

COURT SPECIFIES LOCAL GRIEVANCE AS FIRST STEP IN SEEKING EXEMPTION; NARROWLY INTERPRETS EXEMPTION

Last month, the Vermont Supreme Court issued a decision in a property tax case that could have implications for many Vermont municipalities. The case involved a nonprofit religious organization called Our Lady of Ephesus House of Prayer (OLEHOP), which grieved its municipal property taxes. OLEHOP eventually sued the town, claiming that its 81-acre property, with house and extensive outbuildings, should be entirely exempt from taxation because the property was dedicated to public and pious use.

Before we delve into the exemption issues, it is important to note that, in this case, the Court settled an issue that has been in dispute for some time: When an owner of property claims an exemption from taxation, must the owner first grieve with the listers, and then with the board of civil authority (BCA), and so on; or, must the owner file an action for declaratory judgment in superior court? The answer is that the property owner must first grieve with the listers. This is an excellent result for municipalities, which now retain local control over the property assessment, grievance, and appeal process (until the appeal goes beyond the BCA to either the superior court or to the state's Property Valuation and Review division).

In addition to these jurisdictional questions, this case asked the Supreme Court to look at two important statutes (see sidebar): 32 V.S.A. § 3802(4), the "public, pious or charitable" property tax exemption, and 32 V.S.A. § 3832(2), which narrows this exemption. It attempts to settle the question of what constitutes a "religious society," and whether such a society may also claim an exemption because the property is put to public and pious uses.

The Court found that OLEHOP was, in fact, a religious society, and that the property was actually open to the public. However, the Court also found that the property could be partially taxed, because as a religious society, it is only entitled to a narrow exemption from taxation. *Our Lady of Ephesus House of Prayer, Inc. v. Town of Jamaica*, 2005 VT 16 (2005).

OLEHOP had claimed that it was not a religious society, but rather, that its property was both pious and open to the public and should, therefore, be entirely exempted pursuant to 32 V.S.A. § 3802(4). The Court didn't accept this argument, considering that it was required to interpret OLEHOP's request pursuant to both exemption statutes, 32 V.S.A. §§ 3802(4), 3832(2). In so doing, the Court harmonized two competing statutes by giving preference to the more specific statute, which, in this case, was the statute applying to religious societies, § 3832(2). OLEHOP's status as a religious organization could not be denied and, as such, the § 3832(2) exemption only grants it a narrow exclusion from taxation.

EXEMPTION STATUTES

The two key statutes in the OLEHOP case are reprinted below. While the first grants a broad exemption to property taxes, the second is the one the Vermont Supreme Court relied upon in its findings, which lessened the amount of property eligible for exemption.

32 V.S.S. § 3802. Property tax: The following property shall be exempt from taxation:
...(4) Real and personal estate granted, sequestered or used for public, pious or charitable

uses; real property owned by churches or church societies or conferences and used as parsonages and personal property therein used by ministers engaged in full time work in the care of the churches of their fellowship within the state;

§ 3832. Public, pious and charitable uses: The exemption from taxation of real and personal estate granted, sequestered or used for public, pious or charitable uses shall not be construed as exempting: ... (2) Real estate owned or kept by a religious society other than a church edifice, a parsonage, the outbuildings of the church edifice or parsonage, a building used as a convent, school, orphanage, home or hospital, land adjacent to any of the buildings named in this subsection, kept and used as a parking lot not used to produce income, lawn, playground or garden and the so-called glebe lands.

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