

## **Court: FGH can appoint its own board**

Ending long legal battle between City of Fairmont, hospital

BY MISTY POE TIMES WEST VIRGINIAN

FAIRMONT — In a decision filed Wednesday, the state Supreme Court has ruled that Fairmont General Hospital has the right to appoint its own board members, ending a nearly threeyear legal battle between the City of Fairmont and the hospital.

The high court's ruling upholds a decision made by Marion County Circuit Court Judge David Janes in November 2011, who ruled that the hospital could appoint its own members and that the city's charter no longer applies to the hospital. The City of Fairmont appealed that decision in February 2012, asking the Supreme Court to hear the case.

Since 2010, the city and FGH have been embroiled in a battle for appointments — FGH wanted the right to appoint its own board of directors, while the city believed it held that right to not only appoint the board members, but to have two members of city council sit on the board.

In August 2010, the FGH board voted to change its bylaws to appoint its own members free of the city's approval. In January 2011, Fairmont City Council voted to appoint two representatives, council members Debbie Seifrit and Ron Straight, and that same month, the FGH board appointed its own members without council's blessing.

A month later, the FGH board filed the injunction in the hopes of preventing a "public spectacle" if the board were forced to ask Seifrit and Straight to leave a meeting.

SEE FGH, PAGE [8A](#)

### **Article Continued Below**

[See FGH on Page A08](#)

**FGH**

CONTINUED FROM PAGE 1A

At that point, the parties entered mediation. While both parties said mediation was helpful, the city still filed a countersuit in April. The city's countersuit alleged the FGH board's new bylaws were in conflict with the city charter, the hospital's articles of incorporation and state law.

Janes issued an order in favor of the hospital in December 2011. In February 2012, the city filed the notice of intent to appeal with the state Supreme Court of Appeals in Charleston.

Michael Garrison of Spilman Thomas & Battle in Morgantown, an attorney who has been representing FGH in the case, said he was pleased that the circuit judge's decision was upheld.

"And I'm pleased on behalf of the hospital," he said. "I think it was the right decision."

Garrison does not expect any changes on the hospital board of directors because the hospital has been appointing its members for a few years under new bylaws.

"It's been self-appointed for the past few years, so it won't be something that shows a lot of change."

Janes and the Supreme Court held that because FGH is no longer a "municipal hospital" — the city hasn't controlled day-to-day operations since 1985 — that the Fairmont City Charter does not apply and that council *lacked any standing* to challenge the board changing its bylaws, amending its articles of incorporation or appointing its own members.

The Supreme Court agreed.

"Obviously we're disappointed the court didn't see the arguments we put forth, but we tried to protect the interest of the citizens and uphold the charter," said Fairmont City Manager Jay Rogers.

According to Rogers, the basis behind the city's argument focused on the community's involvement in the hospital.

"It wasn't about control and it wasn't about power," Rogers said. "It's the whole story behind Fairmont General, how it was built by this community and the people who helped build that hospital initially.

"I don't think on its face we necessarily argued that (the city's charter) wasn't applicable any longer, but we believed there was more that defined what a municipal hospital was and thought the council's role in serving on that board was what kept the continuity of a community hospital."

Part of the city's argument in the appeal was that having council members on the hospital's board not only protected the service its residents would receive there, but that city representation would assure the tax base from B&O taxes paid by the hospital's vendors, suppliers and providers.

The court rejected that argument, asserting that there was no evidence that "non-council appointees to the hospital's board are likely to run amok and abandon an institution that has existed for 75 years."

"I think we're very pleased," said Robert C. Marquardt, president and CEO of Fairmont General Hospital. "We thought we were correct on our interpretation of the city charter and how it impacted the city charter. Ultimately, we're pleased that our view and our perspective were upheld."

Marquardt said the board has been operating as if it had the authority since the beginning of 2011. In the future, he said the most obvious impact is that the Supreme Court's decision removes the potential barrier to recruit other board members. There are currently nine members, but FGH's bylaws allow for up to 17 members on the hospital board. "Now we can convene and deliberate and start discussions on potential other board members and how they might be attracted," Marquardt said. "We didn't expect to get a ruling from the Supreme Court until September. We're surprised how rapidly this came about."

Rogers said the city respects the Supreme Court's decision and FGH.

"At the end of the day, we support Fairmont General and, as the City of Fairmont, we want Fairmont General to grow and thrive in this community for years to come," Rogers said. "What we just went through was just a difference of opinion on that particular issue."

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