

In the
Supreme Court of Ohio

RURAL HEALTH COLLABORATIVE
OF SOUTHERN OHIO, INC.,

Appellee,

v.

JOSEPH W. TESTA,
TAX COMMISSIONER OF OHIO

Appellant.

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: Case No. 2014-0963
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: Appeal from Ohio Board of Tax Appeals
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: BTA Case No. 2012-3421
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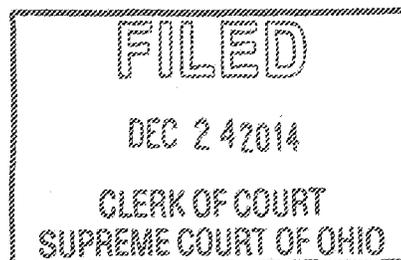
**APPELLANT TAX COMMISSIONER'S RESPONSE MEMORANDUM TO
APPELLEE'S MOTION FOR ORAL ARGUMENT BEFORE THE FULL COURT**

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MEMORANDUM

The Tax Commissioner of Ohio does not object to Rural Health Collaborative of Southern Ohio, Inc.'s ("RHC Realty's") motion for oral argument before the full Court. Rather, the Commissioner responds to RHC Realty's motion in order to correct certain misstatements made by RHC Realty in the memorandum in support attached to its motion.

RHC Realty dramatically accuses the Commissioner of "creating" law, "ignoring" decisional law, and "substituting its own view of what the law should be, spinning intricate webs of superficial beauty that simply fade away in the light of reasoned analysis." That is not the case.

In reality, the Commissioner has steadfastly adhered to this Court's own controlling decisional law. Most notably, *Dialysis Clinic, Inc. v. Levin* holds that health care providers that discriminate against those who cannot pay do not provide charitable services. 127 Ohio St.3d 215, 221, 2010-Ohio-5071, ¶¶ 26, 34. In *Dialysis Clinic, Inc.*, this Court disallowed charitable exemption for a loss-generating dialysis clinic in West Chester, Ohio in 2004 that is materially the same as the loss-generating clinic in Seaman, Ohio at issue here in 2006. In both cases, the provider of care on the property was Dialysis Clinic, Inc. ("DCI"). In both cases, DCI provided dialysis care pursuant to an express written policy that reserved the right to refuse dialysis care to indigent patients who could not pay. The result here should be no different than the disallowed exemption in *Dialysis Clinic, Inc.*

RHC Realty argues that *Dialysis Clinic, Inc.* is inapposite because RHC Realty owns the clinic at issue and leases it to DCI, whereas in *Dialysis Clinic, Inc.* DCI both owned and operated the clinic at issue. In other words, RHC Realty does not dispute that *Dialysis Clinic, Inc.* remains good law, but erroneously believes that this Court should reach a different result because

there are two entities involved rather than one. To RHC Realty, charitable exemption can be achieved where it would otherwise fail merely by introducing a lease to the situation.

But that argument is foreclosed by well-established decisional law precedent as well. In order for a lessor of real property to qualify for charitable exemption, it must be a “charitable institution.” R.C. 5709.121. In *Northeast Ohio Psychiatric Instit. v. Levin*, this Court held that a lessor may not claim to be a “charitable institution” vicariously based upon the activities of a lessee. 121 Ohio St.3d 292, 2009-Ohio-583, ¶¶ 11, 14. That means RHC Realty may not claim to be a charitable institution based upon the health care that DCI provides.

Because RHC Realty has no employees and relies exclusively upon the activities of its members and DCI to establish itself as a “charitable institution,” its claim must fail. The result in this case should be no different than in *Northeast Ohio Psych.*, where this Court denied exemption. Likewise, in *Joint Hospital Services, Inc. v. Levin*, this Court disallowed charitable sales tax exemption to a consortium of hospitals organized to provide linen services to its member hospitals. 52 Ohio St.2d 152, 153 (1977). There, the Court held that the hospital consortium could not claim exemption vicariously based upon the health care services that its members provided. *Id.*

Contrary to RHC Realty’s assertion, the Commissioner has relied extensively upon this Court’s well-settled decisional law in denying charitable exemption for the DCI Seaman clinic in this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Appellant Tax Commissioner's Response Memorandum to Appellee's Motion for Oral Argument Before the Full Court* was served upon the following by U.S. regular mail on this 27th day of December, 2014:

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