COURT IS STRICT ON PROPERTY TAX EXEMPTION

A perennial controversy for towns is deciding which properties are exempt from property taxes under 32 V.S.A. § 3802. The complexity of the problem is reflected in the fact that although the statute is less than four pages long, the annotations to it cover 13 pages and cite over 40 cases that went all the way to the Supreme Court for final resolution. To those, last month the Court added two more cases that involve properties "owned or leased by colleges, academies or other public schools."

The first case, *Burr and Burton Seminary v. Town of Manchester,* Vt. Sl. Op. 2000-294 (Aug. 24, 2001) involved two properties owned by Burr and Burton, a private school. One property was the Head house, located two miles from the main campus and used as a residence for the school's principal and for "various... meetings, dinners and parties for faculty, students, trustees and staff." The Town valued the building at $290,000. The second building was previously used as a student dormitory but since 1994 had been for sale and had been rented to various tenants. In 1998 the Town had begun to tax it based on a value of $177,000.

Burr and Burton grieved these appraisals, arguing that the properties fall within "lands owned or leased by ... academies" and were thus exempt from taxes. The Town argued that the school must not only own the properties but also use them for an educational purpose in order to qualify for the exemption.

The first basic rule the Court applied is that "any statutory exemption from property tax is to be strictly construed against the taxpayer." In other words, properties are not exempt from taxes unless the taxpayer can present a compelling argument. The issues here, the Court said, are whether the taxpayer, Burr and Burton, must actually use the property and whether the use must serve educational purposes.

The legislative intent of the statute seems to be to give a tax break to properties such as schools, churches, charities and libraries that are "being used to serve some public purpose." Therefore, to interpret the statute to mean that any property owned by an academy, no matter what its use, is tax exempt would violate the intent of the statute. "If there is no educational use to the land, there is no benefit to the state and, consequently, no reason why the Legislature would forgo the benefit of taxation of this land." That interpretation has stood for over 100 years, said the Court, and the Legislature has made no move to amend the statute, so it seems to agree with the interpretation that the school must actually use the property, not just own it. In fact, the Legislature reinforced that analysis by amending the statute to say that it does not apply to schools' "lands or buildings rented for general commercial purposes."

Applying this reasoning to Burr and Burton, the Court held that the old dormitory which was being rented out to nonschool tenants is not tax exempt. Not only is it not used for educational purposes, it is rented out for commercial purposes**.** The Head House is a different matter. The fact that it is used for the headmaster's residence and, possibly, as part of his compensation package, does not mean it is not used for educational purposes. There is ample case law to support the argument that a headmaster's residence is used for educational purposes. In addition, Burr and Burton uses it for other purposes related to its educational functions. Therefore, Head House was found to be tax exempt.

The second case, *Berkshire School v. Town of Reading,* Vt. Sl. Op. 2000-398 (Aug. 24, 2001) involves a 212-acre parcel of undeveloped land that was donated to the

school. There is no current educational use of this land, although there are plans to use it in the future.

The school, of course, argued that it merely had to "own or lease" the land, not actually use it, in order to qualify for a tax exemption under 32 V.S.A. § 3802 (4). Following its analysis in the Burr and Burton case, the Court said that the school must use its property for some **educational purpose in order to meet** the implicit requirement in the statute that tax exemption is granted in return for public benefit. In this case, the Court concluded "that land owned by the school is not exempt. The property ... is simply a plot of land that is not being used at all, let alone for any educational purpose."

Hopefully, these two cases will help clarify the enigma created by 32 V.S.A. 3802. As it stands, the statute means the school has to own the property, use it and use it for educational purposes. Any change in this will have to come from the Legislature, not the Court.

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