

ORIGINAL

IN THE SUPREME COURT OF OHIO

AKRON GENERAL MEDICAL CENTER,)
)
Appellant,)
)
vs.)
)
JOSEPH W. TESTA,)
TAX COMMISSIONER OF OHIO, and)
STOW-MUNROE FALLS CITY SCHOOLS)
BOARD OF EDUCATION,)
)
Appellees.)

CASE NO. 2014-0876

On Direct Appeal from the Ohio Board of Tax Appeals, BTA Case No. 2012-426

FILED
DEC 16 2014
CLERK OF COURT
SUPREME COURT OF OHIO

APPELLANT AKRON GENERAL MEDICAL CENTER'S
MOTION FOR ORAL ARGUMENT BEFORE THE FULL COURT

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MOTION

Pursuant to S.Ct.Prac.R. 17.07(A), Appellant Akron General Medical Center (“AGMC”) hereby moves for oral argument before the full Supreme Court.¹ Oral argument before the full Court is warranted in this case because this appeal presents issues of public and great general interest relating to the proper interpretation of Ohio Revised Code 5709.12 and 5709.121 as applied to real property belonging to a charitable institution. In particular, Appellant’s Merit Brief presents two propositions of law relating to (1) the proper legal standards for the Board of Tax Appeals to apply in deciding tax exemption applications under R.C. 5709.121(A)(2); and (2) whether the Board of Tax Appeals may deny a charitable tax exemption application under R.C. 5709.121(A)(2) and R.C. 5709.12(B) based upon the percentage of free or donated services. (See Appellant’s Merit Brief, filed October 7, 2014, Propositions of Law #1 and #2).

Both issues present important questions of law that will have a significant and broad-based impact upon other charitable institutions throughout the State of Ohio. For this reason, therefore, the Ohio Hospital Association (“OHA”) has filed an Amicus Brief in this case because it has determined that the legal issues presented are “extremely important to all persons making charitable use of their property, but especially so to taxpayers, such as members of Amicus, that provide healthcare services.” (See OHA Amicus Brief, pg. 2, filed October 6, 2014). This is a significant filing that explains why this case is different from most other direct appeals. Over the past 20 years, a review of the Supreme Court’s docket reveals that the OHA has filed an amicus brief in only two other cases arising from a direct appeal from the Board of Tax Appeals: (1) *Dialysis Clinic, Inc. v. Richard A. Levin*, Case No. 2009-2310; and (2) *Community Health*

¹ This Motion for Oral Argument before the full Court has been timely filed within 20 days of Appellees’ Merit Briefs, as required by S.Ct.Prac.R. 17.07(A)(2).

Professionals, Inc. v. William W. Wilkins [Richard A. Levin], Case No. 2006-1086. (See Exhibit A, Report of Ohio Supreme Court cases, dated 12/11/2014, involving Ohio Hospital Association from 1993-2014). In both cases, the Ohio Supreme Court scheduled oral argument before the full Court, and in the *Dialysis Clinic* case, the Court scheduled oral argument *sua sponte*. (See Exhibit B, Entry, dated June 14, 2010, in *Dialysis Clinic v. Levin*, Case No. 2009-2310, and Exhibit C, Entry, dated January 18, 2007, in *Community Health Professionals, Inc. v. Wilkins*, Case No. 2006-1086). Accordingly, given the importance of the legal issues presented in this case to all charitable institutions across the State of Ohio, Appellant AGMC respectfully requests that the Court schedule oral argument before the full Supreme Court in this case.

Indeed, a review of the Merit Briefs in this case only provides further confirmation for why oral argument before the full Supreme Court is warranted. In his Merit Brief, the Tax Commissioner requests that the Court adopt an interpretation of R.C. 5709.121(A)(2) that would require a charitable institution to meet “certain standards for quality and quantity” in order to satisfy the three-part test set forth in the statute itself. (See Appellee Tax Commissioner’s Merit Brief, pp. 9, 29-38, filed 11/26/2014). In so doing, the Tax Commissioner argues that the operative language in R.C. 5709.121(A)(2) – “in furtherance of or incidental to” – should be interpreted to require that the use “must be *reasonably certain* to advance the owner’s purposes or be causally linked *by necessity* to the owner’s purposes.” (*Id.* at pg. 30) (emphasis added). Moreover, the Tax Commissioner requests that the Court require the charitable institution to demonstrate a specific “amount” of charitable use of the property, “meaning the frequency and duration of that use (*i.e.* quantity).” (*Id.*) This interpretation conflicts with the plain language of the statute as written, and is directly contrary to the interpretation of R.C. 5709.121(A)(2) that is set forth in Appellant’s Proposition of Law No. 1. (See Appellant’s Brief, pp. 16-35).

Accordingly, given that the proper interpretation of R.C. 5709.121(A)(2) has been placed directly into question in this case, the Court should schedule an oral argument before the full Court because it is clear that one of the primary legal issues presented in this case is the proper interpretation of R.C. 5709.121(A)(2), which is a legal issue of public and great general interest to not only the parties, but to all charitable institutions across the State of Ohio.

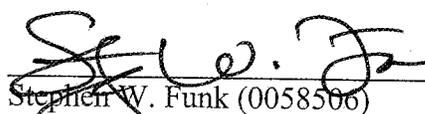
Finally, this Court should schedule oral argument before the full Court because a review of the Merit Briefs confirms that there is a significant legal issue presented relating to whether a charitable tax exemption may be denied under R.C. 5709.121 or R.C. 5709.12(B) based upon the “percentage of free or donated services.” (*See* Appellant’s Merit Brief, Proposition of Law No. 2, pp. 33-38). As set forth in OHA’s Amicus Brief, this Court has rejected this requirement in the past, but the Tax Commissioner still persists in requiring some minimal, yet unspecified level of uncompensated care as a precondition to a charitable tax exemption under Ohio law. (OHA Amicus Brief, pg. 2). Indeed, in this case, the Tax Commissioner’s Merit Brief once again argues that the BTA properly denied AGMC’s charitable tax exemption based upon “the degree of charity use.” (Tax Commissioner’s Merit Brief, pg. 16). Moreover, as previously discussed, the Tax Commissioner further argues that Court should determine eligibility for a tax exemption under R.C. 5709.121(A)(2) based upon “the amount of charitable use a property receives.” (*Id.* at 30). As the OHA Amicus Brief explains, this erroneous interpretation of the applicable charitable tax exemption statutes “threatens the property tax exemption currently available to OHA members for their healthcare facilities and related structures that are operated in furtherance of their charitable purposes.” (OHA Amicus Brief, pg. 2). Accordingly, given the importance of the legal issues presented, the Court should schedule oral argument before the full Court because it is clear the Court’s ultimate resolution of the important legal issues presented in

this case will have a significant impact on all other nonprofit, charitable institutions throughout the State of Ohio. (*Id.*)

CONCLUSION

For these reasons, therefore, Appellant Akron General Medical Center respectfully requests that the Court issue an Order under S.Ct.Prac.R. 17.07 to schedule oral argument in this case before the full Court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2014, a true and correct copy of *Appellant Akron General Medical Center's Motion for Oral Argument* was served via regular first-class mail, postage prepaid, under Civ. R. 5(B)(2)(c), upon the following counsel of record:

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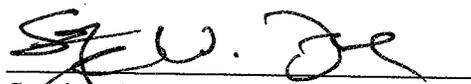
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EXHIBIT A

The Supreme Court of Ohio & The Ohio Judicial System

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View Case	Case Number	Party Name	Party Type	Case Type
View Case	1993-1329	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Motion to Certify
View Case	1994-0726	Ohio Hospital Association	Amicus Curiae on behalf of Appellee	Motion to Certify
View Case	1994-2612	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Certified Conflict Case
View Case	1995-0869	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	1995-1522	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony); Claimed Appeal of Right
View Case	1995-1699	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	1996-0757	Ohio Hospital Association	Amicus Curiae on behalf of Appellee	Discretionary Appeal (Non-felony)
View Case	1998-1134	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2002-0993	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2003-0067	Ohio Hospital Association	Amicus Curiae on behalf of Appellee	Discretionary Appeal (Non-felony)
View Case	2004-0284	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2005-0998	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)

View Case	2005-1505	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Direct Appeal (Case Originating in Court of Appeals)
View Case	2006-1086	Ohio Hospital Association	Amicus Curiae on behalf of Appellee	Appeal from Board of Tax Appeals
View Case	2006-1212	Ohio Hospital Association	Amicus Curiae on behalf of Respondent	Certified Question of State Law
View Case	2006-1247	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2006-2069	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2007-2202	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2009-0580	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2009-0710	Ohio Hospital Association	Relator	Original Action in Prohibition
View Case	2009-0820	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2009-1715	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2009-2307	Ohio Hospital Association	Amicus Curiae on behalf of Appellee	Discretionary Appeal (Non-felony)
View Case	2009-2310	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Appeal from Board of Tax Appeals
View Case	2010-0297	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2010-1236	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2010-2148	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Certified Conflict Case
View Case	2011-0899	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony); Claimed Appeal of Right
View Case	2012-0014	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony); Claimed Appeal of Right
View Case	2012-0797	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2013-1668	Ohio Hospital Association	Amicus Curiae on behalf of Respondent	Original Action in Mandamus and Prohibition
View Case	2014-0876	Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Appeal from Board of Tax Appeals
View Case	2002-1986	The Ohio Hospital Association		Discretionary Appeal (Non-felony)

			Amicus Curiae on behalf of Appellant	
View Case	2006-1263	The Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2000-1405	The Ohio Hospital Association et al.	Amicus Curiae on behalf of Respondent	Original Action in Mandamus
View Case	2007-1529	The Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)

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Entity Name: The Ohio Hospital Association

Records 1 to 3 of 3

View Case	Case Number	Party Name	Party Type	Case Type
View Case	2002-1986	The Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2006-1263	The Ohio Hospital Association	Amicus Curiae on behalf of Appellant	Discretionary Appeal (Non-felony)
View Case	2000-1405	The Ohio Hospital Association et al.	Amicus Curiae on behalf of Respondent	Original Action in Mandamus

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EXHIBIT B

FILED

The Supreme Court of Ohio

JUN 14 2010

CLERK OF COURT
SUPREME COURT OF OHIO

Dialysis Clinic, Incorporated

Case No. 2009-2310

v.

ENTRY

William W. Wilkins [Richard A. Levin],
Tax Commissioner of Ohio

This cause is pending before the Court as an appeal from the Board of Tax Appeals.
Upon consideration thereof,

It is ordered by the Court, sua sponte, that this case be set for oral argument before the
full Court.

(Board of Tax Appeals; No. 2006V2389)



ERIC BROWN
Chief Justice

EXHIBIT C

Community Health Professionals, Inc.

v.

William W. Wilkins [Richard A. Levin],
Tax Commissioner of Ohio

Case No. 2006-1086

ENTRY

This cause is pending before the Court as an appeal from the Board of Tax Appeals. Upon consideration of the amicus curiae Ohio Hospital Association's motion to participate in oral argument,

It is ordered by the Court that the motion is granted and the amicus shall share the time allotted to the appellee.

(Board of Tax Appeals; No. 2004K689)

THOMAS J. MOYER
Chief Justice