospitals may conclude that they operate more efficiently by sharing a free-standing support facility -- such as a laundry -- with affiliated nonprofit institutions. Although the Utah Supreme Court has never ruled on the exempt status of such off-site facilities, other courts have upheld their exempt status where they enable or enhance the exempt institution's charitable activities. See, e.g., Shared Hospital Services Corp. v. Ferguson, 673 S.W.2d 135 (Tenn. 1984) (exempt status of shared laundry service); Barnes Hospital v. Leggett, 646 S.W.2d 889 (Mo. App. 1983) (exempt status of separate office building used for hospital clinics and medical student training).