

**[J-253-98]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

WILSON AREA SCHOOL DISTRICT, BOROUGH OF WILSON, AND NORTHAMPTON COUNTY,	:	No. 0122 M.D. Appeal Docket 1998
	:	
Appellants	:	Appeal from the Order of the Commonwealth Court, entered January 26, 1998 at 30 C.D. 1997, affirming the Order of the Northampton County Court of Common Pleas, entered December 6, 1996, at No. 1992-C-6659
v.	:	
	:	708 A.2d 835 (Pa. Commw. 1998)
EASTON HOSPITAL,	:	
	:	ARGUED:: November 18, 1998
Appellee	:	
	:	
	:	

**DISSENTING OPINION**

**MR. JUSTICE NIGRO**

**DECIDED: March 24, 2000**

I cannot agree with the Majority's conclusion that Easton Hospital operates "entirely free of a private profit motive", and should therefore retain its tax-exempt, charitable status. Accordingly, I respectfully dissent.

As I interpret them, this Court's prior decisions in City of Washington v. Bd. of Assessment Appeals of Washington County, 550 Pa. 175, 704 A.2d 120 (1997) and St. Margaret Seneca Place v. Bd. of Property Assessment, Appeals and Review, County of Allegheny, 536 Pa. 478, 640 A.2d 380 (1994) squarely support the proposition that charitable entities are entitled to reinvest their surplus within for their maintenance or expansion without losing their tax-exempt status. In addition, I agree with the majority that charitable entities may invest their surplus funds and gain a reasonable return that will be

used to further their charitable missions. Easton Hospital, however, has not reinvested in its charitable enterprise or made investments producing a reasonable return to support its charitable mission. Rather, Easton Hospital transferred its surplus to other non-profit and for-profit entities, which the record does not establish are charitable. Of the \$1,960,000 transferred to these entities from 1990 to 1995, only \$20,000 has been repaid. Contrary to the majority, I agree with the analysis set forth by the Commonwealth Court in Pinnacle Health Hospitals v. Dauphin County Bd. of Assessment Appeals, 708 A.2d 1284 (Pa. Commw. 1998), appeal withdrawn, Nos. 120-121 M.D. Appeal Dkt. 1998, and would find that under the facts of this case, the use of the Hospital's surplus to fund its corporate affiliates is evidence that the Hospital is not operating entirely free of a private profit motive.<sup>1</sup> While Easton Hospital is free to expand its own facilities, which have a charitable mission, it should not be permitted to capitalize other entities without such a purpose and maintain its tax-free status.<sup>2</sup> Therefore, I respectfully dissent from the decision of the majority affirming the decision of the Commonwealth Court in the instant case.

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<sup>1</sup> Appellants argue that Easton Hospital does not operate entirely free of private profit motive because it has loaned and contributed more than \$3,320,000 to its parent company and its other subsidiaries to fund for-profit and non-profit ventures which are not charitable in nature and which compete with private sector businesses. Appellants further argue that Easton Hospital's employment contracts with doctors whose practices it buys have non-compete clauses which evidence a private profit motive. Contrary to the majority, I believe that Appellants' arguments have merit and that Easton Hospital's ventures into the private sector clearly evidence that during the tax years in question, it did not operate entirely free of a private profit motive.

<sup>2</sup> With this in mind, I would simply reiterate the position expressed in my dissenting opinions in Unionville-Chadds Ford School Dist. v. Chester County Bd. of Assessment Appeals, 552 Pa. 212, 714 A.2d 397 (1998) and City of Washington v. Bd. of Assessment Appeals, 550 Pa. 175, 704 A.2d 120 (Pa. 1997), that the HUP test should be applied to reinforce the traditional characteristics of charities, rather than to expand their scope to the point that the term 'charity' becomes meaningless.