

# Sides argue UHC property tax case at Supreme Court

by Matt Harvey Assistant Managing Editor | Posted: Tuesday, January 28, 2014 4:16 pm

CHARLESTON — West Virginia Supreme Court justices on Tuesday heard arguments in United Hospital Center's appeal of a ruling that it must pay property tax on its Bridgeport hospital site for tax year 2011.

The property was assessed for that tax year during 2010. The assessment was done prior to UHC moving from Clarksburg to a newly constructed site in Bridgeport in early October of 2010.

UHC would owe more than \$1 million in property tax, and likely upward of \$2 million total counting interest, if the Supreme Court upholds a finding by Harrison Circuit Judge John Lewis Marks Jr. Marks in January 2013 rejected UHC's appeal of the county assessor's finding that the hospital owed the money.

The justices likely will issue an opinion in this case sometime during the current term of court, which ends June 18.

Spilman Thomas & Battle lawyer Mike Garrison, appearing on behalf of the hospital, appeared to make deep inroads with the justices on one point: That UHC's location in Bridgeport housed its entire computer technology staff at the time of the assessment.

Justice Brent D. Benjamin repeatedly noted that even though the patient care work was being done at Clarksburg, that wouldn't have been possible without the computer support in Bridgeport. Benjamin posited that could mean the property in Bridgeport was at the point of being an active, charitable hospital.

At one point, Benjamin even asked Harrison Assistant Prosecutor James Armstrong, who represented the county in its bid to uphold the property tax assessment, whether he'd be willing to have surgery without computer support.

But the matter doesn't appear to be a clear-cut victory for UHC.

Justice Menis E. Ketchum II noted that a state regulation is very clear that the UHC property in Bridgeport was taxable in 2010, before it went into operation as a charitable hospital.

However, a statute also is involved that likely would take precedence over the regulation, and the justices sent some mixed signals on that.

Ketchum also wondered whether the time when a hospital is issued a certificate of need (in this case, that would have been after the 2010 assessment) should serve as the hinge point for these types of matters.

Benjamin, though appearing for most of the hearing like he will rule in favor of UHC, also indicated that doing so might open up the floodgates for other nonprofit hospitals to use such a ruling as a loophole to avoid property taxation.

It may be that the justices will rule extremely narrowly in this case, as Garrison suggested they might.

Ketchum, for instance, indicated that it was clear the hospital — with construction all but finished at the time of the assessment — clearly was going to be used for the charitable purpose of treating patients.

Armstrong and Kathy Schultz of the West Virginia Attorney General's Office both stuck to their positions and kept from getting flustered despite some tough questioning from the justices.

Harrison Assessor Cheryl Romano and the state tax commissioner followed both the regulations and West Virginia Code, Armstrong and Schultz contended. And ruling for UHC would fly in the face of that, they indicated.