

- (1) use of medical supplies from hospitals' inventories in treating indigent patients under charity care program did not constitute a per se taking of hospitals property without just compensation;
- (2) requiring hospitals to provide medical services to indigent patients as part of charity care did not constitute a per se taking as to services furnished by hospitals;
- (3) requirement that hospitals provide charity care to indigent patients did not constitute an unconstitutional physical invasion or occupation of hospital facilities, and thus was not a per se taking; and
- (4) requirement that hospitals provide medical services to indigent patients did not constitute a regulatory taking of hospitals' property rights.

Affirmed as modified.

1. Constitutional Law ¶656

In non-First Amendment federal law cases, a plaintiff cannot succeed on a facial challenge to a statute's constitutionality unless he establishes that no set of circumstances exists under which the law would be valid, or he shows that the law lacks a plainly legitimate sweep. U.S. Const. Amend. 1.

2. Constitutional Law ¶656

Under New Jersey law, it is clear that a statute is not facially unconstitutional if it operates constitutionally in some instances.

3. Constitutional Law ¶657

Unlike a facial challenge, an as applied challenge to the constitutionality of a statute requires an analysis of the facts of a particular case to determine whether the application of a statute, even one constitutional on its face, deprived the plaintiff to whom it was applied of a protected right.

4. Appeal and Error ⇐3137

The Supreme Court's review of questions of law is de novo.

5. Constitutional Law ⇐3855

The Takings Clause of the Fifth Amendment applies to the States through the Fourteenth Amendment. U.S. Const. Amends. 5, 14.

6. Eminent Domain ⇐3

The takings protection in the New Jersey State Constitution is coextensive with the Takings Clause of the Fifth Amendment of the United States Constitution. U.S. Const. Amend. 5; N.J. Const. art. 1, para. 20.

7. Eminent Domain ⇐2.1

In a takings analysis, a court asks: (1) whether the plaintiff has a protected property interest; (2) if so, whether the government's action constituted a taking; (3) if yes, whether that taking was for public use; and (4) if yes to all of the above, whether the statute adequately provides for just compensation. U.S. Const. Amend. 5; N.J. Const. art. 1, para. 20.

8. Eminent Domain ⇐2.1

The distinction between "per se" takings and "regulatory" or "use-restriction" takings is not whether the government action at issue comes garbed as a regulation, statute, ordinance, or miscellaneous decree; rather, the essential question is whether the government has physically taken property for itself or someone else, by whatever means, or has instead restricted a property owner's ability to use his own property. U.S. Const. Amend. 5; N.J. Const. art. 1, para. 20.

9. Eminent Domain ⇐2.1

One subcategory of per se takings, a "physical appropriation," occurs when the government directly takes private property for its own use or use by a third party, as through the exercise of its power of eminent domain to formally condemn property or by