# STATE OF MICHIGAN

# COURT OF APPEALS

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| REDFORD OPPORTUNITY HOUSE,<br><br>Petitioner-Appellee, | UNPUBLISHED<br>January 27, 2004 |
| v | No. 241718<br>Tax Tribunal |
| TOWNSHIP OF REDFORD,<br><br>Respondent-Appellant. | LC No. 00-277828 |

Before: Hoekstra, P.J., and Sawyer and Gage, JJ.

PER CURIAM.

Respondent appeals as of right the Michigan Tax Tribunal's decision finding that real property used as a licensed facility for developmentally disabled adults and owned by petitioner, a nonprofit corporation, is exempt from ad valorem property taxation under MCL 211.7o(1). We affirm.

Respondent argues that petitioner does not qualify as a "charitable institution" for purposes of MCL 211.7o(1), because it does not provide "a gift" to its residents. Respondent claims that the residents effectively pay for the home and its services through government benefits that petitioner receives on their behalf.

Our review of the Tax Tribunal's determination is limited to determining whether the Tax Tribunal made an error of law or applied a wrong legal principle. *ProMed Healthcare v Kalamazoo,* 249 Mich App 490, 492; 644 NW2d 47 (2002). "Generally, this Court will defer to the Tax Tribunal's interpretation of a statute that it is delegated to administer. The factual findings of the tribunal are final, provided that they are supported by competent, material, and substantial evidence on the whole record." *Id*. (citation and internal quotation marks omitted). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence required in most civil cases." *Dow Chemical Co v Dep't of Treasury,* 185 Mich App 458, 463; 462 NW2d 765 (1990).

The meaning of "charitable institution," which is not legislatively defined for purposes of MCL 211.7o(1), has developed in case law.

In *Engineering Society of Detroit v City of Detroit,* 308 Mich 539, 550; 14 NW2d 79 (1944), our Supreme Court set forth four requirements necessary to qualify for the exemption under a former version[1] of the statute:

> (1) The real estate must be owned and occupied by the exemption claimant;
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> (2) The exemption claimant must be a library, benevolent, charitable, educational, or scientific institution;
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> (3) The claimant must have been incorporated under the laws of this State;
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> (4) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.

The Supreme Court reaffirmed this test in *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748, 751; 298 NW2d 422 (1980). The third requirement stated in *Engineering Society, supra,* that the claimant be incorporated under the laws of this state, was later determined to be unconstitutional because it denied equal protection to institutions registered out-of-state. *OCLC Online Computer Library Center, Inc v City of Battle Creek,* 224 Mich App 608, 612; 569 NW2d 676 (1997), citing *Chauncey & Marion Deering McCormick Foundation v Wawatam Twp,* 186 Mich App 511, 515; 465 NW2d 14 (1990).

In *Michigan United Conservation Clubs v Lansing Twp,* 423 Mich 661, 671, 378 NW2d 737 (1985), the Supreme Court explained that the proper test for determining whether the charitable institution exemption applies focuses on the definition of charity adopted in *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp,* 416 Mich 340, 348-349; 330 NW2d 682 (1982):

> [C]harity . . . [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. [Citations and emphasis omitted.]

This Court has employed this definition in cases analyzing the second and fourth requirements in *Engineering Society, supra*. See *Huron Residential Service Youth, Inc v Pittsfield Charter Twp,* 152 Mich App 54, 60-63; 393 NW2d 568 (1986); *OCLC, supra,* pp 614-615; *Holland Home v City of Grand Rapids,* 219 Mich App 384, 399; 557 NW2d 118 (1996).

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[1] The exemption for a library, educational or scientific institution is now set forth in MCL 211.7n.

In determining that petitioner provided a gift, the Tax Tribunal compared this case to *Huron Residential Services, supra.* In that case, a residential treatment facility for youths sought a charitable institution exemption. More than ninety-nine percent of the petitioner's operating funds came from per diem payments from the state pursuant to contracts with the Departments of Social Services and Public Health. The Tax Tribunal had accepted the respondent's argument that the petitioner was a "governmental contractor" that "offered no gift because the state pays it a per diem rate based upon its costs." *Id*., p 62. But this Court disagreed and explained that there was a gift for the benefit of the residents because the state, not the residents, paid for the services rendered. *Id*., p 63.

In the present case, petitioner's revenue consisted of the residents' payment of ninety percent of their Supplemental Social Security Income (SSI) benefits, housing assistance payments, money through a contract with the Department of Community Health, Wayne Center, residents' food stamps, and interest from a bank account. This revenue was approximately the same as the cost of providing the services.

Respondent argues that *Huron Residential Services* is distinguishable because the petitioner there did not discriminate based on ability to pay and had accepted youths without any reimbursement, but there was no testimony here that petitioner had accepted any resident without payment.

Respondent is correct that, in *Huron Residential Services, supra*, at 57, the Court noted that the "[p]etitioner occasionally accepts youths on an emergency basis without any reimbursement and at least once accepted a youth on a long term basis without any reimbursement." In the present case, there was no testimony that petitioner provided services without reimbursement or would do so in the future. One of the general admissions criteria was that the individual be eligible for SSI benefits or have sufficient resources to meet anticipated expenses. Although petitioner had not granted an exception for the residents, as a practical matter, no exception was ever necessary. According to the uncontradicted testimony at the hearing, all individuals who qualified to enter the program had developmental disabilities, and all individuals with developmental disabilities were eligible for SSI. Therefore, the fact that the petitioner in *Huron Residential Services, supra,* granted exceptions, whereas petitioner did not because none was ever necessary, is a distinction without a meaningful difference.

We reject respondent's contention that petitioner's home and services for the developmentally disabled is analogous to the independent living apartments for senior citizens at issue in *Holland Home, supra,* and *Retirement Homes, supra.* In those cases, the petitioners could not claim that their provision of room, board and services was a gift because the residents paid significant entrance fees and monthly charges. In the present case, petitioner's provision of room, board and extensive services is a gift because the state, not the residents, pays the expenses. *Huron Residential Services, supra,* p 62. A second clear distinction concerns the population being served. In *Holland Home, supra*, p 403, the Court noted that the petitioner's independent living facilities for "the relatively healthy elderly" did "not advance petitioner's charitable purpose of assisting the infirm elderly, the indigent elderly, or the elderly who have no satisfactory place to live." Similarly, in *Retirement Homes, supra*, p 350, the Court noted that the apartments did not appear to benefit the general public because the residents "were chosen on the basis of their good health, their ability to pay the monthly charge, and generally, their ability to live independently." Unlike the residents chosen for the independent living apartments in

*Holland Home* and *Retirement Homes,* the residents for petitioner's home are individuals unable to care for themselves, whose families are unable to care for them, and who have no state facility in the county where they could live.

We likewise reject respondent's argument that petitioner's claim for an exemption is analogous to that of the petitioner in *Haslett Manor Adult Foster Care, Inc v Meridian Twp,* 7 MTTR 614; 1993 WL 302334 (Docket No. 141053, March 10, 1993). The Tax Tribunal's decision in that case focused on evidence showing that the corporation existed for the purpose of enriching its owners, officers and shareholders. The record in the present case is devoid of evidence of personal enrichment.

Respondent notes that the Tax Tribunal incorrectly stated that petitioner received donations. The Tax Tribunal addressed this issue in its order denying respondent's motion for reconsideration. The Tax Tribunal's denial of the motion for reconsideration indicates that the misstatement was not decisive of the Tax Tribunal's determination that petitioner was entitled to the exemption. Any error in this regard was therefore harmless. MCR 2.613(A).

Respondent challenges the Tax Tribunal's conclusion that petitioner's provision of a home and services for the developmentally disabled "lessens the burden of government," as referenced in the definition of charity adopted in *Retirement Homes, supra,* pp 348-349. Although the state is required to "foster[] and support[]" "[i]nstitutions, programs and services for the care, treatment, education or rehabilitation of those inhabitants who are physically, mentally or otherwise seriously disabled," Const 1963, art 8, § 8, the state is not required to maintain public facilities; it may satisfy its obligation through private institutions. *Alliance for the Mentally Ill of Michigan v Dep't of Community Health,* 231 Mich App 647; 588 NW2d 133 (1998); *In re Raseman Estate,* 18 Mich App 91, 96-98; 170 NW2d 503 (1969). According to respondent, because the state is not required to provide public facilities, petitioner does not lessen the government's burden by providing its home and services.

In our view, the Tax Tribunal correctly concluded that petitioner lessened the burden of government because petitioner assisted the state in addressing the needs of the developmentally disabled. In *Moorland Twp v Ravenna Conservation Club,* 183 Mich App 451, 460-461; 455 NW2d 331 (1990), the conservation club lessened the burden of government by assisting the state in achieving its conservation objectives. Similarly, petitioner here assisted the state by providing a means for the state to fulfill its constitutional mandate to foster and support institutions, programs and services for the mentally disabled.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Hilda R. Gage