
NO. 22533

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, Local 152,
AFL-CIO and UNITED PUBLIC WORKERS, AFSCME, Local 646, AFL-CIO,
Plaintiffs-Appellants

vs.

LAWRENCE MIIKE, DIRECTOR, IN HIS OFFICIAL CAPACITY AS DIRECTOR,
DEPARTMENT OF HEALTH, STATE OF HAWAI'I; STATE OF HAWAI'I
DEPARTMENT OF HEALTH; BENJAMIN CAYETANO, IN HIS OFFICIAL
CAPACITY AS GOVERNOR OF THE STATE OF HAWAI'I; HAWAI'I HEALTH
SYSTEMS CORPORATION; HANA COMMUNITY HEALTH CENTER, INC.,
Defendants-Appellees

and

JOHN DOES 1-10; JANE DOES -10; DOE CORPORATIONS 1-10; DOE
PARTNERSHIPS 1-10; ROE NON-PROFIT ORGANIZATIONS 1-10; and ROE
GOVERNMENTAL ENTITIES 1-10 (97-032),
Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 97-2555)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ.;
and Acoba, J., Dissenting)

Plaintiffs-Appellants Hawaii Government Employees
Association, AFSCME, Local 152, AFL-CIO and United Public
Workers, AFSCME, Local 646, AFL-CIO appeal from the:
(1) September 5, 1997 Order granting Defendant Hana Community
Health Center, Inc.'s (HCHC) July 7, 1997 Motion to Dismiss First
Amended Complaint; (2) Findings of Facts; Conclusions of Law; and
Order, filed January 7, 1999; (3) Judgment, filed February 1,
1999; (4) Notice of Entry of Judgment, filed February 1, 1999;

(5) Amended Judgment, filed May 14, 1999; and (6) Notice of Entry of Amended Judgment, filed May 14, 1999, by the Circuit Court of the First Circuit, the Honorable Gail Nakatani presiding. On appeal, the Plaintiffs-Appellants contend that the circuit court: (1) erred by its failure to extend Hana Medical Center (HMC) employees the protection of the merit principles under article XVI, section 1 of the Hawai'i Constitution; (2) misinterpreted and misapplied Acts 262 and 263 of the 1996 Session Laws in violation of constitutional and statutory merit principles because: (a) Act 263 "mentions nothing about civil service positions," (b) implied exclusion from the civil service system is not permitted, (c) Act 263's authority to release HMC to a private nonprofit organization was conditional on the resolution of the issues in Section 2(2), (d) the circuit court did not consider the testimony of key legislators regarding the intent of the enactment, (e) resolution of the issue of employee status was a mandatory civil service law, (f) when Act 263 is read in pari materia with Act 262, control over HMC was transferred to HHSC and HMC positions were subject to HRS chapters 76 and 77, and (g) Act 262 preempts Act 263, so the HMC positions retained civil service protections; (3) improperly dismissed HCHC as a party because its contract with Defendants-Appellees was null and void as a violation of public policy; and (4) erred when it ignored the ultra vires acts of health administrators and failed to grant

relief in mandamus against the HHSC Board. The seven subcategories in Plaintiffs' point of error number two can be distilled into two issues: (1) whether Act 263 specifically exempted the HMC positions from the civil service; and (2) whether resolution of the issues in Act 263 was a condition precedent to privatization. The subcategories dealing with reading Acts 262 and 263 in pari materia are addressed in the ultra vires issue discussion.

Upon carefully reviewing the record and the briefs submitted, we hold as follows:

The circuit court did not err by failing to extend HMC employees the protection of merit principles under article XVI, section 1 of the Hawai'i Constitution. The plain language of Act 263 mandated privatization of the HMC within two years. 1996 Haw. Sess. L. Act 263, § 2 at 615 ("[T]he department of health shall release the [HMC] from the division of community hospitals, effective July 1, 1997.") (Emphasis added.). Assuming arguendo that the statute was ambiguous, Act 263's legislative history supports privatization of the services provided by HMC because it states that the purpose of Act 263 was to "transfer the [HMC] from the State to a Hana nonprofit organization to promote a community-based health program." Sen. Stand. Comm. Rep. No. 1917, in 1996 Senate Journal, at 940; Sen. Stand. Comm. Rep. No. 2163, in 1996 Senate Journal, at 1045.

Konno v. County of Hawai'i, 85 Hawai'i 61, 937 P.2d 397 (1997), is materially distinguishable from this case. In Konno, the County of Hawai'i relied on HRS § 46-85 (1993) for authorization to enter into a landfill operation contract with the private sector. Upon examination of the legislative history of HRS § 46-85, we noted that the statute was enacted as part of a bill intended to help finance the construction of garbage-to-energy plants through the issuance of special purpose revenue bonds. Nothing in the legislative history indicated that the statute was intended to authorize privatization of landfills or to exempt landfill workers from civil service coverage. We thus held that neither of the civil service exemptions relied upon by Hawai'i County -- HRS § 76-77(7) and HRS § 76-77(10) -- were applicable. In the present case, Act 263 mandated privatization of the services provided by the HMC. Thus, there was "clear legislative support for privatization," which this court found to be absent in Konno. Id. at 79, 937 P.2d at 415.

The implied exemption of the HMC positions from the civil service law under Act 263 is not contrary to constitutional or statutory standards. Article XVI, section 1 of the Hawai'i Constitution provides that civil service positions are defined by law, and HRS § 76-16 (1996) of the civil service law lists specific positions which are exempted from the civil service law. HRS § 76-16(17) additionally provides the following exemption:

“Positions specifically exempted from this part by any other law” While Act 263 does not expressly state that the HMC positions are exempt from the civil service law, the clear legislative intent to privatize the services to be provided by implication mandates that the HMC positions be eliminated and exempt from the civil service law. To hold otherwise would nullify Act 263 and be contrary to our rule of statutory construction that legislative enactments are presumptively valid and should be interpreted to give them effect. See State v. Spencer, 68 Haw. 622, 624, 725 P.2d 799, 800 (1996).

The circuit court did not misinterpret or misapply Act 263 when it found that privatization of the HMC was not conditioned upon resolving the status of existing HMC employees. Based upon the plain language of Act 263, the decision to privatize the HMC was not conditioned upon resolving the status of existing employees. Act 263 mandated privatization of the HMC; the language of subsection 2(2)(A) of Act 263 required resolution of employment issues related only to when the transfer was to occur. The proffered testimonies of Senator Chumbley and Representative Pepper on this issue were inadmissible for the purpose of showing legislative intent. Trent v. Fisher, 17 Haw. 612, 618 (1906); see also Kim v. Employees Retirement System, 89 Haw. 70, 78, 968 P.2d 1081, 1089 (App. 1998) (noting that a legislator’s statements were not valid evidence of legislative

intent). Thus the DOH properly complied with Act 263 when it transferred HMC to a private nonprofit organization.

The circuit court did not improperly dismiss HCHC because its contract with Defendants-Appellees was neither null and void nor in violation of public policy. The legislature mandated privatization and made it clear that the transfer of HMC to a nonprofit organization was public policy. Hse. Stand. Comm. Rep. No. 1103-96, in 1996 House Journal, at 1470. Such policy determinations are expressly within the constitutional purview of the legislature. See Lee v. Corregedore, 83 Hawai'i 154, 171, 925 P.2d 324, 341 (1996) (noting that broad public policy determinations are "best left to the branch of government vested with the authority and fact-finding ability to make such broad public policy decisions, namely the Hawaii legislature"). Furthermore, the Defendants-Appellees had no responsibility to implement a personnel system consistent with chapters 76 and 77 because the HMC positions were exempted from the civil service system by Act 263. Thus, HCHC's contract with Defendants-Appellees was valid and fulfilled public policy by transferring HMC to a nonprofit organization.

Defendant Miike's transfer of control of HMC to HCHC was not ultra vires. Acts 262 and 263 are in pari materia, but Act 263 will not control even though it is the more specific statute because Act 262 provides that Act 262 controls over the

inconsistent provisions of any other law. 1996 Haw. Sess. L. Act 262, § 29 at 613. Where there is an irreconcilable conflict between a general and specific statute concerning the same subject matter, the specific will be favored. State v. Batson, 99 Hawai'i 118, 120, 53 P.3d 257, 259 (2002). However, where the statutes simply overlap in their application, effect will be given to both if possible, as repeal by implication is disfavored. Id.

Acts 262 and 263 mandated the transfer of HMC to other entities. In this case, a more specific statute (Act 263) will not be favored because Act 262, section 29 provides that Act 262 controls over the inconsistent provisions of any other law. 1996 Haw. Sess. L. Act 262, § 29 at 613. The plain language and legislative history of Act 263 shows that the purpose of the Act was to transfer HMC to a nonprofit organization. The purpose of Act 262 was to transfer all operations of the Division of Community Hospitals to HHSC, a new state agency. Haw. Sess. L. Act 262, § 1 at 595. There is no irreconcilable conflict between Act 262 and 263. Therefore, Act 262 and 263 overlap, so effect will be given to both. Act 262 must be interpreted to require the State of Hawai'i Department of Health (DOH) to transfer HMC to HHSC, while Act 263 requires DOH to transfer HMC to a nonprofit organization. Act 262 requires the DOH to transfer all operations to HHSC effective July 1, 1996. 1996 Haw. Sess. L.

Act 262, § 20 at 611 and § 32 at 614. Nothing in Act 262 prohibits the subsequent transfer of HMC to a nonprofit organization. A transfer of HMC to HHSC, effective July 1, 1996, would conform to Act 262. A subsequent transfer of HMC to a nonprofit organization would not contradict Act 262 and would comply with Act 263.

Furthermore, Act 263 would be invalidated by holding that Act 262 mandated that HMC be transferred to HHSC and remain there contrary to the express language of Act 263. Both Acts 262 and 263 were passed in the 1996 legislative session. It is implausible that the legislature intended to pass two laws relating to the same subject matter in the same year only to have one nullify the other.

Act 263 imposed a duty upon DOH to transfer HMC to a nonprofit organization by July 1, 1997. Act 262 would have transferred this duty to HHSC when all of the other rights, power, functions, and duties were given up by the division of community hospitals effective July 1, 1996. The legislature, however, specifically retained oversight and review over direct patient care services at all HHSC facilities. Haw. Sess. L. Act 262, § 2 at 604. The legislature exercised the right to control services at HMC by passing Act 263. Act 263 authorized the DOH to enter into an agreement with a private nonprofit organization.

Because the legislature directly authorized the DOH to privatize HMC, Miike's actions were not ultra vires. Therefore,

IT IS HEREBY ORDERED that this court affirm the circuit court's Order granting Defendant HCHC's Motion to Dismiss First Amended Complaint filed on September 5, 1997, Findings of Fact, Conclusions of Law and Order filed on January 7, 1999, Judgment filed February 1, 1999, Notice of Entry of Judgement filed on February 1, 1999, Amended Judgment filed on May 14, 1999, and Notice of Entry of Amended Judgment filed on May 14, 1999.

DATED: Honolulu, Hawai'i, January 26, 2004.

On the briefs:

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