IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA

Florida Public Employees Council 79,
AFSCME and Federation Of Physicians
And Dentists/Alliance Of Healthcare
And Professional Employees,

Petitioners,

Florida Nurses Association, Inc.,

Intervenor,

vs.

Kenneth S. Tucker, in his capacity as
The Secretary Of The Florida Department
Of Corrections,

Respondent,

Corizon, Inc.,

Intervenor.
_____/

CASE NO: 2012-CA-3119

FINAL ORDER ON PETITION FOR WRIT OF QUO WARRANTO

This cause came on for final hearing on November 15 & 29, 2012. The Court having considered the pleadings, evidence, and oral arguments of the parties and intervenors, and being otherwise fully advised in the premises, finds and rules as follows:

The issue before this Court is whether the Respondent is empowered to contract with Corizon, Inc. and Wexford Health Services, Inc., private for-profit corporations, to take

over the provision of comprehensive health services to inmates in Florida's correctional facilities, thereby replacing the current system of comprehensive health services provided by the Department of Corrections ("DOC") through its employees.

The Respondent, as Secretary of DOC, has awarded a contract to Corizon, Inc. and is negotiating a contract with Wexford Health Services, Inc. to provide comprehensive health services to inmates in DOC correctional facilities.

AUTHORITY TO PRIVATIZE

There is no dispute that DOC has been assigned various goals, activities and duties with respect to the Florida correctional system. One of these duties is to provide for the care of inmates in its custody. Fla. Stat. §§ 945.025(1)-(2) and 945.04(1)(2012). As part of the requirement to provide for the care of inmates within its control, the Eight Amendment of the United States Constitution requires that inmates be provided with adequate healthcare. See Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285 (1976). The provision of such care is also specifically required by Fla. Stat. §945.025(2)(2012).

The Florida Supreme Court has previously ruled that DOC has been given implied authority to enter into contracts to carry out the goals and activities assigned to it by the Florida Legislature. Pan-Am Tobacco Corp. v. Department of Corrections, 471 So. 2d 4, 5 (Fla. 1985)("Additionally, it has authorized certain goals and activities which can only be achieved if state agencies have the power to contract for necessary goods and, services." "Where the legislature has, by general law, authorized entities of the state to enter into contract or to undertake those activities which, as a matter of practicality, require entering into contract, the legislature has clearly intended that such contracts be valid and binding on both parties."). The provision of health care to inmates is an essential duty placed upon

DOC. That duty implies the authority to enter into contracts needed to accomplish that purpose.

Additionally, Fla. Stat. §20.315(12)(2012) permits DOC to enter into contracts with entities capable of providing needed services if they are more cost-effective, cost-efficient, or timely than those provided by the Department or available to it under existing law. The Petitioners contend that this statute is ambiguous and that principles of statutory construction should be applied to interpret it. Specifically, the Petitioners assert that the phrase "and other entities capable of providing needed services" should be interpreted to not permit contracts with for-profit entities. When interpreting a statute, a court must look first to the statute's plain language. If that "language is clear and unambiguous, courts should rely on the words used in the statute without involving rules of construction or speculating as to the legislature's intent." Germ v. St. Luke's Hosp. Association, 993 So. 2d 576, 578 (Fla. 1st DCA 2008)("Courts should give statutory language its plain and ordinary meaning, and may not add words that were not included by the legislature.").

This Court agrees with the position taken by DOC as to the meaning of this statute. Accordingly, this Court finds that Fla. Stat. §20.315(12)(2012) is not limited to non-profit entities. Therefore, DOC has authority, pursuant Fla. Stat. §20.315(12)(2012), to enter into contracts with for-profit entities to provide health care services for Florida inmates.

Further, this Court does not agree with the Petitioners' contention that Fla. Stat. §945.6033(2012) limits the DOC's authority to enter into the contracts at issue. This statute permits the Department to enter into "continuing contracts" with "licensed health care providers" for the provision of inmate health care services which the Department is unable to provide in its facilities.

The Court does not agree with the Department's position that Fla. Stat. §954.6033(2012) is distinguished by the use of the term "continuing contracts." The Department's assertion that a continuing contract can only be a contract that does not have a definite time period is too narrow. See Amec Civil, LLC v. State Department of Transportation, 41 So. 3d 235, 242 (Fla. 1st DCA 2010)("A 'continuing contract' is one 'calling for periodic performances.'"); and Corbin on Contracts, §956. In referencing breaches of continuing contracts, Corbin includes "[c]ontracts to convey tracts of land or to render various kinds of service may also require performance in instalments at definite intervals." (E.S.) Additionally, Corbin says "[t]here are contracts, however, that have been said to require continuing(or continuous) performance for some specified period of time, a period that may be definite or indefinite when the contract is made."

Fla. Stat. §945.6033(2012) is, however, distinguished by its very narrow definition of "health care provider" and the fact that there is no requirement that the services referenced be provided in a more cost-efficient or cost-effective manner as required by Fla. Stat. §20.315(12)(2012). The term "health care provider" is defined in Fla. Stat. §945.601(2)(2012) as "a regional research hospital or research center which is authorized by law to provide hospital services", "any entity which has agreed to provide hospital services", or "any entity licensed to provide hospital services." Thus, Fla. Stat. §945.6033(2012) is limited to contracting with entities that can provide hospital services which the Department is unable to provide in its facilities. This statute does not restrict the Department's ability to contract for health services to be provided at its facilities pursuant to Fla. Stat. §20.315(12)(2012).

Proper Designation Of Funding

At issue here is whether the Florida Legislature has properly designated funding for contracts with private entities to provide health care services for Florida prison inmates. The 2012 General Appropriations Act ("GAA")(2012-118, Laws of Florida) contains language in Line Item 784 purporting to authorize "up to $41,405,554 in recurring general revenue funds ... for the contracting of health services in the Southern Florida Region (formerly known as Region IV)." There is no mention, or authorization, of funds to contract for health services in the remainder of the state (Regions I, II, and III).

On September 12, 2012, the Legislative Budget Commission ("LBC") granted DOC's request to amend its 2012-2013 operating budget to provide $57,668,391 to fund contracts for all four regions from January 1, 2013, through the end of the 2012-2013 fiscal year. The LBC authorized transferring funds to the Inmate Health Services category from budget categories for Salaries and Benefits ($37,535,005), Other Personal Services ($12,875,012), Expenses ($6,697,952), OCO ($199,229), and Contracted Services ($361,193).

Fla. Stat. §216.313(2012), provides:

> An executive or judicial branch public officer or employee may not enter into any contract or agreement on behalf of the state or judicial branch which binds the state or its executive agencies or the judicial branch for the purchase of services or tangible personal property in excess of $5 million unless the contract identifies the specific appropriation of state funds from which the state will make payment under the contract in the first year of the contract, unless the Legislature expressly authorizes the agency or the judicial branch to enter into such contract absent a specific appropriation of funds. (E.S.).

This provision, enacted in 2011, clearly contemplates that substantial contracts for services

such as those challenged in this case have a specific appropriation supporting their funding.

There are two contracts at issue here. The first is a contract for Regions I, II, and for certain institutions in Region III of the Florida prison system. This contract is between the Florida Department of Corrections and Corizon, Inc. (Exh A., Corizon Response To Order To Show Cause). The Corizon contract identifies its funding as based on Line Item 784, General Appropriations Act 2012. The second is a proposed contract between Wexford Health Services, Inc. and the Department of Corrections for Region IV, also known as the Southern Florida Region (Petition Exhibits 4 & 6). Each contract exceeds or is expected to exceed $5 million.

In 2012, the Florida Legislature enacted Chapter 2012-118 specifying the appropriation of state funds. Line Item 784 of that law states, in pertinent part:

> From Specific Appropriation 784, up to $41,405,554 in recurring general revenue funds is provided for the contracting of health services in the Southern Region (formerly known as Region IV). If a contract is not executed, the Department of Corrections is authorized to submit a budget amendment in accordance with chapter 216, Florida Statutes, to move funds between categories of appropriation to continue to provide inmate health services.

This provision clearly authorizes funding only for privatizing health services in Region IV, and it does not authorize funding for privatizing health services in Regions I, II, or III. This section of the 2012 appropriations law sets forth the legislative policy and intent that the Florida Legislature determined only to fund privatizing of health care services in Region IV and no where else.

The challenged contracts do not become binding and enforceable unless funded by

the legislature through a valid appropriation. No funds may be drawn from the State treasury except by an appropriation made by law. Art. VII, §1(c),Fla. Constitution. DOC has no power to implement a contract that has not been validly funded. See e.g. Fla. Stat. §§216.311 and 216.313 (2012).

As described above, after the Florida Legislature recessed in 2012, the Department of Corrections submitted to the Legislative Budget Commission for consideration at its September 12, 2012, meeting a proposal to increase the $41,405,554 appropriation for privatizing prison health care solely in Region IV to $57,668,391 to privatize prison health care for the entire state. This request was approved by the Legislative Budget Commission and is the basis for funding the Corizon contract for Regions I, II, and III.

The Legislative Budget Commission is a group of 14 legislators (Rule 6.2, Joint Rules of the Florida Legislature - 2010-2012) authorized by Article III, Section19(c)(3) of the Florida Constitution, and Fla. Stat. §216.181(2012). The Legislative Budget Commission is authorized by Article III of the Florida Constitution to make "limited adjustments to the budget(...)[which] may be approved without the concurrence of the full legislature." (E.S.). Pursuant to Article III, the Florida Legislature passed Fla. Stat. §216.181 which places specific limitations on the Legislative Budget Commission's powers. Amendments to original approved operating budgets "must be consistent with legislative policy and intent" and they "may not initiate or commence a new program or a fixed capital outlay project, except as authorized by this chapter, or eliminate an existing program."

In Chiles v. Children A, B, C, D, E, and F, etc., 589 So. 2d 260, 267-268 (Fla. 1991), the Florida Supreme Court invalidated Fla. Stat. §§216.011(1)(ll) & 216.221(1989) providing the Administrative Commission, part of the Executive Branch, the authority to

reduce the approved budget to prevent a deficit without the approval of the legislature, as in violation of separation of powers. In reaching this conclusion, the Court stated:

> The constitution specifically provides for the legislature alone to have the power to appropriate state funds. More importantly, only the legislature, as the voice of the people, may determine and weigh the multitude of needs and fiscal priorities of the State of Florida.
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> This is not to say that the legislature cannot permit another branch or agency to respond to a budget crisis caused by unexpected events between legislative sessions. The legislature can delegate functions so long as there are sufficient guidelines to assure that the legislative intent is clearly established and can be directly followed in the event of a budget shortfall .... What the legislature *cannot* do is delegate its policy-making responsibility.

589 So. 2d at 267-268 (emphasis in original). This principle is applicable to the delegation of power to the LBC as well. It is the duty of the full legislature, not a small group of select legislators, to make the policy decisions on spending set forth in the GAA. Article III, Section 19(c)(3) specifies "limited adjustments" to the budget, not changes in policy and spending priorities. This Court must construe a provision of the constitution according to its plain and ordinary meaning, giving effect to all of its provisions. See In re Advisory Opinion to the Governor, 374 So. 2d 959, 964 (Fla. 1979). Also, because this provision and the statutes implementing it operate as exceptions or qualifications to the exercise of the appropriation power by the full legislature, they must be strictly construed. See Samara Development Corp. v. Marlow, 556 So. 2d 1097, 1101-01 (Fla. 1990)("[I]t it is a well-recognized rule of statutory construction that exceptions or provisos should be narrowly and strictly construed"). "Limited adjustments to the budget" plainly contemplates administration of the approved budget according to its underlying intent, not new

policy/spending priority decisions that could have been but were not passed by the full legislature. Otherwise, the exception swallows the rule, allowing a small handful of legislators to rewrite the GAA.

Fla. Stat. §216.181(2012) is the general law prescribing the parameters of the LBC's authority to amend the budget as enacted in the GAA. It reflects the limitations imposed on the LBC by Article III, Section 19(c)(3) in Section 216.181(2), which specifies the conditions with which all amendments to the GAA must comply. The first and most comprehensive restriction is subsection (a) requiring the "[t]he amendment must be consistent with legislative policy and intent." The LBC's action in this case does not meet this threshold requirement.

Section 216.181(1) establishes that the GAA is the baseline for legislative intent in spending the funds appropriated. As with any legislative enactment, the plain language of the GAA controls. There is simply no language in the GAA indicating any intent to fund any privatization contract for Regions I, II, and III. On the contrary, the only language involving privatization for health services establishes the opposite. In light of the clear and unambiguous language, the only possible conclusion is that the legislature did not intend to provide funds for contracting out health services in Regions I, II, and III.[1]

The LBC's action in this instance violated Article III of the Florida Constitution because its increasing the budget from $41,405,554 to $57,668,391 to fund a program

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[1]This Court rejects any assertion that the expired 2011 proviso provides funding authorization for the challenged contract. As Judge Carroll stated in his Final Judgment (Consolidated Case Nos. 12-CA-218 and 12-CA-462): "Unlike a general law, which would remain in place until repealed or modified, a budget proviso has a limited life. The parties have agreed that as the State's fiscal year came to an end on June 30, 2012, so did the 'life' of the proviso, and thus, that the subject proviso no longer has any force or effect." Ex. 3 to Pet. at 5.

(privatizing prison health care for Regions I, II, and III) was not authorized by the Florida Legislature and was not a "limited" adjustment to the budget. See Article III, Section 19(c)(3). The LBC's action is not consistent with the legislative policy expressed in Chapter 2012-118 to provide funding for privatizing prison health care in only Region IV of Florida. For these reasons the action of the Legislative Budget Commission at issue in this action was contrary to Article III, Section 19(c)(3) of the Florida Constitution and Fla. Stat. §216.181(2)(a)(2012). Therefore, the Legislative Budget Commission exceeded its authority in authorizing budgeting for a contract to privatize prison health care for Regions I, II, and III.

Whether to privatize some or all of this state's prison operations is a significant policy decision. Under existing law, the legislature weighs in on this policy decision through its appropriations power. Where, as here, there is no specific appropriation for privatizing health services in Regions I, II, or III, it cannot be said that such significant action has been approved or authorized.

While the State of Florida does have authority to privatize prison health care throughout the state, the full legislature must do so by passing the appropriate funding mechanism specifically directed to that goal.[2] Authorizing and funding privatizing health services in Florida's prisons is the prerogative of the full legislature and not that of the Legislative Budget Commission.

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[2]With respect to privatizing health services in Region IV, the legislature did authorize funding for a contract. Though the legislature did not authorize funding for a contract privatizing health services in Regions I, II, and III, there is no prohibition against the full legislature doing that in the future.

Conclusion And Relief

For the reasons set out above, the Court finds that the Department of Corrections does have statutory authority to enter into a contract or contracts to privatize prison health care services so long as appropriate funding is specifically and appropriately approved by the Florida Legislature. There is no prohibition against entering into a contract to privatize prison health care in Region IV of Florida in accordance with Line Item 784 of Chapter 2012-118. However, there is no basis for entering into a contract to privatize prison health care service in Regions I, II, and III, at this time, because the Florida Legislature has not funded this contract. The attempt of the Legislative Budget Commission to provide funding for this contract is void and ineffective as it violates Article III, Section 19(c)(3) of the Florida Constitution, Fla. Stat. §216.181(2)(a)(2012),and Fla. Stat. §216.313(2012). Therefore, the Department of Corrections did not and does not presently have authority to enter into the subject contract with Corizon. It is therefore,

ORDERED AND ADJUDGED:

1. The Respondent may proceed, pursuant to Fla. Stat. §20.315(12)(2012), with negotiating a contract for providing prison health care services for Region IV in accordance with Line Item 784 of Chapter 2012-118.

2. The Respondent is enjoined from implementing the challenged contract with Corizon, Inc. for privatizing prison health care services for Regions I, II, and III.

DONE AND ORDERED this 4th day of December, 2012, at Tallahassee, Leon County, Florida.

JOHN C. COOPER,
CIRCUIT JUDGE

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