

## TAXING NON-PROFIT LANDS

The Vermont Supreme Court has affirmed and clarified the test for whether or not a municipality may tax lands used for a “public, pious, or charitable” purpose. *Mark Herrick v. Town of Marlboro*, No. 2000-591, 2001 Vermont Supreme Court (Nov. 9, 2001).

Under state law, a municipality may not tax “real and personal estate granted, sequestered or used for public, pious, or charitable uses.” 32 V.S.A. § 3802 (4). In order to qualify for the tax exemption, the Supreme Court has established the following rigid criteria that define whether or not a use truly is “public:”

1. The property must be dedicated unconditionally to public use;
2. The primary use must directly benefit an indefinite class of persons who are part of the public, and must also confer a benefit on society as a result of the benefit conferred on the persons directly served; and
3. The property must be owned and operated on a not-for-profit basis. *American Museum of Fly Fishing, Inc. v. Town of Manchester*, 151 Vt. 103 (1989).

In the instant case, Mark Herrick owned a 171-acre parcel, including a two-unit house and some outbuildings, located in the town of Marlboro. He allowed a nonprofit corporation, The Mountain Ministry, Inc., a nondenominational Christian service ministry, the exclusive use of his property. The Ministry assists poor people in transition, particularly single mothers, battered women, and homeless persons. *Herrick* at 1. All of these services are provided free of charge, on the basis of need, and any income derived from the rental of one unit of the house and agricultural/silvicultural use of the land is collected by the Ministry.

On March 25, 1999, Herrick, acting in his capacity as a member of the Board of Directors for Mountain Ministry, executed a document he entitled “Sequestration,” in which he sequestered all of his land to the exclusive use of Mountain Ministry. See *Johnson v. Jones*, 86 Vt. 167, at 170 (1912) (defining “sequester” as setting aside or apart). Herrick received no financial consideration in return for the sequestration, but still retained title to the land, and retained the power to revoke the sequestration document at any time. *Herrick* at 2.

The lands used by Mountain Ministry satisfy the first two prongs of the *American Museum of Fly Fishing* test. The property is dedicated unconditionally to the public use, in that it is used as a temporary home for people who otherwise would have nowhere to go. The land also benefits an indefinite class of the public – battered and single women, as well as homeless people. Additionally, society at large benefits from Herrick’s arrangement as the burden on government to provide for the needy is reduced. Benefits also result when people become more productive and eventually give back to society.

The Vermont Supreme Court ruled, however, that the third part of the *American Museum of Fly Fishing* test was not satisfied. The Court found that because he retained title to the land, Herrick retained the ability to sell it, to realize its appreciation in value, and was able (potentially) to reap tax benefits as owner. These factors did not satisfy the requirement that to be exempt, the land in question must be owned and operated on a not-for-profit basis.

What does this ruling mean for municipalities? It requires an entity operating a nonprofit facility to also be a non-profit owner. This means that a private person cannot own a property and lease it to a non-profit corporation, all the while receiving the benefits of ownership, of rental income, and the additional benefit of not having to pay taxes.

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