COURT CASES CITED IN BULLETIN NO. 5

TAX EXEMPTIONS FOR BENEVOLENT & CHARITABLE INSTITUTIONS

THE CITY OF BANGOR vs. RISING VIRTUE LODGE, NO. 10, FREE AND ACCEPTED MASONS.

SUPREME JUDICIAL COURT OF MAINE, PENOBSCOT

73 Me. 428; 1882 Me. LEXIS 68

May 27, 1882, Decided

JUDGES: APPLETON, C. J. WALTON, BARROWS, DANFORTH, PETERS, LIBBEY and SYMONDS, JJ., concurred.

OPINION BY: APPLETON

The Rising Virtue Lodge, with other lodges, owning block of stores assessed as of the value of fifteen thousand dollars, claim that this property, a small portion of which, in value, is used for masonic purposes, should be exempted from bearing its proportionate share of the burdens, which are imposed, for the support of government, on the general property of the community.

The just and honest rule in assessments for governmental purposes is equality of taxation. Whatever sacrifices it requires from the people should be made to bear as nearly as possible with the same pressure upon all. In this way only will there be the least sacrifice by all. If one bears less than his share of the public burdens, some other must bear more. If one block of stores remains untaxed, the remaining stores and other taxable property must be unduly and disproportionately taxed. The more numerous the exemptions, the more unequal and burdensome the taxation.

The defendant corporation denies that its property should be assessed to defray its ratable share of the expenses of the government, which protects it, in common with the other property of the people and corporations of the State. The ground of exemption rests on R. S., c. 6, § 6, part 2, by which "the real and personal property of all literary institutions, and the real and personal property of all benevolent, charitable and scientific institutions incorporated by this State," are exempted from taxation.

Assuming that the legislature have the power to relieve favored corporations or individuals from paying their just taxes, (and it is as proper in the one case as in the other,) still taxation is the general rule; exemption from taxation the exception. Statutes violating the general rule are to be construed strictly. They must be construed with the utmost strictness. The statute creating the exemption must be clear, precise and definite, so as to satisfy the court beyond all doubt that the exemption claimed was within the intention of the legislature, as every exemption is repugnant to equal and impartial taxation. "All exemptions are to be construed strictly. Such special privileges are in conflict with the universal obligation of all to contribute a just proportion toward the public burdens." *Co. Com. v. Sisters of Charity, 48 Md. 34*. "The power to tax," observes DAVIS, J., in *Bailey v. Magwire, 22 Wall. 215, 22 L. Ed. 850*, "rests upon necessity, and is inherent in every sovereignty, and there can be no presumption in favor of its relinquishment."

Exemption is a special favor conferred. The party claiming it must bring his case unmistakably within the spirit and intent of the act creating the exemption. Charity and charitable uses are expressions recognized and well understood in the law. The object of the legislature was to favor societies existing *exclusively* for charitable purposes, or as was said elsewhere by an eminent court, for purposes *purely* charitable, not a society existing for other and distinct purposes, and with other and different objects to be attained. It was the object to protect public charitable institutions.

The statute upon which the defendants rely, uses the word benevolent, but there is no question that this word, when used in connection with charitable, is to be regarded as synonymous with it and as defining and limiting the nature of the charity intended. *Saltonstall v. Sanders*, 11 Allen 466.

What, then, is a charity? What is a charitable institution? "A good charitable use is *public*," remarks GRAY, J., in *Saltonstall v. Sanders*, 11 Allen 446, "not in the sense that it must be executed openly and in public; but in the sense of being so general and indefinite in its objects as to be deemed of common and public benefit. Each individual immediately benefitted may be private, and the charity may be distributed in private and by a private hand. It is public in its general scope and purpose, and becomes definite and private only after the individual objects have been selected." In *Attorney General v. Proprietors of Meeting House*, 3 Gray 1, 50, "A public charity," observes SHAW, C. J., "in legal contemplation, is derived from *gift or bounty*." *Attorney General v. Hewer*, 2 Vern. 387. In the case of the *Attorney General v. Heelis*, 2 Sim. & Stu. 77, it is said by the Vice-Chancellor, that it is the source whence the funds are derived, and not the purpose to which they are dedicated, which constitutes the use, charitable; if derived from the gift of the crown, or the legislature, or a private gift for improving a town, they are charitable, within the equity of the stat. of 43 Eliz. c. 4; but when a fund is derived from rates and assessments, being in no respect derived from bounty or charity, it is not charitable. So a subscription by a benefit society, for mutual relief, is a private and not a public charity, and does not require the intervention of the attorney general, *Anon.* 3 Atk. 277. The essential features of a public charity, are, that it is not confined to *privileged individuals*, but is open to the indefinite public. It is this indefinite, unrestricted quality, that gives it its public character. *Donohugh's Appeal, 86 Pa. 306.*

Masonry being a secret institution, and its main purposes being carefully guarded from public scrutiny and knowledge in the secrecy of its lodges, we can only ascertain the objects of its existence from the information afforded us by its constitution and its general regulations, so far as they are made part of the case. The intimate purposes of the institution are not disclosed. They are secret. They are kept sacred. It is only from what is known that we can infer what are its leading objects.

The section relied on as exempting the institution from taxation, refers to those which are *purely* charitable. That masonic lodges are charitable to their own members is not to be questioned, but that is not the question. The inquiry is, whether it is a public charity or a private charity for the exclusive aid of its members.

The constitution, it seems by the preamble thereto, was ordained and established "in order to form perfect fraternal union, establish order, insure tranquility, provide for and promote the general welfare of the craft, and secure to the fraternity, the blessings of masonic privileges." From the "blessings of masonic privileges," all not members, and all of the female sex not married to masons or begotten by them in lawful wedlock, are excluded, while no woman can be a member, and no man, except by a unanimous vote. It will, too, be perceived that charity is not even mentioned as one of the purposes for which the constitution was ordained and established, but "the welfare of the craft" and "the blessings of masonic privileges" are specially designated.

It provides for the establishment and preservation of "a uniform mode of working and lectures, in accordance with the ancient landmarks and customs of masonry," and a Grand Lecturer, "whose duty it shall be to exemplify the work" and "impart instruction to any lodge requiring their services."

Its funds are derived from fees for initiation, assessments, fees for dispensation for holding new lodges, to be paid the Grand Treasurer, and generally from "fees, dues and assessments."

Of the nine committees for which provision is made in the management of the institution, there is one for charity, whose duty it is to appropriate the interest of the charity, "in whole or in part, for the relief of such poor and distressed brethren, their widows and orphans, as the grand lodge or the trustees of the charity fund may consider worthy of assistance, and if the whole be not so distributed, the residue, with all the other receipts of

the treasurer, after deducting therefrom such sums as may be necessary for the ordinary expenses of the Grand Lodge," is to be added to this fund. This limitation of charity in the constitution is found in similar terms in the charter of the defendant lodge.

The jewels and the regalia, the elaborate schedule of official dignitaries with titles implying important functions and grave duties, inconsistent with and unnecessary for the distribution of charities, its splendid processions, its gorgeous rooms, its palatial temples, its "duly" guarded doors, its mysterious rites, its secret signs of recognition, all its rules, regulations and proceedings, so far as made known to the public, negative the idea that charity is the primary and exclusive object of the institution, and conclusively prove that "the welfare of the craft," and "the blessings of masonic privileges," are the objects of its existence. It is a society for mutual benefit and protection, and the ends to be attained are private and personal, not public. The very word "privileges," implies rights and immunities superior to those enjoyed by others.

It is apparent that the defendant corporation cannot be regarded as a purely public charitable institution, because it wants the essential elements of a public charity. It has other objects than charity. Whatever its ultimate purposes, they are other than charitable. Its funds are derived not from devises and gifts, as in case of a public charity, but from fees and the assessment of its members. The funds so obtained are to be distributed among the poor and needy members, from whom they were collected, and among their wives and children. It is an association for the mutual benefit of its members, and not a charitable institution within the meaning of the statute. *Bolton v. Bolton, ante*, p. 299.

In *Babb v. Reed, 5 Rawle 151*, it was held that a lodge of Odd Fellows, being an association of mutual benevolence among its members, was not a charitable institution. But the Odd Fellows, so far as is known, are a secret institution with signs of recognition and carefully guarded secrets, raising their funds and distributing the same in a similar manner as the Masons. "The association," observes SARGENT, J., in delivering the opinion of the court, "from whose property is the money in court, was formed and conducted without incorporation. Its objects are stated to be the employment of its funds in purposes of mutual benevolence among its members and their families; but these cannot be deemed charitable uses under the common law of Pennsylvania, or the statute 43 Eliz. The twenty-one cases enumerated in the statute, and others constructively within it, are of a *public* nature, tending to the benefit or relief in some shape or other, of the community at large, and not restricted to the mutual aid of a few." In *Thomson's Ex'rs v. Norris, 20 N.J. Eq. 489*, the case of *Babb v. Reed* was cited with approbation.

In *Delaware County Institute v. Delaware County*, 8 Weekly Notes of Cases, (Penn.) 449, it was held that an institute of science, whose object was the promotion of general and scientific knowledge among the community at large, but whose benefits were restricted to its members, except at the pleasure of its managers, was not a *purely* public charity, and was not exempt from taxation as such. "The plaintiff in error," observes the court, "so far from being a *purely* public charity, is not a public charity at all. It is a private corporation for the benefit of its members, as much as any other beneficial and literary society." It will be observed that other than members were allowed, or might be allowed, to participate in all the benefits of the association, not so with masonic lodges, whose "masonic privileges" and benevolence are limited and restricted to its members and families.

A charitable institution to be exempted from taxation must be a *purely* charitable one. *Humphries v. Little Sisters of the Poor, 29 Ohio St. 201*. The gift or bequest must be for *strictly* charitable purposes, else the trust will not be enforced. *Thompson's Ex'rs v. Norris*. The funds of the defendant corporation may be and are, as the case shows, applied to other than charitable uses, "as for the good of the craft," in building a hall for the unknown purposes of its existence. To authorize exemption from taxation its purposes must be "strictly charitable," "purely charitable," not a commingling of other and more important purposes with charity as a mere secondary consideration.

But we are referred to certain decisions as opposed to the conclusions to which we have arrived. It may be proper to remark that the constitution and regulations of the Grand Lodge were not before nor considered by the court, in the cases relied upon in defence.

In *King v. Parker*, 9 Cush. 71, it was held that a conveyance to certain persons and the survivors of them as joint tenants, but without word of limitation to their heirs or to the heirs of the survivor, in trust to and for the use of an unincorporated lodge of Freemasons, to the only proper use, benefit and behoof of the lodge forever -- that the conveyance was in trust and that the estate did not descend to the heirs of the grantor. It suffices to remark that since that decision the question of public charities has been before the same court, and this decision has been not merely doubted, but, substantially, so far as relates to the question under discussion, overruled. In *Old South Society v. Parker, 119 Mass. 1*, WELLS, J., says property held in trust for a monthly meeting of Friends *seems* to have been regarded as a public charity in *Earle v. Wood*, 8 Cush. 430, and in *Dexter v. Gardner*, 7 Allen 243; and for a lodge of Freemasons in *King v. Parker*, 9 Cush. 71, but neither of these cases was a proceeding which concerned the administration of charity as such. They were suits relating to trusts, in which the rights of private parties alone were represented. There was no *public* charity declared in either case, and no adjudication which necessarily involved or was based upon the existence of a charitable trust. A fund to be dispensed exclusively by way of mutual aid or benefit, among the members of an association, *is a private* and not a *public charity*, 3 Gray 1, 50; 11 Allen 64. It may *well be questioned*, therefore, whether all the conditions requisite for a technical public charity, were present in the case of *King v. Parker*, cited above.

The case of *Duke v. Fuller, 9 N.H. 536*, was that of an unincorporated lodge of Masons, one of whose by-laws was that, "the furniture and funds of the lodge shall be considered as the joint and equal property of all the members, who shall, by a majority of votes, have management thereof for the good of the craft or for the relief of indigent and distressed worthy masons, their widows and orphans." The lodge was dissolved and the funds divided among the six attending members and the defendant, who had been its treasurer, and the plaintiff brought his suit for his share. The court held the division void and gave judgment for the defendant. In their opinion they cite stat. 43 Eliz. relating to "gifts and devises" for charitable uses, as if the funds derived from assessments were derived by "gifts or devises," which they assuredly are not, any more than taxes collected for and appropriated to the support of paupers, are to be deemed within that statute, though that is a more general and extensive charity. Assuming this to be a *public* charity, the court intimate that in cases of gross mismanagement or dissolution, it might, sitting as court of equity, take the funds and commit their administration to other hands. But the right to thus interfere can rest only on the ground, that this is a *purely* public charity, which all the authorities show it is not.

In *The State v. Addison, 2 S.C. 499*, the decision rests upon the long continued construction by the city council of Charleston, of an ordinance passed in 1793, exempting "all and every . . charitable society from payment of any city taxes now due or to become due." The property of certain real estate belonging to the lodge remained untaxed until the year 1868, when, for the first time, it was taxed. "Having already intimated," observes MOSES, C. J., "that we do not consider it as essential for any society claiming exemption under the ordinance of 1793, to show that the charities which it administers are *purely* for *public* purposes, we think the relators are to be held within it, *because* the city council, from the period when the societies first owned real estate in Charleston, to 1868 have given a construction to it which it was too late to disregard or change while it was in force. It is true, as it was not in the nature of a contract, they could have repealed it at their pleasure; but while operative, their action in regard to it for so long a time must be received as the interpretation of their own enactment." It will be perceived that it is not alleged that the lodges in question were within 43 Eliz. The decision rests on the absence of previous taxation, and on the construction of the language of the ordinance, made by the city council.

In *Mayor of Savannah v. Solomon's Lodge*, 53 Geo. 93, it was held that a Masonic institution was a charitable institution and exempt from taxation, but the decision was based solely by WARNER, C. J., upon the statutes of the state. "It was," he remarks, "so recognized and styled by the general assembly of this state, as far back as 1796. See *Marble and Crawford's Digest*, 147." Upon this assumption, and without discussion, the opinion rests. Whether or not it was purely a public charity was neither considered nor discussed.

In *Everett v. Carr, 59 Me. 325*, all that was decided, was, that "incorporated masonic lodges might receive in trust, property devised for charitable purposes." They could hold property as trustees, as towns, or individuals can, but that does not make the towns, lodges or individuals, public charitable institutions within the statute. They are corporations established for other purposes, and holding specified property for certain purposes. They hold as corporations their own property in their own right, for such purposes as the law permits; and trust property in trust, as other trustees. In the will of Dwinel there were legacies to Everett and others, "in trust, to be used solely and purely for charitable purposes." Neither devise altered the relations of the devisees, so as to make either the lodges or the individual trustees, thereby "charitable institutions," and therefore to be exempted from taxation. The only question then was, whether the lodge could take as trustee. That it does charitable acts is not to be questioned, but if charity was not the primary and exclusive object of its existence, and it was not a purely benevolent, charitable institution, the purpose and objects of its existence remaining unchanged, the receiving a devise as trustee would not make it a public, charitable institution -- under the statute, when, without and before such devise it was not, any more than a bequest to a town for literary purposes would make such town a literary institution. The town can hold a devise for literary purposes, as trustee, precisely as a lodge can for benevolent purposes, without the one being a literary or the other a benevolent institution, within the purview of the statute. *Piper v. Moulton, 72 Me. 155*.

In *Indianapolis v. Grand Master, 25 Ind. 518*, it was held that a lodge was a charitable institution -- but its rules and regulations were not before the court, nor considered by it. The decision rather assumed it as true that it was a charitable institution, and assuming it to be so, the court decided that it was.

After a careful consideration of the constitution and the general rules and regulations of the Grand Lodge of the state of Maine, and after an examination of the authorities bearing on the question, our conclusion is that a Masonic Lodge is not a charitable or benevolent institution, within R. S., c. 6, § 6, par. 2 and that its real and personal estate must bear its equal and just proportion of the burdens of sustaining government with the other property of the community.

Judgment for the plaintiff.

WALTON, BARROWS, DANFORTH, PETERS, LIBBEY and SYMONDS, JJ., concurred.

CALAIS HOSPITAL vs. CITY OF CALAIS.

SUPREME JUDICIAL COURT OF MAINE, WASHINGTON

138 Me. 234*; *24 A.2d 489*; *1942 Me. LEXIS 6

February 13, 1942, Decided

JUDGES: SITTING: STURGIS, C. J., THAXTER, HUDSON, MANSER, WORSTER, MURCHIE, JJ.

OPINION BY: MANSER

This is an appeal under R. S., Chap. 13, Secs. 73-78, from the refusal of the assessors of the City of Calais to abate a tax of $ 540.00 assessed for the year 1939 upon the real estate of the appellant. The case is certified to this court upon report for the rendition of such judgment as the legal rights of the parties require.

In October, 1938, the Calais Hospital was incorporated under provisions of R. S., Chap. 70, as a charitable and benevolent institution, without capital stock, with no provision for dividends or profits, and for the purpose of owning, operating and maintaining a hospital and nurses' training school and a nurses' home. Seven physicians and eight other citizens of Calais and vicinity became Trustees of the institution.

Prior to this time, Dr. W. N. Miner was the owner of the real estate and a private hospital had been conducted by a corporation which owned the equipment, of which corporation Dr. Miner was the principal stockholder.

The new corporation purchased the real estate from Dr. Miner and the equipment from the former corporation for the sum of $ 30,000.00 and gave its mortgage for that amount to Dr. Miner, payable at the rate of $ 1,500.00 per year. The transaction was completed December 31, 1938, and the new corporation was in active charge and management from that time. The tax in question was assessed as of April 1, 1939.

The petition for abatement was based upon the claim that the appellant is a charitable and benevolent institution within the purview of R. S., Chap. 13, Sec. 6, Par. III, which provides exemption from taxation of real and personal property of all benevolent and charitable institutions incorporated by the State. This exemption is limited by the provision "but so much of the real estate of such corporations as is not occupied by them for their own purposes, shall be taxed in the municipality in which it is situated." A further amendment to the exempting statute above cited, found in P. L. 1939, Chap. 123, even if pertinent, is without application as it was not then in effect.

The questions for determination are:

Is the present hospital not only incorporated but also conducted as a charitable and benevolent institution, and is its entire real estate occupied for its own purposes?

In support of the claim for exemption, the appellant introduced testimony to the effect that no officer, trustee, physician or surgeon received any compensation from the hospital for services; that the hospital was available for the patients of any physician or surgeon registered and in regular practice; that the plan of operation was essentially the same as that followed by the public hospitals throughout the State long established and recognized as charitable institutions; that the hospital received from the State in 1939 for several designated purposes nearly $ 11,000.00 out of total receipts of approximately $ 27,000.00. Of such State contributions $ 7,141.89 comes under the heading "Hospital Appropriation." The authorization for such allocation of funds by the State is found in P. L. 1933, Chap. 1, Sec. 12, which prescribes the procedure to be followed by any

charitable or benevolent institution not wholly owned or controlled by the State in order to be entitled to participation in appropriations made for the purpose. It must be shown that the "persons receiving care were in need of such treatment, support or education; that they were not able to pay for the same; that the rates charged are not greater than those charged to the general public for the same service, and that the rates charged to those who are able to pay are not less than the cost of service rendered."

The record justifies the conclusion that this prescribed course was followed. The total amount received from paying patients was $ 15,001.01.

It further appears that an account was kept of services rendered all patients whether they were financially able to pay or not, but of $ 8,682.89 in unpaid accounts for 1939, $ 4,593.24 were regarded as uncollectible. In this connection, Dr. Miner, who was Treasurer and Manager, testified that "no patient was ever turned away from the hospital because of finances."

It does not appear of record that either a training school or home for nurses had been established in 1939, although contemplated by the statement of purposes of the corporation. These features, while tending to emphasize the character of such an institution, are not required as a qualification under the statutory exemption.

The appellee concedes that the hospital corporation, in its legal conception, is charitable.

The major premise in opposition upon the merits is that not all of the building is occupied by the hospital for its own purposes and consequently, under the limitation of the statute above recited, the portion not so used was taxable.

The case of *Ferry Beach Park Assn. v. City of Saco, 127 Me. 136, 142 A. 65,* which, like the instant case, was upon an appeal from refusal to abate taxes, and was before the court on report, raised the same issue. Upon examination of the record in that case, the Court found that the properties of the Association, other than a pavilion and a grove used for religious and educational purposes, were subject to taxation, and ordered an abatement upon the portion entitled to exemption.

In the case before us, however, the appellee asserts that because of the admitted fact that the Hospital did not bring in to the assessors a list of its property, not exempt from taxation, in accordance with the requirement of R. S., Chap. 13, Sec. 70, it has no right of appeal and the action of the assessors in refusing to make any abatement, even upon so much of the property as was clearly exempt, is final. The position of the Hospital is that it was unnecessary to file a list as the property was entirely exempt.

The statute is strict in this respect and the Court would have no authority to order an abatement even though the decision of the assessors was manifestly unjust, if any portion of the real estate, however small, was taxable. R. S., Chap. 13, Sec. 70, provides:

> "If any resident owner . . . does not bring in such list, he is thereby barred of his right to make application to the assessors or the county commissioners for any abatement of his taxes, unless he offers such list with his application and satisfies them that he was unable to offer it at the time appointed."

The appellee further asserts that the financial statement of the Hospital for 1939 demonstrates that the institution was conducted upon a profit-making basis, notwithstanding the substantial State contributions,

because there was paid to Dr. Miner upon the mortgage indebtedness the sum of $ 6,000.00, although but $ 1,500.00 was prescribed as an installment payment. The apparent surplus of receipts over operating expenses is logically accounted for, however, by the fact that part of the assets transferred to the new corporation were bills receivable in the sum of $ 9,241.36 and as the result of a determined effort a large portion of this sum was collected. In other words, an amount equal to the sum paid Dr. Miner upon his mortgage note was received from sources other than current income. The inference sought to be adduced is not tenable upon review of all the facts.

Recurring to the main contention of the appellee it is, in detail, that there was during 1939 a room in the hospital building used by Dr. Miner as his office in connection with his private professional practice for his personal gain, though without payment of rental by him to the Hospital; that this constituted the dominant use of that portion of the property, and thus subjected such portion to taxation.

The rule has been recently affirmed in *Lewiston v. All Maine Fair Association, 138 Me. 39, 21 A.2d 625*, in effect that property acquired and designed and always used in good faith for its own purposes remains exempt although occasionally used for the purposes foreign to such purposes, when this could be done without interfering with its general occupation and use of the same property.

So in *Curtis v. Odd Fellows, 99 Me. 356, 59 A. 518, 519,* it appeared that the building of the defendant was designed and intended for use by a fraternal order for its meetings and functions, that at times its halls and rooms were let to associate branches of the order, and on Sundays to the Christian Scientists, together with the fact that a single room was also let to the Christian Scientists for two hours a day. The furniture and fixtures throughout the building belonged to the defendant and the entire building was at all times under its control, subject only to use as above stated. Light, as well as heat, was provided by the defendant when any part of the building was let. Of this situation the court said, page 358, that the defendant.

> "is not the exclusive occupant, and the plaintiff claims that the meaning of this clause of the paragraph is the same as if it read, so much of the real estate of such corporations as is not exclusively occupied by them for their own purposes, shall be taxed,' etc. But the legislature did not say this. If this had been its intention the adoption of one more word would have made such meaning clear, and we cannot believe that if this had been the intention of the legislature, this one word, which would have made the intention beyond all question, would have been omitted. And for other reasons we are of the opinion that it was not the intention of the legislature that only the real estate of such benevolent and charitable institutions as is occupied by them exclusively should be exempt from taxation."

There is further clarification in the following language of the court:

> "The decision of this question must undoubtedly depend very largely upon the facts and circumstances of each case. There may be cases where the use of the property of such an owner for other purposes is of such a dominant character, and the occupation by the owner for its own purposes is so incidental and trivial, or where the use of the property by the owner for its own purposes is so plainly an attempt to evade taxation, the substantial use and occupation being for

> other purposes, that such occupation would not be sufficient to make the property exempt from taxation under our statutes."

In the present case the question resolves itself into a factual determination concerning the use by Dr. Miner of the particular room, and whether it was such as to interfere with the general use and occupation of the building by the Hospital for its own dominant purposes.

The salient features are that Dr. Miner was the Treasurer and Manager of the Hospital and the room was his headquarters in connection with his service to the institution; there was no setting aside of the room for his exclusive personal use; it was of mutual convenience, enabling him to continue the practice of his profession, without detriment to Hospital service, but to its advantage, because of the greater facility afforded with reference to the performance of his managerial duties. The doctor received no compensation from the Hospital and the Hospital received no rental income. An arrangement as to the use of one room in the building which benefited the institution in carrying forward its work without additional expense, which segregated no portion to the exclusive use of another, but left the Hospital in dominant control, does not constitute a use which is independent of and alien to the normal functions of the Hospital, even though it was also of advantage to Dr. Miner.

True it is that the burden is on the Hospital to establish its right to exemption. *Camp Associates v. Lyman, 132 Me. 67, 166 A. 59*; *Bangor v. Masonic Lodge, 73 Me. 428, 40 Am. Rep., 369*. There was sufficient evidence it was incorporated and conducted as a charitable and benevolent institution, and that there was an actual appropriation of all its property for its own purposes. The real estate should not have been assessed, and the hospital is entitled to an abatement of the entire tax.

Appeal from decision of Assessors of Calais sustained.

Tax to be abated.

Judgment for appellant with taxable costs.

CAMP EMOH ASSOCIATES vs. INHABITANTS OF LYMAN.

SUPREME JUDICIAL COURT OF MAINE, YORK

132 Me. 67; 166 A. 59; 1933 Me. LEXIS 43

May 4, 1933, Decided

JUDGES: SITTING: PATTANGALL, C. J., DUNN, STURGIS, BARNES, THAXTER, JJ.

OPINION BY: DUNN

The plaintiff corporation was organized July 25, 1929, under Chapter 62 of the Revised Statutes, 1916 (Chap. 70, 1930). It has no capital stock, and no provision for making dividends and profits. In 1930 it owned real estate in the town of Lyman. It appears to have had no other property.

In assessing the general property for the support of government, the Lyman assessors laid a tax against defendant's realty, that it might bear a proportionate share of the common burden. The tax was computed on a valuation of $ 13,500.00. The assessment itself was $ 607.50. The property was sold for delinquency, by the collector of taxes. After sale, and within the redemption period, plaintiff paid the tax, with interest and accrued charges, under protest that the property was exempt, and the whole tax unauthorized and illegal.

This action of assumpsit was begun to recover back the amount so paid. The action is grounded on a statute which provides tax exemption for "the real and personal property of all benevolent and charitable institutions, incorporated by the (this) state." R. S., Chap. 13, Sec. 6, Par. III. What a "benevolent" institution is, if it differs from one that is merely "charitable," may be difficult to say. *Maine Baptist Missionary Convention v. Portland, 65 Me. 92*.

The case was heard before the Superior Court. There was no dispute with respect to the facts. Whether or not, within the meaning of the statute, the plaintiff was using the taxed estate for purposes entitling exemption, was the point in controversy. Judgment was for the plaintiff. The defendant excepted.

Property is not exempt from taxation merely because it is owned by a benevolent and charitable institution. Freedom from assessment extends only to property which the institution occupies or uses for its own purposes. R. S., *supra; Ferry Beach Park Ass'n v. City of Saco, 127 Me. 136, 142 A. 65*.

On March 18, 1930, by its deed of that date, of which the Lyman assessors had actual notice, the Ladies Helping Hand Auxiliary to the Home for Jewish Children (a Massachusetts corporation which had owned the real estate and been taxed therefor in 1929), conveyed the property to the plaintiff. The same persons apparently comprised the boards of directors of the grantor and grantee corporations. Evidence warrants inference, as the judge in the lower court notes, that a motive of incorporation in Maine was to obtain immunity from taxation.

The main purpose and design of the plaintiff, as set forth in its certificate of organization, is that of acquiring and holding real and personal property for the erection and support of a camp, or camps, to be conducted without profit, for the care, maintenance, and assistance of poor and indigent Jewish children, on such terms and subject to such limitations as the board of directors may determine. The certificate defines no territorial restriction.

That the members of the plaintiff corporation are not permanently resident in Maine, and that of the officers only the clerk resides in the State, are not matters of consequence. The individual members, as natural persons,

are merged in the corporate identity, the domicile of which is Lyman. It meets requirements, even in the case of a business corporation, that the clerk be resident within the jurisdiction. R. S., Chap. 56, Sec. 32.

The corporation has on its land a group of camps. During July and August, 1930, upwards of two hundred and fifty children were at the camp, by assignment or invitation, all but one of the children having come from outside this State.

The assignment of children was chiefly, perhaps entirely, by an affiliate organization in Boston, from the Jewish public. Parents or friends of the children might, and some did, make contributions in their behalf; but principally, care and training, and shelter and food, and all things else, were furnished and supplied by the plaintiff, freely, and without the expectation of reward. Money to defray expenses was derived for the most part from donations; other moneys came from entertainments or fairs.

At the end of the season, the camp was closed, not to be opened again until the next year. The property, it is true, was not in actual use on the day of the assessment, i.e., the first day of April, 1930. To hold that to secure exemption, it must have then been in actual use, would ignore the spirit and intendment of the law. Actual use on that particular day is not the test.

The evidence clearly shows that the plaintiff is a "benevolent and charitable institution incorporated by the state." It is entirely immaterial what influenced the organization of the corporation. And, certainly, that it was organized in Maine, because its incorporators were suited with our laws, or wished to receive the benefit of them, should not be used against it to debar it of its rights under those laws. It may be that our legislation as to exemption is too broad, but that constitutes no reason why it should not be enforced with an equal hand. The wisdom of the statute is for the Legislature, not the Court, to consider. Legislative enunciation exempts certain corporations created and existing with the consent of the State of Maine, from taxation, the exemption being restricted to property which such corporate bodies own and use for their own purposes.

Immunity from assessment depends, not upon simple ownership and possession of property, nor necessarily upon the extent, or length, of the actual occupancy thereof, although this is entitled to consideration, but upon exclusive occupation of such a nature as, within the meaning of the statute, contributes immediately to the promotion of benevolence and charity, and the advancement thereof.

The statute enacts that a corporation such as this shall be considered benevolent and charitable, without regard to the sources from which it gets its property or funds, or limitations in the classes of persons for whose benefit the property and funds are applied. R. S., *supra.*

The burden was on the plaintiff to establish its right to exemption. *Bangor v. Masonic Lodge, 73 Me. 428*. There was sufficient evidence of the actual appropriation of its property, for the purposes for which the plaintiff corporation was incorporated. The real estate should not have been assessed. No reversible error was committed by the lower court. The exception, therefore, is overruled.

Exception overruled.

CUSHING NATURE AND PRESERVATION CENTER v. TOWN OF CUSHING et al.

SUPREME JUDICIAL COURT OF MAINE

2001 ME 149; 785 A.2d 342; 2001 Me. LEXIS 152

September 14, 2001, Argued

October 29, 2001, Decided

JUDGES: Panel: WATHEN, C.J. * and CLIFFORD, RUDMAN, DANA, SAUFLEY, ALEXANDER, and CALKINS, JJ.

* Wathen, C.J., sat at oral argument and participated in the initial conference but resigned before this opinion was adopted.

OPINION BY: SAUFLEY

The Cushing Nature and Preservation Center appeals from a judgment of the Superior Court (Knox County, Atwood, J.) denying its motion for summary judgment and granting a summary judgment in favor of the Town of Cushing on the Center's action for a declaratory judgment. The Center argues that its property qualifies for a charitable property tax exemption pursuant to *36 M.R.S.A. § 652(1)* [***2] (1990 & Supp. 2000) and is entitled to a refund of taxes paid in 1998 and 1999. We conclude that there are material facts in dispute and vacate the judgment of the Superior Court.

I. BACKGROUND

The facts set forth in the parties' opposing statements of material fact may be summarized as follows. The Cushing Nature and Preservation Center was incorporated pursuant to the Maine Nonprofit Corporation Act, 13-B M.R.S.A. 101-1405§§ (1981 & Supp. 2000). According to its articles of incorporation, the Center was:

> organized for one or more of the following purposes as specified in *Section 501(c)(3) of the Internal Revenue Code of 1986*, including to own, operate and preserve land as a nature center and/or center for programs for environmental education, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under *IRC 501(c)(3)* or corresponding provisions of any subsequent tax laws.

The IRS made a preliminary determination that the Center is exempt from federal income tax. The Center, whose president is Dr. Nile Albright, has four officers and a three-person board of directors, none of whom are compensated for their services. The directors of the Center are also directors of another corporation run by Dr. Nile Albright, Advanced Medical Research Foundation. AMRF formerly owned the two Cushing lots. While owner of the two lots, AMRF sought and was denied tax exempt status. See *Advanced Med. Research Found. v. Town of Cushing, 555 A.2d 1040, 1042 (Me. 1989).*

In February 1998, the Center acquired the two lots from Advanced Medical Research Foundation. The lots comprise 400 acres and are valued at roughly 2.5 million dollars. There is a farmhouse on the property, as well as a barn that purportedly serves as a nature center. The barn contains an administrative area on the second floor and remains locked except for special functions. No regular electricity service has been provided to the property since July 1998. In 1998 and 1999, the Center had a volunteer part-time manager, who was also employed full-time by AMRF.

The Center generally makes the property available to the public. The Town, however, asserted in its statement of material facts that clamming is prohibited on the property. The record is unclear as to what portion of the property clammers are prohibited from using. The Center now contends that it discourages clammers from crossing the property, but that it does not prohibit them from clamming in the intertidal zone. [1] It is undisputed that clamming in fact occurs on the property.

1 Believing that the issue of clamming was irrelevant to the decision before the court, the Center presented no fact in opposition to the Town's statement of material fact on that point. Thus, we accept the Town's assertion to the extent that it is supported by the record reference. The record referred to was Dr. Albright's deposition, in which he said in response to the question of whether clamming was permitted: "No. And we've posted it such and, when the clammers come we put a yellow tag beneath their windshield saying, this is private property and we'd like you to not use it this way and not dispose of any trash."

The Center alleges that several nature-related educational programs took place on the property in 1998 and 1999. In both years, the property was used for the Cushing Nature Center Science Camp for Girls (CNCSCG), a program "designed to promote interest and enthusiasm in science by girls, to develop self-esteem and leadership, and for them to meet women scientists and role models." Each year approximately twenty girls stayed overnight at the property for six days and participated in a variety of educational and recreational activities. Whether the Center conducted or operated the camp is in dispute.

The Center also alleges that it made its property available for several other endeavors related to nature education. MSAD # 50 ran a four-day science day camp on the property in the summers of 1998 and 1999 as part of its state-funded summer science program. [2] The Knox County Boy, Girl, and Cub Scouts used the property for camping for three days in September 1998. The Girl Scouts also held a camporee on the property over a weekend in May 1999. In both cases, the scouts provided their own shelter, bathrooms, supplies, food, and telephone, and were able to use the barn only in the event of rain. In 1998, the scouts conducted a coastal clean-up on the property. Nature walks have been conducted on the property, and Maine Medical Center used the property to study the relationship between deer density and Lyme disease. The Cushing Historical Society marked burial sites of Native Americans and early settlers on the property in 1998. In June 1999, a fifth grade class took a one-hour nature hike on the property. [3]

2 MSAD # 50 executed a release of liability, was encouraged to provide its own bathrooms, supplies, food, and cellular phones, and was advised not to use the barn unless it rained. The Center made contributions to the camp of $ 480 in 1998 and $ 550 in 1999. MSAD # 50 also used the property to conduct a four-day teacher training program in 1998. Whether MSAD # 50 conducted a similar program in 1999 is in dispute.

3. The Town alleges that the property was also used for meetings by the Pathology Department of Penobscot Bay Hospital, the Nurses Association of Penobscot Bay Hospital, the Maine Arthritis Association, the Maine Diabetes Association, the Cushing Historic Society, and a group affiliated with the Drug Abuse Resistance Education program. The Center denies that the Pathology Department of Penobscot Bay Hospital, the Nurses Association of Penobscot Bay Hospital, the Maine Arthritis Association, or the Maine Diabetes Association have met on the property since the Center acquired it.

The Town assessed taxes against the combined properties of$ 18,245.36 in 1998 and $ 18,981.06 in 1999. The Center requested that the Town Board of Assessors exempt its property from municipal property taxes for 1998 and 1999 pursuant to the provisions of *36 M.R.S.A. § 652(1)(A)*. The Board denied that request.

The Center then filed a complaint seeking a declaratory judgment that its real property qualifies for tax exempt status and that it is entitled to a refund of the taxes paid. The Superior Court denied the Center's motion for summary judgment and granted a summary judgment for the Town. The court concluded that the Center's restrictions on access by clammers is contrary to public policy, thereby precluding the Centerfrom claiming an exemption. The court also concluded that because of the existence of the Farm and Open Space Tax Law, 36 M.R.S.A. 1101-1121§§ (1990 & Supp. 2000), land conservation cannot be considered a charitable purpose pursuant to *36 M.R.S.A. § 652(1)(A)*. This appeal followed.

II. DISCUSSION

On appeal from a grant of summary judgment, we consider only those portions of the record referred to and the material facts set forth in the M.R. Civ. P. 56(h) statements "to determine whether there was no genuine issue as to any material fact and that the successful party was entitled to a judgment as a matter of law." *Levine v. R.B.K. Caly Corp., 2001 ME 77, P4, 770 A.2d 653, 655*; *Stanton v. Univ. of Me. Sys., 2001 ME 96, P6, 773 A.2d 1045, 1048*. We examine the facts in the light most favorable to the nonprevailing party. *Mastriano v. Blyer, 2001 ME 134, P10, 779 A.2d 951, 953-54*.

Whether an organization's real property qualifies for a charitable tax exemption is a mixed question of law and fact. See *Episcopal Camp Found., Inc. v. Town of Hope, 666 A.2d 108, 110-111 (Me. 1995)*. First, the court must determine whether a stated purpose is charitable within the meaning of the statute creating the exemption. See id. Statutory interpretation involves questions of law that give rise to de novo review. *Charlton v. Town of Oxford, 2001 ME 104, P10, 774 A.2d 366, 371*. If an organization's purpose is deemed to be charitable, the court goes on to a careful examination of the facts to determine whether the organization is actually using its property solely for purely benevolent and charitable purposes. *Episcopal Camp Found., 666 A.2d at 111* (quoting *Green Acre Baha'i Inst. v. Town of Eliot, 150 Me. 350, 354, 110 A.2d 581, 584 (1954))*.

Here, the court did not engage in an examination of the facts because it determined first, that the Center was acting contrary to public policy in limiting clammers' access to the property, and second, that one of the Center's stated charitable purposes, land preservation, did not fall within the meaning of a charity for purposes of *36 M.R.S.A. § 652(1)(A)*. Because we conclude that the limitation on clammers' access to the property does not, by itself, bar the Center from claiming the exemption, and that the Center has set forth an alternative charitable purpose, nature education, we must remand the matter for examination of the facts. A. Access to Clam Flats

Although the Superior Court found that clamming is prohibited on the property, the record reference in the Town's statement of material facts is equivocal with respect to whether clamming is actually prohibited in the intertidal zone. The Center agrees that it may not legally prohibit clammers from being upon the intertidal zone of its property because the public enjoys an easement over intertidal land for the purposes of fishing, fowling,

and navigation. *Bell v. Town of Wells, 557 A.2d 168, 173 (Me.1989).* It now alleges, however, that it has never flatly prohibited clamming but rather discourages clammers from parking on its upland property and from using its roads to access the flats. This does not appear to be in dispute. Nonetheless, the Superior Court held that the Center's interference with clamming violates public policy.

When the **purpose** of an alleged charitable use violates public policy, it cannot be classified as charitable. See *Holbrook Island Sanctuary v. Town of Brooksville, 161 Me. 476, 486-88, 214 A.2d 660, 666 (1965).* This does not mean, however, that a charity may not lawfully restrict the use of its property. If the use is charitable, the owner need not allow all public uses in order to qualify for an exemption. Here the Center alleges a charitable purpose of nature education. If it does, in fact, use the property solely for that purpose, it may exclude others not involved in that purpose from access to the property without jeopardizing the property's tax exempt status. Clammers using the property to park trucks and gain access to the flats are engaged in commercial activities, not nature education. Thus, excluding clammers from using the upland portion of the property would not preclude the Center from seeking a charitable exemption. B. Educational Purposes

The Superior Court also concluded that land preservation cannot constitute a charitable use for purposes of *36 M.R.S.A. § 652* because the Legislature has provided a specific method of obtaining favorable tax treatment of preserved lands through the Farm and Open Space Tax Law, 36M.R.S.A. §§ 1101-1121.

The Center has not presented any facts in support of a claim that it has engaged in land conservation or preserved the land for future public use. Thus, we need not determine whether land conservation or preservation, standing alone, could constitute a charitable use, and the Superior Court did not err in entering judgment for the Town on that claim.

The Center has, however, presented facts in support of its alternate claim that it currently uses the land exclusively for the charitable purpose of educating youth and the public regarding science and nature. We have recognized that education may constitute a charitable purpose. See *Episcopal Camp Found., 666 A.2d at 110.* Thus, we must determine whether the Center has presented sufficient facts regarding its educational charitable purposes to preclude the entry of a summary judgment in favor of the Town.

In determining whether an organization's property qualifies for a charitable tax exemption, we have identified several factors the trial court should consider. When an exemption is claimed, the court must undertake a "careful examination" of the facts presented to determine (1) whether the owner of the land is organized and conducting its operation for purely benevolent and charitable purposes in good faith; (2) whether there is any profit motive revealed or concealed; (3) whether there is any pretense to evade taxation; and (4) whether any production of revenue is purely incidental to a dominant purpose that is benevolent and charitable. *Green Acre Baha'i Inst., 150 Me. at 354, 110 A.2d at 584.* This does not represent an exhaustive list of considerations, but it will guide the court in its determination of the existence of a charitable use.

Here, there is apparently no factual dispute that the Center is organized as a charitable corporation or that it allows occasional educational events to occur on the property. The dispute centers on the Town's contention that the land is actually held for noncharitable investment or other noncharitable purposes. The Town has presented facts in support of that contention. Thus, the trial court must determine whether the claimed charitable use is the sole use of the land, whether the charitable uses are conducted in good faith, and whether there exists a pretense to evade taxation.

Because of its legal rulings, the court did not reach an analysis of the disputes of fact material to the Center's use of its land, including the extent of the Center's educational uses, its involvement with the Science Camp for Girls, and the extent of its noncharitable uses of the land, including noncharitable investment purposes. We therefore vacate the judgment in favor of the Town and remand the matter to the Superior Court for resolution

of the factual disputes relevant to the Center's alleged charitable use of the property for nature and science education. The entry is:

Judgment vacated. Remanded to the Superior Court for further proceedings consistent with this opinion.

EPISCOPAL CAMP FOUNDATION, INC. v. TOWN OF HOPE

SUPREME JUDICIAL COURT OF MAINE

666 A.2d 108*; *1995 Me. LEXIS 245

May 5, 1995, Argued

October 20, 1995, Decided

JUDGES: Before WATHEN, C.J., and ROBERTS, GLASSMAN, CLIFFORD, RUDMAN, DANA, and LIPEZ, JJ. Wathen, C.J., Clifford, and Lipez, JJ., concurring. Glassman, J., with whom Rudman and Dana, JJ., join, dissenting

OPINION BY: ROBERTS

The Town of Hope appeals from the summary judgment entered in the Superior Court (Knox County, Mead, J.) in favor of Episcopal Camp Foundation, Inc., on its complaint seeking a declaratory judgment that the property of the Foundation is exempt from taxation pursuant to *36 M.R.S.A. § 652(1)* (1990 & Supp. 1994). Because we conclude that the court correctly determined that the Foundation is conducted exclusively for benevolent or charitable purposes, we affirm the judgment.

The record reveals the following undisputed facts: The Foundation is a nonprofit corporation that operates Camp Bishopswood, a summer camp for second through tenth grade boys and girls on its property located on Lake Megunticook in the Town of Hope. The Foundation's corporate purpose as set forth in its articles of incorporation is "to maintain camps for both men and women which will carry on moral, cultural, religious and recreational training and education, instruction in arts and crafts and nature lore, good citizenship, social living and civic responsibility, and to cooperate in community welfare enterprises." The articles of incorporation further provide that all profits derived from the operation of the camp shall be devoted exclusively to the purposes for which it is organized and no officer of the corporation shall receive any pecuniary profit except reasonable compensation. Charges for operating the camp shall be limited to expenses actually incurred.

The board of trustees is comprised of nine unpaid members of the Episcopal Diocese of Maine. The board hires an executive director as a full-time employee who hires staff for the camp. The staff attends a week-long pre-camp training session in which communication skills, counseling relationships, teaching by example, affirming and supporting the children, shared responsibility, and group living are emphasized. The four goals of the camp are (1) to affirm individuality, (2) to provide experiential community living, (3) to provide children with the opportunity to be involved with the natural environment, and (4) to allow the children to enjoy themselves. In addition to some religious teaching in a "Faith Development" class, the camp conducts most of the traditional summer camp activities such as swimming, games, arts and crafts, nature study, and sports. The weekly schedule is patterned after the Order for Celebrating the Holy Eucharist.

The Foundation allows Episcopalian children and past campers to register first. In 1992, 80% of the campers were in that group. The Foundation does not exclude non-Episcopalians and does not seek to indoctrinate campers in the Episcopalian faith. The Foundation seeks a diverse community and sponsors hearing-impaired children and several African-American children.

If a camper requires financial assistance, the Foundation advises the parents to first contact their local Episcopal diocese, many of which provide scholarships for the camp regardless of whether the family is Episcopalian. If

the family is unable to obtain financial assistance from the diocese, the Foundation provides a scholarship. The money for the scholarships is not derived from camp tuition but is provided by donations by the Episcopal church and parents. In most cases the Foundation scholarship equals one-half of the weekly tuition, but if more assistance is required, the Foundation provides a larger scholarship. The scholarships are provided on request and the Foundation does not independently verify the family's financial need. In 1992, at least 22% of the children attending the camp received scholarships from the Foundation.

In 1992 full tuition was $ 165 per week, which was sufficient to cover only two-thirds of the operating costs of the camp. The rest of the operating costs were derived from charitable donations and income generated by leasing the property in the off-season. By providing scholarships and keeping the tuition rate below cost, the Foundation attempts to keep the camp affordable to as many children as possible. Full tuition is approximately one-third of the tuition per week charged by the average for-profit camp.

The Foundation has owned the property since 1962. In 1993, the Town asserted for the first time that the Foundation's property was subject to real estate taxation. The Town assessed taxes of $ 13,909.50 for 1992 and $ 13,855.89 for 1993. On May 21, 1993, the Foundation brought the present action pursuant to the Maine Declaratory Judgments Act, *14 M.R.S.A. §§ 5951*--5963 (1980 & Supp. 1994), seeking a declaration that the Foundation's property is exempt from taxation pursuant to *36 M.R.S.A. § 652(1)(A)* and seeking to enjoin the Town from assessing or collecting taxes.

The Foundation filed a motion for a summary judgment in which the following facts were undisputed by the parties: (1) the Foundation's production of income is incidental to its dominant purpose, (2) the Foundation is not a pretense to avoid taxation, (3) the Foundation has no profit motive, revealed or concealed, (4) none of the Foundation's officials receive any pecuniary profit other than reasonable compensation, and (5) all profits are devoted exclusively to the purposes for which it is organized. The only issue between the Town and the Foundation, therefore, was whether, based on the undisputed factual record, the Foundation is organized and conducted exclusively for benevolent and charitable purposes.

After a hearing, the trial court granted a summary judgment in favor of the Foundation, finding that

> the Foundation, through Camp Bishopswood, offers an organized and professional program that integrates religious teachings, moral instruction, and social living and civic responsibility. The Foundation offers these services at less than their cost and provides direct tuition assistance to a number of campers. Any profit that the Foundation might realize is devoted to the charitable purposes of Camp Bishopswood.

From this judgment, the Town appeals.

We review the grant of a summary judgment for errors of law, viewing the evidence in the light most favorable to the party against whom the judgment was entered. *Cushman v. Tilton, 652 A.2d 650, 651 (Me. 1995).* After independently reviewing the record, we will affirm a summary judgment when there is no genuine issue of material fact and the movant is entitled to a judgment as a matter of law. Id.

The statutory exemption at issue in this case provides in pertinent part:

The following property of institutions and organizations is exempt from taxation:

1. Property of institutions and organizations.

A. The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State, and none of these may be deprived of the right of exemption by reason of the source from which its funds are derived or by reason of limitation in the classes of persons for whose benefit such funds are applied.

. . .

C. Further conditions to the right of exemption under paragraphs A and B are that:

(1) Any corporation claiming exemption under paragraph A must be organized and conducted exclusively for benevolent and charitable purposes.

36 M.R.S.A. § 652 (Supp. 1994). We have previously held that the party seeking an exemption must establish that its organization comes "unmistakably within the spirit and intent of the act creating the exemption." *Holbrook Island Sanctuary v. Town of Brooksville, 161 Me. 476, 483, 214 A.2d 660, 664 (1965)* (citations omitted). All exemptions are to be construed strictly because "such special privileges are in conflict with the universal obligation of all to contribute a just proportion toward the public burdens." City of Bangor v. Rising Virtue *Lodge No. 10, Free & Accepted Masons, 73 Me. 428, 433 (1882).* The inquiry in this case is whether, based on the undisputed record, providing children with the opportunity to attend a summer camp below cost is a charitable and benevolent purpose within the purview of *section 652*.

In defining "charity," we have previously stated that the word

> is not to be taken in its widest sense, denoting all the good affections which men ought to bear to each other, nor in its restricted and usual sense, signifying relief to the poor, but is to be taken in its legal signification, as derived chiefly from the statute of 43 Eliz., C. 4. Those purposes are deemed charitable which are enunciated in that act, or which by analogy are deemed within its spirit and intendment.

Maine Baptist Missionary Convention v. City of Portland, 65 Me. 92, 93-94 (1876) (citation omitted). We have described a charity to be

> 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 in life, or [**9] by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Johnson v. South Blue Hill Cemetery Ass'n, 221 A.2d 280, 287 (Me. 1966).

The justification for awarding charitable institutions tax exemptions is that

> any institution which by its charitable activities relieves the government of part of [its] burden is conferring a pecuniary benefit upon the body politic, and in receiving exemption from taxation it is merely being given a "quid pro quo" for its services in providing something which otherwise the government would have to provide.

YMCA of Germantown v. City of Philadelphia, 323 Pa. 401, 187 A. 204, 210 (Penn. 1936). Accordingly, property on which organizations conduct these traditional charitable activities has been exempt from taxes. See, e.g., *Town of Poland v. Poland Spring Health Inst., Inc., 649 A.2d 1098 (Me. 1994)* (providing primary and preventative health care is charitable and benevolent purpose); *Maine AFL-CIO Housing Dev. Corp. v. Town of Madawaska, 523 A.2d 581 (Me. 1987)* (operating housing project for low income, elderly, or handicapped persons benefits the public and is charitable); *Green Acre Baha'i Inst. v. Town of Eliot, 150 Me. 350, 110 A.2d 581 (1954)* (missionary activities are traditional charitable purposes); *Camp Emoh Assocs. v. Town of Lyman, 132 Me. 67, 166 A. 59 (1933)* (operating summer camp for indigent Jewish children was charitable purpose).

As the trial court found, the Foundation "offers an organized and professional program that integrates religious teachings, moral instruction, and social living and civil responsibility." That purpose, undisputed by the Town, is well within the definition of charity contained in Johnson and relied on by the court. Moreover, the undisputed facts demonstrate that the Foundation could not operate without substantial charitable donations. We have suggested that the charitable source of funds is an indication of charitable status. See City of Bangor v. Rising Virtue *Lodge No. 10, Free & Accepted Masons, 73 Me. at 434*. As we stated in *Green Acre Baha'i Inst. v. Town of Eliot, 150 Me. at 354, 110 A.2d at 584*, "in each situation where exemption is claimed, there must be a careful examination to determine whether in fact the institution is organized and conducting its operation for purely benevolent and charitable purposes." Here the trial court engaged in such an examination. Given the common factors that this case shares with our prior cases, there is no reason to disturb the well-reasoned decision of the trial court

The entry is:

Judgment affirmed.

Wathen, C.J., Clifford, and Lipez, JJ., concurring.

DISSENT BY: Glassman

I must respectfully dissent. The law is well established that taxation is the rule and tax exemption is the exception. *Silverman v. Town of Alton, 451 A.2d 103, 105 (Me. 1982).* Accordingly, "we begin with the general principle, well established in Maine law, that an exemption from taxation, while entitled to reasonable

interpretation in accordance with its purpose, is not to be extended by application to situations not clearly coming within the scope of the exemption provisions." *Harold MacQuinn, Inc. v. Halperin, 415 A.2d 818, 820 (Me. 1980)* (citations omitted). In the instant case, although the Foundation provides a significant number of scholarships to children to attend the Camp which it operates on a non-profit basis, these factors alone are insufficient to constitute a charitable purpose. *See, e.g., Camping & Educ. Found. v. State, 282 Minn. 245, 164 N.W.2d 369, 374 (Minn. 1969)* (holding that profit motive cannot be sole criterion for determining tax exempt status).

There is no overriding principle immediately apparent from our prior cases. [1] Implicit, however, in each case that presents the issue whether an organization has been conducted exclusively for charitable purposes is an evaluation of its activities to determine if they alleviate a public need "which otherwise the government would have to provide." *YMCA of Germantown v. City of Philadelphia, 323 Pa. 401, 187 A. 204, 210 (Pa. 1936). See, e.g., Town of Poland v. Poland Spring Health Inst., Inc., 649 A.2d 1098 (Me. 1994)* (providing primary and preventative health care a charitable purpose); *Maine AFL-CIO Housing Dev. Corp. v. Town of Madawaska, 523 A.2d 581 (Me. 1987)* (operating housing project for low-income elderly or handicapped persons a charitable purpose); *Camp Emoh Assoc. v. Town of Lyman, 132 Me. 67 (1933)* (operating tuition-free summer camp for indigent Jewish children a charitable purpose). *See also City of Bangor v. Rising Virtue Lodge, 73 Me. 428 (1882)* (Masonic Lodge not statutorily exempted on basis that funds collected from members were distributed among poor and needy members and their wives and children).

1 Missionary societies have long been deemed to possess the required attributes of benevolent and charitable institutions for tax exemption purposes. *Green Acre Baha'i Inst. v. Town of Eliot, 150 Me. 350, 110 A.2d 581 (1954)*; *Universalist Church v. City of Saco, 136 Me. 202, 7 A.2d 428 (1939)*; *Maine Baptist Missionary Convention v. City of Portland, 65 Me. 92 (1876).*

The activities offered at the Camp, including those directed to the goals of "good citizenship, social living and civic responsibility and to cooperate in community welfare enterprises," do not materially differ from the activities typically offered by children's summer camps that operate for profit. Nor can it be said that the activities are a public benefit akin to providing services to indigent or low-income persons or persons requiring health care. In my opinion, the purpose of the Foundation in establishing Camp Bishopswood was to provide to any child, regardless of financial need, a summer camp experience. As laudable as this goal may be, it is not "unmistakably within the spirit and intent" of section 651. *Holbrook Island Sanctuary v. Town of Brooksville, 161 Me. 476, 483, 214 A.2d 660, 664 (1965).* On this record, the Foundation should not be exempt from the the universal obligation to contribute proportionately toward the cost to the government in meeting public needs. There being no challenge to the amount of the assessed tax, I would vacate the judgment and remand this case for the entry of a judgment in favor of the Town of Hope.

FRANCIS SMALL HERITAGE TRUST, INC. v. TOWN OF LIMINGTON et al.

SUPREME JUDICIAL COURT OF MAINE

2014 ME 102*; *98 A.3d 1012*; *2014 Me. LEXIS 110

May 15, 2014, Argued

August 7, 2014, Decided

JUDGES: Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, MEAD, GORMAN, and JABAR, JJ.

OPINION BY: SILVER

The Town of Limington appeals from a judgment entered in the Superior Court (York County, *Fritzsche, J.*) vacating a decision of the State Board of Property Tax Review. The Town argues that (1) the Superior Court erred in vacating the Board's ruling that Francis Small Heritage Trust, Inc., is not entitled to a tax exemption as a benevolent and charitable institution pursuant to *36 M.R.S. § 652(1)(A), (C)* (2013), and (2) the Board did not err in concluding that the Town correctly applied the "[a]lternative valuation method" of *36 M.R.S. § 1106-A(2)* (2013) to the Trust's properties that are classified as open space land pursuant to Maine's Farm and Open Space Tax Law, *36 M.R.S. §§ 1101-1121* (2013).[1] This opinion gives us the opportunity to review the real estate tax status of land fully devoted to conservation and free public access. Because we conclude that the Trust is entitled to a charitable exemption, we affirm the judgment.

1 Various provisions of the Farm and Open Space Tax Law, including *36 M.R.S. § 1106-A* (2013), have been amended since the 2009 and 2010 tax years at issue in this case. *See, e.g.*, P.L. 2011, ch. 240, §§ 7-8 (effective Sept. 28, 2011) (codified as amended at *36 M.R.S. § 1109(1), (3)* (2013)); P.L. 2011, ch. 618, §§ 6-7 (effective Aug. 30, 2012) (codified at *36 M.R.S. § 1106-A(2)-(3)*). Those amendments do not affect this appeal.

I. BACKGROUND

The following facts are drawn from the administrative record developed before the Board. The Trust owns eleven contiguous parcels of land on and near Sawyer Mountain in Limington. Three of the parcels have historically been taxed pursuant to the Maine Tree Growth Tax Law, *36 M.R.S. §§ 571 to 584-A* (2013).[2] The remaining eight parcels are classified as open space land pursuant to the Farm and Open Space Tax Law, *36 M.R.S. §§ 1101-1121*. The open space properties are protected by third-party, "forever-wild" conservation easements, and some of the parcels are also further protected by easements held by the Department of Inland Fisheries and Wildlife as part of the Land for Maine's Future program.

2 Various provisions of the Maine Tree Growth Tax Law have been amended since the 2009 and 2010 tax years at issue in this case. *See, e.g.*, P.L. 2013, ch. 405, § A-23 (effective Oct. 9, 2013) (codified at *36 M.R.S. §§ 575-A, 577, 579, 581-F to 581-G* (2013). Those amendments do not affect this appeal.

The Trust's purposes are "to conserve natural resources and to provide free public access to those natural resources." To that end, the Trust's properties are "used and operated as conserved wildlife habitat," and are open to the public 365 days a year. Local schools use the properties for field trips and environmental education. The Trust's land is also open for hunting, fishing, hiking, cross-country skiing, and snowmobiling. In addition, the Trust has engaged in other activities, such as sponsoring a Limington Boy Scout Troop, participating in a project with Maine Medical Center to research the risk of exposure to Lyme-disease-transmitting deer ticks, and conducting a workshop on invasive plants. The Trust also holds a conservation easement on a commercial farm in the town of Parsonsfield. The Trust's Articles of Incorporation set forth the purposes of the Trust:

> *The corporation is organized exclusively for charitable, educational, and scientific purposes* within the meaning of *Section 501(c)(3) of the Internal Revenue Code* and Title 13-B of the Maine Revised Statutes. The nature of the activities to be conducted and the purposes to be promoted or carried out by the corporation are as follows:
>
> (a) *The receipt and administration of property and funds for the promotion of conservation and preservation of the natural resources* primarily in, but not limited to, the Towns of Cornish, Limerick and Limington, County of York, state of Maine *for the benefit of the general public*, including land and water resources, plant and animal life, and areas of scenic, agricultural, ecological or educational significance therein;
>
> (b) In conformity with the purposes set forth in this paragraph, the corporation shall accept by gift, devise or bequest, but may also obtain by purchase, lease, or otherwise, property and interests therein, including, but not limited to, developmental rights therein, and other property, real, personal or mixed, of historic, scenic, agricultural and natural significance. *Other specific purposes of the corporation shall be to* maintain open space and preserves for wildlife and plant life, *protect appropriate uses such as logging, farming and other compatible commercial activities within specified areas and adjacent areas*, engage in and promote scientific study and education regarding natural resources, to demonstrate and teach the necessity of preserving our natural heritage by conservation and preservation so that future generations may enjoy it, and to protect and promote the utilization of properties for hunting, fishing, hiking, cross country skiing and other compatible uses.

(Emphasis added.)

For tax purposes, the assessed value of open space land is governed by *36 M.R.S. § 1106-A*, which provides that, if the assessor cannot determine the market price of the property, the assessor may employ an "[a]lternative valuation method." *Id. § 1106-A(1), (2)*. Pursuant to the alternative valuation method, "[t]he assessor may reduce the ordinary assessed valuation of the land, without regard to conservation easement restrictions," by up to 95% if the land meets certain statutory criteria.[3] *Id. § 1106-A(2)*. *Section 1106-A(2)* further provides, however, that "[n]otwithstanding this section, the value of forested open space land may not be reduced to less than the value it would have under [the Maine Tree Growth Tax Law], and the open space land valuation may not exceed just value as required under [*36 M.R.S. § 701-A* (2013)]."

3 The statute provides in relevant part:

> The assessor may reduce the ordinary assessed valuation of the land, without regard to conservation easement restrictions and as reduced by the certified ratio, by the cumulative percentage reduction for which the land is eligible according to the following categories.
>
> **A.** All open space land is eligible for a reduction of 20%.
>
> **B.** Permanently protected open space land is eligible for the reduction set in paragraph A and an additional 30%.
>
> **C.** Forever wild open space land is eligible for the reduction set in paragraphs A and B and an additional 20%.
>
> **D.** Public access open space land is eligible for the applicable reduction set in paragraph A, B or C and an additional 25%.
>
> *36 M.R.S. § 1106-A(2)(A)-(D)* (2013). *Subsection (3)* of the statute defines "[p]ermanently protected open space," "[f]orever wild open space," and "[p]ublic access open space." *36 M.R.S. § 1106-A(3)(A)-(C)*. The Town does not dispute that the Trust's open space properties meet all of these criteria and are eligible for a 95% reduction in assessed value.

In assessing the Trust's open space properties, the Town utilized the alternative valuation method. Because the Town's valuation of the properties, as reduced pursuant to *section 1106-A(2)(A)-(D)*, fell below the value of the properties pursuant to the Maine Tree Growth Tax Law, the Town instead used the tree growth value. The Town did not have data regarding the mixture of trees for one of the Trust's open space parcels because it had never been enrolled in the tree growth program, so the Town instead used the full value of that parcel as reduced pursuant to *section 1106-A(2)(A)-(D)*.

The Trust requested tax abatement on its eleven properties for the 2009 and 2010 tax years, contending that the properties should be granted tax-exempt status, and that, if the properties are not exempt, the Town overvalued the eight open space lots by misapplying the alternative valuation method set forth in *36 M.R.S. § 1106-A(2)*. The Town denied the Trust's petitions, and the Trust appealed to the Board.

The Board consolidated the Trust's appeals and held evidentiary hearings on July 19 and 20, 2011, and September 9, 2011. The Board received the testimony of several witnesses, including Richard Jarrett, the treasurer of the Trust and a member of its board of directors. Jarrett testified that the "compatible commercial activities" provision of the Trust's Articles of Incorporation permitted the Trust to engage in forestry. The Trust, Jarrett testified, plans to use its tree growth parcels for an educational program on sustainable tree harvesting, with any revenue flowing back into the Trust to be used in accordance with its purposes. Jarrett also testified that heavily encumbered conservation land is more of a financial liability than an asset, and that transfers of such property are generally for nominal value and often accompanied by a donation of "stewardship" funds for the maintenance of the property.

By a written decision dated August 22, 2012, the Board denied the Trust's appeals. The Board concluded that the Trust was not entitled to a tax exemption because "its activities are not restricted solely to benevolent and charitable purposes." In reaching this conclusion, the Board relied on several facts: (1) the Trust's Articles of Incorporation permitted the Trust to "engage" in commercial activities such as farming and logging; (2) Jarrett, the Trust's treasurer, interpreted the commercial activities provision of the Articles to permit the Trust to engage

in forestry; (3) three of the Trust's parcels were enrolled in the tree growth program; and (4) the Trust "own[s]" a commercial farm in Parsonsfield. The Board also reasoned that the Trust's property could not be exempt because eight of the Trust's properties were classified as open space land and already enjoyed substantial tax relief, relying in part on *Cushing Nature & Preservation Center v. Inhabitants of the Town of Cushing, No. Civ.A.CV99-059, 2001 Me. Super. LEXIS 50, 2001 WL 1729095, at *6 (Me. Super. Ct. May 30, 2001), vacated on other grounds, 2001 ME 149, 785 A.2d 342*.

With respect to the valuation issue, the Board concluded that the plain language of *section 1106-A(2)* supported the Town's use of the tree growth value where the 95% reduction resulted in a value less than the tree growth value. The Board also rejected the Trust's argument that the fair market value of the properties was nominal due to restrictions on their use because the Board found Jarrett's "unsupported testimony not persuasive and therefore insufficient to overcome the presumption that the assessors' valuation is valid."

The Trust appealed the Board's decision to the Superior Court pursuant to M.R. Civ. P. 80C and *5 M.R.S. §§ 11001-11008* (2013). The Superior Court vacated the Board's decision, concluding that the Trust was entitled to a tax exemption as a benevolent and charitable institution. The court reasoned that the Trust's Articles of Incorporation permitted only the "protection" of logging, farming, and other compatible commercial activities, and did not actually authorize the Trust to engage in them, and that any revenue derived by the Trust from such commercial activities was purely incidental. The court further reasoned that nothing in the Maine Tree Growth Tax Law or the Farm and Open Space Tax Law precluded exemption of the Trust's property as that of a benevolent and charitable institution. The court did not reach the issue of the Town's valuation of the Trust's open space properties. The Town timely appealed.[4]

4 Amici Maine Coast Heritage Trust and Land Trust Alliance, Inc., filed a brief in support of the Trust.

II. DISCUSSION

A. Standard of Review

Because the Superior Court acted in its appellate capacity, we review the decision of the Board directly without deference to the Superior Court's intermediate review. *See Humboldt Field Research Inst. v. Town of Steuben, 2011 ME 130, PP 3-4, 36 A.3d 873*; *Mar. Energy v. Fund Ins. Review Bd., 2001 ME 45, P 7, 767 A.2d 812*. We review the Board's decision for abuse of discretion, errors of law, or findings not supported by the evidence. *Mar. Energy, 2001 ME 45, P 7, 767 A.2d 812*.

B. Analysis

As a general rule, all real estate in Maine is subject to taxation. *36 M.R.S. § 502* (2013); *Hebron Acad., Inc. v. Town of Hebron, 2013 ME 15, P 7, 60 A.3d 774*. Legislatively established state policy encouraging charitable use of land, however, establishes that an organization's property is exempt from taxation if (1) the organization claiming the exemption is "organized and conducted exclusively for benevolent and charitable purposes," and (2) the property is "owned and occupied or used solely for [the organization's] own purposes." *36 M.R.S. § 652(1)(A), (C)(1)*. Because the Town does not argue that the Trust does not own, occupy, and use the property

in question solely for its own purposes, we address only whether the Trust is "organized and conducted exclusively for benevolent and charitable purposes." *Id.*

Whether a purpose is benevolent and charitable within the meaning of *section 652(1)* is a question of law that we review de novo. *Cushing Nature & Pres. Ctr. v. Town of Cushing, 2001 ME 149, P 10, 785 A.2d 342*. Because "[t]axation is the rule and exemption the exception," *Green Acre Baha'i Inst. v. Town of Eliot, 150 Me. 350, 353, 110 A.2d 581 (Me. 1954)*, the burden is on the party seeking the exemption to prove that it falls "unmistakably within the spirit and intent of the act creating the exemption," *Hebron Acad., 2013 ME 15, P 7, 60 A.3d 774* (quotation marks omitted). In cases where the charitable exemption is claimed,

> there must be a careful examination to determine whether in fact the institution is organized and conducting its operation for purely benevolent and charitable purposes in good faith, whether there is any profit motive revealed or concealed, whether there is any pretense to avoid taxation, and whether any production of revenue is purely incidental to a dominant purpose which is benevolent and charitable. When these questions are answered favorably to the petitioner for exemption, the property may not be taxed.

Christian Fellowship & Renewal Ctr. v. Town of Limington, 2006 ME 44, P 17, 896 A.2d 287 (quoting *Green Acre, 150 Me. at 354, 110 A.2d 581*).

We have construed the word "benevolent" as synonymous with the word "charitable." *Id. P 13*. An activity or purpose is "charitable" if it is

> 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 in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Id. P 14 (quoting *Episcopal Camp Found., Inc. v. Town of Hope, 666 A.2d 108, 110 (Me. 1995))*. Part of the rationale for granting exemption for charitable institutions is that

> [a]ny institution which by its charitable activities relieves the government of part of [its] burden is conferring a pecuniary benefit upon the body politic, and in receiving exemption from taxation it is merely being given a "quid pro quo" for its services in providing something which otherwise the government would have to provide.

Episcopal Camp, 666 A.2d at 110 (alterations in original) (quotation marks omitted). This "quid pro quo" factor, although not controlling, is one courts should consider in determining whether the charitable exemption applies. *Christian Fellowship, 2006 ME 44, PP 24, 35, 896 A.2d 287*. Providing opportunities for even "casual and limited group recreational and relaxation activities" can constitute a quid pro quo because it "provid[es] something that government would otherwise provide, through the government system of parks, public lands, and recreational facilities." *Id. P 37* (quotation marks omitted).

We have not directly addressed whether land conservation constitutes a charitable purpose within the meaning of *section 652(1). See Cushing, 2001 ME 149, P 15, 785 A.2d 342* (declining to reach the issue of "whether land conservation or preservation, standing alone, could constitute a charitable use"). We have, however, considered whether wildlife refuges qualify for exemption. In *Holbrook Island Sanctuary v. Inhabitants of the Town of Brooksville, 161 Me. 476, 477, 484, 214 A.2d 660 (Me. 1965),* the plaintiff organization sought exemption of property it operated as a wildlife sanctuary or game preserve. Public access to the plaintiff's property was strictly limited:

> The corporation employed a full-time Warden . . . with an additional helper during the summer months and the hunting season. All persons wishing to enter the sanctuary were and are asked to register at the office and to apply to the Warden for permission to enter the sanctuary. Persons and organizations engaged in nature study were permitted in the Sanctuary accompanied by the Warden for [***14] the purpose of nature study, observation and photography. The public was directed not to enter the sanctuary for any other purpose. The Warden and his assistant were instructed to prohibit hunting in the area.

Id. at 480-81. The plaintiff blocked off existing access roads on the property, with the intention of permitting the roads to become overgrown and return to their natural state. *Id. at 480*. We concluded that the organization at issue was not "charitable," because it was "nothing in substance more than a game preserve," the purpose of which was "plainly to benefit wild animals"; provided "no benefit to the community or to the public"; and was contrary to public policy favoring state-regulated game management areas. *Id. at 484-88*; *see also Silverman v. Town of Alton, 451 A.2d 103, 106 (Me. 1982)* (holding that a wildlife refuge was not "in and of itself . . . a scientific institution or organization" pursuant to *36 M.R.S. § 652(1)(B)* (2013), and that the "incidental scientific objective to benefit the University of Maine by permitting use of the premises" was insufficient to bring the property within the exemption).

The Town suggests that our holdings in *Holbrook* and *Silverman* control this case. Amici Maine Coast Heritage Trust and Land Trust Alliance, Inc., in turn, urge us to overrule or limit *Holbrook*, citing scholarly criticism of that decision. *See* Kirk G. Siegel, Comment, *Weighing the Costs and Benefits of Property Tax Exemption: Nonprofit Organization Land Conservation, 49 Me. L. Rev. 399, 416 (1997)* ("[*Holbrook*'s] holding, that a benefit to wild animals did not equate to a benefit to the community and was therefore not charitable, might be assessed differently by a court with a modern awareness of the public benefits of ecosystem preservation.").

We conclude that both *Holbrook* and *Silverman* are distinguishable. Our holding in *Holbrook* was based on the absence of any benefit to the public of a game preserve operated in a manner that heavily restricted public access and was contrary to public policy. *See Holbrook, 161 Me. at 480-81, 484-88, 214 A.2d 660*. As we discuss further below, neither rationale applies here. *Silverman* is also inapposite, as it did not apply the exemption for benevolent and charitable organizations, but rather the exemption for scientific institutions. *451 A.2d at 105-06*.

Appellate courts in several other jurisdictions have concluded that land conservation is a charitable purpose, at least when coupled with public access, or where conservation of the land otherwise confers a public benefit. *See, e.g., Santa Catalina Island Conservancy v. Cnty. of L.A., 126 Cal. App. 3d 221, 178 Cal. Rptr. 708, 716 (Ct. App. 1981)* (concluding that "nonprofit organizations formed and conducted for the purpose of preserving natural environments and recreational opportunities for the benefit of the public come within the term 'charitable' as defined by the decisions of our Supreme Court by lessening the burdens of government"); *Turner*

v. Trust for Pub. Land, 445 So. 2d 1124, 1124, 1126 (Fla. Dist. Ct. App. 1984) (holding that a nonprofit corporation's conservation of land in its natural state entitled it to tax exemption pursuant to a Florida statute defining a charitable purpose as "a function or service which is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or service" (quotation marks omitted)); *Pecos River Open Spaces, Inc. v. Cnty. of San Miguel*, No. 30,865, 2013-NMCA-029, 2013 WL 309847, at *5, *7 (N.M. Ct. App. Jan. 11, 2013) (holding that, "owing to the substantial public benefit derived from conservation of the Property, conservation in this case constitutes a charitable purpose that qualifies the Property for a tax exemption" pursuant to the New Mexico Constitution); *Mohonk Trust v. Bd. of Assessors, 47 N.Y.2d 476, 392 N.E.2d 876, 878-80, 418 N.Y.S.2d 763 (N.Y. 1979)* (concluding that a trust whose purpose was "preservation of wilderness areas for the benefit of the public" was entitled to exemption pursuant to statute exempting property used exclusively for "religious, charitable, hospital, educational, moral or mental improvement of men, women or children or cemetery purposes" (quotation marks omitted)); *Little Miami, Inc. v. Kinney, 68 Ohio St. 2d 102, 428 N.E.2d 859, 860 (Ohio 1981)* (per curiam) (holding that an organization's restoration of an island to its natural state and continued efforts to preserve the island were in furtherance of charitable purposes and rendered the property exempt); *see also Trustees of Vt. Wild Land Found. v. Town of Pittsford, 137 Vt. 439, 407 A.2d 174, 175-77 (Vt. 1979)* (holding that land preserved in an undeveloped state was not exempt as a "public, pious or charitable use[]" where public access to the land was strictly limited (quotation marks omitted)). Several of these holdings were based in part on legislative recognition of a public policy in favor of conservation. *See Santa Catalina, 178 Cal. Rptr. at 716*; *Turner, 445 So. 2d at 1126*; *Pecos River*, 2013-NMCA-029, 2013 WL 309847, at *3-5.

Most recently, in *New England Forestry Foundation, Inc. v. Board of Assessors of Hawley, 468 Mass. 138, 9 N.E.3d 310, 312-13 (Mass. 2014)*, the Supreme Judicial Court of Massachusetts held that a nonprofit land conservation organization was entitled to a tax exemption as a charitable organization. The organization's stated purpose was, in part, to "create, foster, and support conservation, habitat, water resource, open space preservation, recreational, and other activities by promoting, supporting, and practicing forest management policies and techniques to increase the production of timber in an ecologically and economically prudent manner." *Id. at 313* (quotation marks omitted). The property at issue was a 120-acre parcel abutting a state forest that the organization maintained in an undeveloped state using sustainable forestry practices and opened for public recreation. *Id. at 313-14, 321, 325-26*. The Massachusetts court concluded that the organization's purposes were charitable because the environmental benefits of holding land in its natural state "inure[d] to an indefinite number of people," and because the organization "lessen[ed] the burdens of government" by "assist[ing] the State in achieving its conservation policy goals." *Id. at 320-23*.

There can be little doubt that the Legislature has enunciated a strong public policy in favor of the protection and conservation of the natural resources and scenic beauty of Maine. For example, *38 M.R.S. § 480-A* (2013) states:

> The Legislature finds and declares that the State's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dunes systems are resources of state significance. These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical [***19] resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State.

> . . . .
>
> The Legislature further finds and declares that the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life.

See also 5 M.R.S. § 6200 (2013) (finding that "the continued availability of public access to [outdoor] recreation opportunities and the protection of the scenic and natural environment are essential for preserving the State's high quality of life" and that the "public interest in the future quality and availability for all Maine people of lands for recreation and conservation is best served by significant additions of lands to the public domain"); *30-A M.R.S. § 4312(3)(F)* (2013) (identifying the protection of "critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas" as a state goal). In creating the Land for Maine's Future program, the Legislature declared that

> the future social and economic well-being of the citizens of this State depends upon maintaining the quality and availability of natural areas for recreation, hunting and fishing, conservation, wildlife habitat, vital ecologic functions and scenic beauty and that *the State, as the public's trustee, has a responsibility and a duty to pursue an aggressive and coordinated policy to assure that this Maine heritage is passed on to future generations.*

5 M.R.S. § 6200 (emphasis added). The Legislature also recognized the important role played by conservation organizations in achieving these goals. *See id.* (finding that "Maine's private, nonprofit organizations . . . have made significant contributions to the protection of the State's natural areas and . . . should be encouraged to further expand and coordinate their efforts").

Against this legal backdrop, we consider whether the Trust is organized and conducted for benevolent and charitable purposes pursuant to Maine law. The Trust's purpose is to conserve natural resources for the benefit of the public. The Trust has opened its properties to the public year-round, free of charge, and permits school field trips, hunting, fishing, hiking, cross-country skiing, and snowmobiling. As the Superior Court determined, the Trust essentially operates its properties in the manner of a state park in the Sawyer Mountain region. In doing so, the Trust assists the state in achieving its conservation goals, *see, e.g., 5 M.R.S. § 6200*; *30-A M.R.S. § 4312(3)(F)*; *38 M.R.S. § 480-A*, and "provid[es] something that government would otherwise provide, through the government system of parks, public lands, and recreational facilities," *Christian Fellowship, 2006 ME 44, P 37, 896 A.2d 287* (quotation marks omitted). We therefore hold that, under the circumstances of this case, the Trust is organized and conducted for benevolent and charitable purposes within the meaning of *section 652(1)(C)(1)*.

The Board reached the opposite conclusion in part because the Trust's Articles of Incorporation permit it to "engage" in "appropriate uses such as logging, farming and other compatible commercial activities." It also found that the Trust "owned" a commercial farm in Parsonsfield. We are not persuaded by this analysis. The Trust's Articles of Incorporation state, amongst a list of purposes, that "[o]ther specific purposes of the corporation shall be to . . . *protect* appropriate uses such as logging, farming and other compatible commercial activities within specified areas and adjacent areas."[5] (Emphasis added.) Moreover, there was no evidence that the Trust owns a commercial farm; rather, the testimony indicated that the Trust holds a *conservation easement* on a farm property in Parsonsfield, protecting the property from further development. The treasurer of the Trust testified that the Trust plans to harvest its tree growth parcels, but only as part of an educational program on

sustainable tree harvesting, with any revenue flowing back into the Trust to be used in accordance with its purposes. An educational program on sustainable forestry is consistent with the Trust's charitable purposes. *See 36 M.R.S. §§ 563-564, 572* (2013) (declaring encouragement of operation of forest land on a "sustained yield basis" as the public policy of Maine).

> 5 The Trust's treasurer did testify that the "compatible commercial activities" language in the Trust's Articles of Incorporation permitted the Trust to engage in forestry. Even if we assume that the Articles of Incorporation do permit the Trust to engage in forestry and that such use would be nonexempt in the circumstances of this case, we have made clear that incidental, nonexempt use of property will not render the property ineligible for exemption. *See Hebron Acad., Inc. v. Town of Hebron, 2013 ME 15, PP 20-26, 60 A.3d 774*. A logical corollary to that holding is that an organization's incorporating documents may authorize the organization to engage in such incidental use without destroying the exemption. *See id.*

The Board also based its conclusion that the Trust is not entitled to exemption on the reasoning that the Legislature has already provided tax relief for open space land pursuant to the Farm and Open Space Tax Law, *36 M.R.S. §§ 1101-1121*, citing the reasoning of *Cushing, 2001 Me. Super. LEXIS 50, 2001 WL 1729095, at *6*. Likewise, the Town argues that the Legislature, in enacting the Farm and Open Space Tax Law, intended it to be the exclusive method of taxing open space land.

This reasoning does not withstand scrutiny. The charitable exemption now codified in *section 652(1)* is well established in Maine law, tracing its origins back to the 1800s. *See Hebron Acad., 2013 ME 15, PP 14-15, 60 A.3d 774*. Nothing in the language or legislative history of the Farm and Open Space Tax Law, originally enacted in 1971, *see* P.L. 1971, ch. 548 (effective Sept. 23, 1971), indicates any intent to preempt or otherwise displace this longstanding exemption in the context of land conservation. Although the Farm and Open Space Tax Law provides that "[t]he assessor *shall* determine" whether the land is open space land, and that, if so, "that land *must* be classified as open space land and subject to taxation under this subchapter," *36 M.R.S. § 1109(3)* (emphasis added), that provision only comes into effect upon the landowner's "*election* to apply" for taxation pursuant to the statute, *id. § 1103* (emphasis added). The Legislature, in other words, specifically made the application of the Farm and Open Space Tax Law voluntary on the part of the taxpayer. That the statute's valuation methodology recognizes and adjusts for the restricted nature of open space land, *see id. § 1106-A*, does not demonstrate legislative intent to tax such land when it is owned and used by a charitable institution.

The Farm and Open Space Tax Law and the charitable exemption are distinct in their scope and purpose. The Farm and Open Space Tax Law describes its purpose as follows:

> It is declared that it is in the public interest to encourage the preservation of farmland and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the State to conserve the State's natural resources and to provide for the welfare and happiness of the inhabitants of the State, that it is in the public interest to prevent the forced conversion of farmland and open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farmland and open space land, and that the necessity in the public interest of the enactment of this subchapter is a matter of legislative determination.

36 M.R.S. § 1101. In contrast with the specific, conservationist purposes of the Farm and Open Space Tax Law, the charitable exemption seeks to encourage all activities that are "for the benefit of an indefinite number of persons" and "lessen[] the burdens of government" by providing services in which the state has a genuine interest. *See Christian Fellowship, 2006 ME 44, PP 14, 23, 896 A.2d 287* (quotation marks omitted) (defining "charitable" and noting a legislative study indicating that "the original purposes of the charitable exemption were to promote not only providing services in lieu of government services, but also providing a service in which the state has a genuine interest" (quotation marks omitted)); *see also New England Forestry Found., 9 N.E.3d at 316* (noting that Massachusetts's charitable exemption "does not seek to encourage charitable organizations to pursue particular substantive policy goals or charitable activities," but rather exempts certain property from taxation "on the theory that property held for philanthropic, charitable, religious, or other quasi public purposes in fact helps to relieve the burdens of government").

Although some of the factors by which the Farm and Open Space Tax Law defines open space land could be relevant in the application of the charitable exemption, *see 36 M.R.S. §§ 1102(6), 1109(3),* open space land may be held by an individual or entity that does not qualify for a charitable exemption for any number of reasons, *see, e.g., id. § 652(1)(A)* (requiring that an organization be "incorporated by this State" in order to be entitled to exemption as a charitable institution); *Nature Conservancy of the Pine Tree State, Inc. v. Town of Bristol, 385 A.2d 39, 43 (Me. 1978)* ("Land held in its natural state does not become tax exempt by transfer to a charitable institution where the grantor retains the rights to access, passage or custodianship, more particularly since these tend to be the only private rights of ownership exercised while land is privately being held in its natural state."). That the two statutes might overlap in their application to a particular taxpayer does not indicate legislative intent that one statute "preempt" the other. *See New England Forestry Found., 9 N.E.3d at 315-16* (holding that a Massachusetts statute providing tax incentives for owners of undeveloped forest land did not preempt the Massachusetts charitable exemption statute because the statutes served distinct purposes and contained no language indicating that they were mutually exclusive).

The Town correctly notes that when two statutes are in conflict, "we favor the application of a specific statutory provision over the application of a more general provision." *Cent. Me. Power Co. v. Devereux Marine, Inc., 2013 ME 37, P 22, 68 A.3d 1262*. We will not, however, read into the exemption statute and the Farm and Open Space Tax Law a conflict where none exists. *See Fernald v. Shaw's Supermarkets, Inc., 2008 ME 81, P 19, 946 A.2d 395*; *Yeadon Fabric Domes, Inc. v. Me. Sports Complex, LLC, 2006 ME 85, P 20, 901 A.2d 200*. C. Conclusion

Under the circumstances of this case, the Trust is entitled to exemption as a charitable and benevolent organization. Because we conclude that the Trust's property is exempt, we do not reach the issue of valuation.

The entry is:

Judgment of the Superior Court vacating the decision of the State Board of Property Tax Review affirmed.

GREEN ACRE BAHA'I INSTITUTE vs. TOWN OF ELIOT

SUPREME JUDICIAL COURT OF MAINE, YORK

150 Me. 350*; *110 A.2d 581*; *1954 Me. LEXIS 49

December 23, 1954, Decided

JUDGES: SITTING: WILLIAMSON, TIRRELL, WEBBER, BELIVEAU, TAPLEY, JJ., THAXTER, A. R. J. FELLOWS, C. J., did not sit.

OPINION BY: WEBBER

This was an appeal from the refusal of the Selectmen of the Town of Eliot to abate taxes assessed against the Green Acre Baha'i Institute for the year 1952. The matter was heard by a single justice below, who entered a decree embracing findings of fact and rulings of law and which ordered the taxes abated in full. Exceptions thereto are before us.

The petitioner deems itself exempted from taxation as a benevolent and charitable institution under the provisions of R. S., 1944, Chap. 81, Sec. 6, as amended, the pertinent portions of which read as follows:

> "**Sec. 6. Exemptions.** The following property and polls are exempt from taxation: * * * * III. * * * * the real and personal property of all benevolent and charitable institutions incorporated by the state; * * * * but so much of the real estate of such corporations as is not occupied by them for their own purposes shall be taxed in the municipality in which it is situated. Provided, however, that nothing in this subsection shall be construed to entitle any institution, association, or corporation otherwise qualified for exemption as a * * * * benevolent or charitable institution to any exemption from taxation if any officer, member, or employee thereof shall receive or may be legally entitled to receive any pecuniary profit from the operation thereof, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly benevolent or charitable purposes, or if the organization thereof for any such avowed purposes be a pretense for directly or indirectly making any other pecuniary profit for such institution, corporation, or association, or for any of its members or employees, or if it be not organized and conducted exclusively for benevolent and charitable purposes. * * * * and provided, however, that the provisions of this subsection shall not apply to a summer camp or other seasonal resort which derives a profit on its actual operating and administrative expenses incurred thereat or within this state, nor to that part of its property from which it receives compensation in the form of rent. Such camp or resort shall keep full financial records which shall at all times be open and available to inspection by the tax assessors of the town or city where it is located."

Petitioner is a corporation organized under the laws of Maine by members of the Baha'i faith to "conduct educational facilities, including classes, public lectures and research, for the exposition of spiritual truths, principles and religious precepts based upon the extent and available sacred literature of all revealed faiths, with particular reference to the Baha'i teachings on progressive revelation, religion, unity, and the oneness of mankind; to build and maintain and operate such buildings, museums, dormitories, libraries and facilities as

may be necessary to carry out the educational, religious, charitable and benevolent purposes of the corporation;" and further, "In the conduct of its educational program and the operation of its properties for the aforesaid purposes, (to) conform to the administrative principles and spiritual authority duly established in the Baha'i teachings as upheld by the elective national Baha'i body known as the National Spiritual Assembly of the Baha'is of the United States."

Petitioner owns and operates in respondent town certain real estate comprising a number of acres of land and certain buildings suitable for classes, lectures, concerts and the like, with facilities for lodging and board. The activities are confined to the summer season. Persons in attendance include members of the Baha'i faith, non-members who express a sincere interest in the faith, and citizens of the local community. There are facilities for recreation. Persons who require board and lodging pay for those services, but are required to participate in the classes and lectures. As the Baha'i faith has no official clergy, all members are expected to serve in a missionary role and expand the faith. In short, the purposes of the Institute embrace the essential elements of missionary societies which have long been deemed to possess the required attributes of benevolent and charitable institutions for tax exemption purposes. *Universalist Church v. City of Saco, 136 Me. 202, 7 A.2d 428*; *Park Association v. Saco, 127 Me. 136, 142 A. 65*; *Convention v. Portland, 65 Me. 92*.

In such a tax exemption case as this, many of the issues for determination are questions of fact. The findings of fact of a single justice are final and binding if supported by any credible evidence. *O'Connor v. Wassookeag School, Inc., 142 Me. 86, 46 A.2d 861*; *Sanfacon v. Gagnon, 132 Me. 111, 167 A. 695*.

The justice below found on the basis of supporting evidence that the institution was operating the property for the benevolent and charitable purposes for which it was organized, that the program was conducted in good faith and not with any purpose or intention of tax evasion, that the dominant purpose of the operation was the furtherance of its religious and missionary aims and that any charges for board or lodging were purely incidental to the dominant purpose, and that neither the institution nor any individual was deriving any profit from the operation other than reasonable compensation for services performed.

Certain rules governing situations of this sort are well established. Taxation is the rule and exemption the exception. *Park Association v. Saco, supra.* Exemption is not defeated by the fact that the use by the charitable institution for its own purposes is seasonal. *Universalist Church v. City of Saco, supra; Park Association v. Saco, supra; Camp Emoh Associates v. Inhabitants of Lyman, 132 Me. 67, 166 A. 59*. Property of charitable institutions which is let or rented primarily for revenue is taxable, but where the dominant use by such institution is for its own purposes, tax exemption will not be defeated by either occasional or purely incidental letting or renting. *Curtis v. Odd Fellows, 99 Me. 356*; *Lewiston v. Fair Association, 138 Me. 39, 21 A.2d 625*. We do not think the amendments incorporated in the exemption statute *(supra)* as it now stands were intended to change or alter these well defined rules of exemption. In each situation where exemption is claimed, there must be a careful examination to determine whether in fact the institution is organized and conducting its operation for purely benevolent and charitable purposes in good faith, whether there is any profit motive revealed or concealed, whether there is any pretense to avoid taxation, and whether any production of revenue is purely incidental to a dominant purpose which is benevolent and charitable. When these questions are answered favorably to the petitioner for exemption, the property may not be taxed.

Among the properties of the petitioner were two undeveloped woodland areas. There was evidence that those participating in the program regularly used these areas for walks, prayer, meditation, outdoor meetings and recreation. There was further evidence that certain locations therein had special significance for members of the faith arising out of a former visitation to the area by a leader of the faith. There was also evidence of a hopeful, though not a clearly planned or definite intention, that the area might in the future be used for the enlargement and development of the institution's facilities. There was no suggestion of any present intention or purpose to

hold the property as commercial timberland or for any other revenue use. Upon this evidence, the justice below found that the institution was devoting the entire tract to its benevolent and charitable uses. Under such circumstances, such an area may be shown to be exempt. *Osteopathic Hospital v. Portland, 139 Me. 24, 26 A.2d 641*; *Wheaton College v. Norton, 232 Mass. 141, 122 N.E. 280*.

Upon this record, we cannot say that any finding of the justice below was legally erroneous or that he erred as a matter of law in determining that all of the property of the petitioner was exempt from taxation.

The entry will be, *Exceptions overruled.*

GREEN ACRE BAHA'I INSTITUTE vs. TOWN OF ELIOT

SUPREME JUDICIAL COURT OF MAINE, YORK

159 Me. 395*; *193 A.2d 564*; *1963 Me. LEXIS 56

September 4, 1963, Decided

JUDGES: SITTING: WILLIAMSON, C. J., WEBBER, TAPLEY, SULLIVAN, SIDDALL, MARDEN, JJ.

OPINION BY: WILLIAMSON

This appeal to the Superior Court from the denial of a tax abatement for 1961 on property in the Town of Eliot is before us on report. R. S., c. 91-A, §§ 51, 52.

The petitioner, a Maine Corporation, is a benevolent and charitable institution within the meaning of the exemption provisions of the taxing statute. There has been no change in the corporate status or in the use of its property, apart from two parcels, since our decision in 1954 holding the petitioner entitled to exemption. *Green Acre Baha'i Institute v. Eliot, 150 Me. 350, 110 A.2d 581*. The court said, at p. 352:

> "Petitioner owns and operates in respondent town certain real estate comprising a number of acres of land and certain buildings suitable for classes, lectures, concerts and the like, with facilities for lodging and board. The activities are confined to the summer season. Persons in attendance include members of the Baha'i faith, nonmembers who express a sincere interest in the faith, and citizens of the local community. There are facilities for recreation. Persons who require board and lodging pay for those services, but are required to participate in the classes and lectures. As the Baha'i faith has no official clergy, all members are expected to serve in a missionary role and expand the faith. In short, the purposes of the Institute embrace the essential elements of missionary societies which have long been deemed to possess the required attributes of benevolent and charitable institutions for tax exemption purposes."
>
> "The justice below found on the basis of supporting evidence that the institution was operating the property for the benevolent and charitable purposes for which it was organized, that the program was conducted in good faith and not with any purpose or intention of tax evasion, that the dominant [***3] purpose of the operation was the furtherance of its religious and missionary aims and that any charges for board or lodging were purely incidental to the dominant purpose, and that neither the institution nor any individual was deriving any profit from the operation other than reasonable compensation for services performed."

The statute under which the petitioner seeks to establish tax exemption reads:

"**II. Property of institutions and organizations.**

> **A.** The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this state, and none of these shall be deprived of the right of exemption by reason of the source from which its funds are derived or by reason of limitation in the classes of persons for whose benefit such funds are applied.
>
> > **1.** No such institution shall be entitled to tax exemption if it is in fact conducted or operated principally for the benefit of persons who are not residents of Maine and if stipends or charges for its services, benefits or advantages in excess of an equivalent of $ 15 per week are made or taken. The provisions of this subparagraph shall not apply to institutions incorporated as non-profit corporations for the sole purpose of conducting medical research." R. S., c. 91-A, § 10-11-A.

Apart from the effect of subparagraph 1, enacted in 1957 (hereinafter called 1957 amendment), the property in question admittedly would be exempt from taxation. Two questions arise: (1) Do the facts bring the petitioner within the 1957 amendment? (2) If so, is the 1957 amendment constitutional?

The parties have agreed "that a large majority of the registrants for the years 1960 and 1961 at the institution summer school who occupied dormitory space of the plaintiff corporation at their premises in Eliot, Maine, are residents of other States and Countries other than the State of Maine, and that a majority of the enrollees of the classes for those years were nonresidents of the State of Maine." Without question, the "stipends or charges" are in "excess of an equivalent of $ 15 per week."

A pamphlet on "Green Acre A Baha'i Summer School" for the season of 1961, introduced in evidence by agreement of the parties, reads in part:

> "The place, of course, has something to do with this. Hard by an historic river, within smell of the sea, Green Acre's unspoiled woods, its riverbank and rolling meadow typify the natural beauties which, together with the climate, make New England one of the great summer recreation areas of the nation. Unobtrusively in this rustic setting, the buildings at Green Acre provide a variety of living accommodations--from cottage with kitchen to individual room. In addition, there are places of assembly and recreation, a library, a children's school, and a dining room operating cafeteria style.
>
> But these things only serve the main resource of Green Acre--the people who, coming, give life and spirit to the place. Last summer they came--nearly four hundred--from thirty states and five foreign countries. This year plans have been made to take care of as many--and more."

Taxation is the rule; exemption is the exception. The burden is on the petitioner to establish its exemption. *Camp Emoh Associates v. Inhabitants of Lyman, 132 Me. 67, 166 A. 59*; *Green Acre Baha'i Institute v. Eliot, supra; Calais Hospital v. City of Calais, 138 Me. 234, 24 A.2d 489*; *Park Association v. City of Saco, 127 Me. 136, 142 A. 65*.

We are satisfied from the record that the petitioner was "in fact conducted or operated principally for the benefit of" nonresidents. Accordingly the petitioner is not entitled to exemption under the statute.

We therefore reach the issue of constitutionality. Is the petitioner denied the "equal protection of the laws" under the *Fourteenth Amendment to the Federal Constitution* and under the Declaration of Rights in our State Constitution (Art. I)? The attack is upon the 1957 amendment. In the absence of the amendment no constitutional issue would here arise.

Under the 1957 amendment Corporation A, a benevolent and charitable Maine corporation, conducted or operated as is the petitioner with the same amount and type of property used for the same purposes and receiving the same charges for like services may be entitled to tax exemption. The one point of difference between Corporation A and the petitioner may be in the fact that the petitioner is, and Corporation A is not, conducted or operated principally for the benefit of nonresidents. In this event Corporation A is tax exempt. In our view such a difference is sufficient to warrant a different classification for purposes of taxation.

We cannot say that it is unreasonable for the State to require the ordinary and normal support of government when a corporation as here principally benefits nonresidents, and to remit taxes when benefits accrue to our own residents. Exemption from tax places an equivalent burden on the remaining tax payers. Loss in tax revenue from exemption must be balanced by increased assessments on others.

In our view, the denial of exemption to the property of a Maine benevolent and charitable corporation "in fact conducted or operated principally for the benefit of (nonresidents)" is a constitutional exercise of legislative power.

> "Taxation is legislative. What money shall be raised by taxation, what property shall be taxed, what exempted, rests exclusively with the Legislature to say, without any limitations except such as are imposed by express constitutional provisions. *Brewer Brick Company v. Brewer, 62 Me. 62*."

> *Re Maine Central Railroad Co., 134 Me. 217, 219, 183 A. 844*. In *Evanston Y.M.C.A. Camp v. State Tax Commission (Mich.), 118 N.W.2d 818, 823,* the Michigan Court upheld an analogous statute granting tax exemption to a Michigan corporation "if at least 50% of the membership of the associations or organizations are residents of this state," against attack as a discrimination based on residence prohibited by the Fourteenth Amendment. The court pointed out that the Legislature had not "singled out a particular class denoted nonresidents' for the purpose of imposing a tax. No discrimination between residents' and nonresidents' is involved, since appellant is a Michigan corporation."

In other cases touching analogous situations, courts have recognized the broad powers of the Legislature in creating different classifications for purposes of tax exemption.

In *Camp Emoh Associates v. Inhabitants of Lyman, supra*, in 1933 our court sustained the exemption of a Maine corporation conducting a summer camp with upwards of two hundred and fifty children "all but one of the children having come from outside this State." The court said, at p. 70:

> "The statute enacts that a corporation such as this shall be considered benevolent and charitable, without regard to the sources from which it gets its property or funds, or limitations in the classes of persons for whose benefit the property and funds are applied." (Our present subsection A.)

In sustaining the exempt status of a New York charitable corporation conducting a social welfare camp, the Connecticut Court said in *Camp Isabella Freedman of Conn. v. Town of Canaan (Conn.) 162 A.2d 700, at p. 704*:

> "It may be said, however, that the statute does not restrict the benefits to Connecticut residents. If such a restriction is desirable, it is a matter for action by the legislature. . . Claims of a like nature have been advanced in the courts of three of our New England states, and each has held that in the absence of legislative enactment the property of local charitable corporations is not to be denied tax exemption because the beneficiaries of the charity are out-of-state residents. And this is so though the inference is plain that the motive activating the organization of the local corporation was to take advantage of the tax exemption. *Camp Emoh Associates v. Inhabitants of Lyman, 132 Me. 67, 69, 166 A. 59*; *Greater Lowell Girl Scout Council, Inc. v. Town of Pelham, 100 N.H. 24, 28, 117 A.2d 325*; *Old Colony Trust Co. v. Commissioner of Corporations & Taxation, 331 Mass. 329, 339, 119 N.E.2d 175*. "

In *Greater Lowell Girl Scout Council v. Town of Pelham (N. H.), 117 A.2d 325*, the town contended that since the petitioner, conducting a girl scouts camp, established and operated primarily for the benefit of nonresidents of New Hampshire, it should not be and could not be entitled to a tax exemption. The court noted there was no express provision "that a charitable society organized in this state must be a substantial benefit or advantage to the public of this state."

The court said, at p. 327:

> "Undoubtedly there may be good reasons in logic and policy why charities should benefit the state if they are to enjoy tax exemption but that tax policy should be dictated by the Legislature and not originated by the Court."

A 1955 New Hampshire statute (repealed in 1957) similar in purpose to our 1957 amendment, was held applicable to taxes under consideration by the New Hampshire Court in 1960. *Appalachian Mountain Club v. Meredith (N. H.), 163 A.2d 808*. The court said, at p. 812:

> "As previously noted, the principal beneficiary of the plaintiff's activities is the public, and not the plaintiff's members. Its stated corporate purpose, and the manner in which it is in fact carried out, neither purport to be, nor in practice are designed primarily to benefit nonresident members of the public. The test to be applied is not whether non-residents are in fact the principal beneficiaries, but whether the corporation is in fact operated principally for' their benefit. If in fact larger numbers

> of nonresidents than residents utilize the services and facilities afforded by the plaintiff's activities in general, this results from the circumstance that more interested nonresidents than residents frequent the areas which the plaintiff supervises, rather than from any purpose or course of conduct on its part calculated to benefit nonresidents in particular."

There is no suggestion of unconstitutionality in the New Hampshire case. The case turned on the construction of the statute and its application to the facts. That we reach a different result does not bear on the "equal protection" issue.

In Pennsylvania the Superior Court, in holding that a New York corporation conducting a camp for the benefit of New York City underprivileged children was entitled to tax exemption, succinctly stated the principle in these words:

> "Thus the Constitution does not forbid the General Assembly to exempt from taxation institutions of purely public charity which redound to the benefit of only non-residents of the state. It is, of course, true that the General Assembly can limit the exemption to institutions of public charity from which residents of the state receive a benefit. But it is also true that the General Assembly has not done so."

Appeal of Infants Welfare League Camp (Pa.), 82 A.2d 296, 297; commented upon with approval by the Pennsylvania Supreme Court in *In Re Assessment for the Year* 1952, *etc., 128 A.2d 773*. See also *Old Colony Trust Co. v. Commissioner of Corp. and Tax, 331 Mass. 329, 119 N.E.2d 175*.

A contrary result is reached under the Colorado constitution and statutes in *Young Life Campaign v. Board of County Comm'rs (Colo.), 300 P.2d 535*.

The second condition that the "stipends or charges . . . are in excess of an equivalent of $ 15 per week" does not destroy the validity of the classification. If the Legislature may deny tax exemption to a Maine corporation conducted or operated principally for the benefit of nonresidents, there is no constitutional reason why it may not limit the denial to those institutions receiving larger sums than others for their services, and so lessening the extent of their charity.

The petitioner in support of its argument that the 1957 amendment discriminates in violation of the constitutions (whether Federal, State, or both is not material) relies heavily upon the peddler license cases. In these cases our court held unconstitutional a tax or license on the nonresident when joined with exemption for the resident. *State v. Cohen, 133 Me. 293, 177 A. 403*; *State v. Mitchell, 97 Me. 66, 53 A. 887*. It also seeks to draw an analogy from state income tax cases relating to nonresidents. See *Eliasberg Bros. Mercantile Co. v. Grimes (Ala.), 86 So. 56, 11 A. L. R. 300*; *Travis v. Yale & T. Mfg. Co., 252 U.S. 60, 64 L. Ed. 460, 40 S. Ct. 228*.

The cases cited by the petitioner do not require that our statute be held void. The issue is whether the classification whereby the petitioner is taxed is reasonable. If the loss of tax exemption here came from an arbitrary discrimination or without reason, then the 1957 amendment would be invalid. Such however is not the fact. We have pointed out above the basis for holding as we do, that the 1957 amendment stands as a proper exercise of legislative power and is constitutional.

On application of the law, both statutory and constitutional to the facts found by us on report, we conclude the petitioner is not entitled to tax exemption. Under familiar principles we are not in this inquiry concerned with the wisdom of the policy enacted into law by the Legislature. *Camp Emoh Associates v. Inhabitants of Lyman, supra.*

The entry will be *Remanded for entry of a decree in accordance with this opinion*.

HEBRON ACADEMY, INC. v. TOWN OF HEBRON

SUPREME JUDICIAL COURT OF MAINE

2013 ME 15*; *60 A.3d 774*; *2013 Me. LEXIS 16

December 12, 2012, Argued

February 5, 2013, Decided

JUDGES: Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

OPINION BY: LEVY

The Town of Hebron appeals from a declaratory judgment of the Superior Court (Oxford County, *Clifford, J.*) determining that the tax exemption for literary and scientific institutions in *36 M.R.S. § 652(1)(B)* (2012) exempts certain parcels of Hebron Academy's real estate from taxation by the Town. Hebron Academy cross-appeals, arguing that the court erred in concluding that res judicata barred the court from relieving it of its obligation to pay taxes on its exempt property for the 2009 tax year. We affirm the judgment.

I. BACKGROUND

The court found the following facts, which are supported by the record. *See Bayley v. Bayley, 602 A.2d 1152, 1154 (Me. 1992).*

Hebron Academy is a private, nonprofit preparatory school that owns real estate in Hebron and offers a curriculum similar to that of a liberal arts college, with required courses in English, literature, science, and other subjects.

In addition to its regular sources of revenue, Hebron Academy generates about $130,000 per year by renting some of its facilities on a short-term basis to outside individuals and organizations. The rental revenue accounts for approximately one percent of its operating budget, and the rentals do not interfere with Hebron Academy's use of the properties for its own purposes. Also, various Hebron Academy properties are subject to private rights and restrictions, including rights of way to access other property or maintain utilities, a restriction on building, and a reversionary clause that will be triggered if certain property ceases to be used for academic purposes. These uses are minimal in scope and do not affect the school's use of the properties for its own purposes.

Pursuant to *36 M.R.S. § 841* (2012), on or around March 31, 2010, Hebron Academy requested a tax abatement from the Town for tax year 2009. The Town denied the request because Hebron Academy had not filed the abatement request before the statutory deadline. *See 36 M.R.S. § 841(1).* Pursuant to *36 M.R.S. § 843(1)* (2012), Hebron Academy appealed to the Oxford County Board of Assessment Review, which held a hearing and denied the abatement request on the same ground, without addressing the merits. Hebron Academy did not seek judicial review of the Board's decision by appealing to the Superior Court pursuant to *36 M.R.S. § 844-M(6)* (2012) and M.R. Civ. P. 80B.

In December 2010, Hebron Academy filed a complaint seeking a declaratory judgment that it is a literary and scientific institution within the meaning of *36 M.R.S. § 652(1)(B)*, that its properties are exempt from taxation,

and that the Town must reimburse it for all real estate taxes it paid on its exempt properties for the prior three years, including 2009. Following a one-day hearing, the court entered a judgment declaring that Hebron Academy was entitled to the exemption for most of its property, but that res judicata precluded the court from relieving it of its obligation to pay the 2009 real estate taxes on its exempt property. The court subsequently amended the judgment to require the Town to reimburse Hebron Academy for all taxes paid on its exempt properties for the tax years 2008, 2010, and 2011, with interest. The Town appeals and Hebron Academy cross-appeals from the amended judgment.

II. LEGAL ANALYSIS

A. Hebron Academy's exemption status pursuant to *36 M.R.S. § 652(1)(B)*

As a general rule, "[a]ll real estate within the State . . . is subject to taxation." *36 M.R.S. § 502* (2012). However, there is a tax exemption for "[t]he real estate . . . owned and occupied or used solely for their own purposes by literary and scientific institutions." *Id. § 652(1)(B).* "Exemption is a special favor conferred. The party claiming it must bring his case unmistakably within the spirit and intent of the act creating the exemption." *Humboldt Field Research Inst. v. Town of Steuben, 2011 ME 130, P 7, 36 A.3d 873* (quotation marks omitted). Thus, the party seeking an exemption pursuant to *section 652(1)(B)* has the burden to prove that (1) it meets the "literary and scientific institutions" requirement, (2) it owns the property, and (3) the property is "occupied or used solely for [its] own purposes." *See 36 M.R.S. § 652(1)(B)*; *Humboldt Field Research, 2011 ME 130, P 7, 36 A.3d 873*; *Alpha Rho Zeta of Lambda Chi Alpha, Inc. v. Inhabitants of Waterville, 477 A.2d 1131, 1136 (Me. 1984).*

Here, the Town concedes that Hebron Academy owns the properties in question, but contends that (1) Hebron Academy is not a literary or scientific institution within the meaning of the tax exemption, and (2) Hebron Academy's property is not "occupied or used solely for [its] own purposes." We consider each contention in turn.

1. Hebron Academy's qualification as a literary and scientific institution

The meaning of "literary and scientific institutions" is an issue of statutory interpretation, which we review de novo. *See Hurricane Island Outward Bound v. Town of Vinalhaven, 372 A.2d 1043, 1046 (Me. 1977).* We begin by looking to the plain language of the statute. *Fuhrmann v. Staples the Office Superstore East, Inc., 2012 ME 135, P 23, 58 A.3d 1083.* [HN2] If that language is susceptible to more than one meaning, we will look to legislative history to discern the Legislature's intended meaning. *See id.* We interpret the pertinent language mindful that "[a] tax exemption statute is narrowly and strictly construed with all doubt and uncertainty as to its meaning being weighed against exemption." *Humboldt Field Research, 2011 ME 130, P 5, 36 A.3d 873.*

Here, the statute does not define "literary and scientific institutions," and reasonable minds can differ as to whether that term is broad enough to encompass a preparatory school like Hebron Academy. As such, the term is ambiguous, which leads us to (a) consider our previous interpretation of the term "literary and scientific institutions," and (b) examine relevant portions of the legislative history that illuminate the Legislature's intended meaning of the term.

a. Prior case law interpreting the term "literary and scientific institutions"

We have previously concluded that to meet the "literary and scientific institutions" requirement, an institution need only be literary *or* scientific. *Hurricane Island, 372 A.2d at 1046*. We have also concluded that a liberal arts college and a university are literary or scientific institutions within the meaning of the tax exemption. *See Alpha Rho Zeta, 477 A.2d at 1134* ("[T]here can be no doubt but that Colby College is a literary and scientific institution."); *Inhabitants of Orono v. Kappa Sigma Society, 108 Me. 320, 324, 80 A. 831 (1911)* ("The University of Maine is a literary or scientific institution."). However, our decisions in *Alpha Rho Zeta* and *Kappa Sigma* do not offer clear guidance as to Hebron Academy's qualification as a literary or scientific institution because neither decision articulates the standard by which we concluded that the academic institutions at issue in those cases qualified as literary or scientific institutions.

Furthermore, our remaining case law is instructive only as to the types of educational institutions that do not qualify as literary or scientific institutions. For example, in *Hurricane Island*, we held that an organization that operated a "self-discovery" program did not qualify as a literary or scientific institution merely because it had educational aims and taught scientific courses. *372 A.2d at 1047*. *See also id. at 1047 n.4* (recognizing that other jurisdictions define "scientific institution" to include institutions that engage in scientific research, but declining to adopt that standard); *Holbrook Island Sanctuary v. Inhabitants of Brooksville, 161 Me. 476, 488, 214 A.2d 660 (1965)* (concluding that a small library of books and an area for nature study were insufficient to qualify a game preserve as a scientific institution).

Because our case law does not provide a definitive standard for determining what qualifies as a literary or scientific institution, we turn to the legislative history of the tax exemption for evidence of the Legislature's intended definition of the term. *See Fuhrmann, 2012 ME 135, P 23, 58 A.3d 1083*.

b. Legislative history of Maine's tax exemption

Maine's tax exemption for literary and scientific institutions traces back to the 1819 Massachusetts law creating an independent District of Maine, which preserved a tax exemption for land previously granted by the Commonwealth to "any religious, *literary*, or eleemosynary corporation, or society." [1] 1819 Mass. Laws 252 (emphasis added). Maine incorporated that tax exemption into *article X, section 5 of the Maine Constitution*, as adopted in 1819. *See Delogu v. City of Portland, 2004 ME 18, P 17 n.4, 843 A.2d 33*. Over time, the scope of the exemption has waxed and waned. *See* P.L. 1845, ch. 159, § 5(2); P.L. 1849, ch. 118, § 1; P.L. 1869, ch. 28, § 1. But particularly relevant to our analysis here is the Legislature's addition and subtraction of the term "academy and college buildings" during the course of the exemption's history. This facet of the exemption's history demonstrates a legislative understanding that the term "literary institution" includes academic institutions that own "academy and college buildings." As we have recognized, an "academy" is an institution, like Hebron Academy, whose primary purpose is to provide for and promote the education of high school students. *See City of Augusta v. Att'y Gen., 2008 ME 51, PP 4, 18, 943 A.2d 582* (concluding that the purpose of a trust created to benefit an academy was to promote education for high school students); *see also* Black's Law Dictionary 12 (9th ed. 2009) (defining "academy" as "[a] private high school").

1 The Separation Act of the Commonwealth of Massachusetts provides:

> All grants of lands . . . which have been or may be made by the said Commonwealth, before the separation of said District shall take place, and having or to have effect within the said District, shall continue in full force, after the said District shall become a Separate State. . . . And all lands heretofore granted by this Commonwealth, to any religious, *literary*, or eleemosynary corporation, or society, shall be free from taxation, while the same continues to be owned by such corporation, or society.

1819 Mass. Laws 252 (emphasis added). Our research reveals no Massachusetts case law prior to 1819 that is illustrative of the meaning of "literary . . . corporation, or society."

In 1845, the Legislature enlarged the exemption beyond that contained in the Maine Constitution so as to exempt from taxation "[t]he real and personal property of all literary, benevolent, charitable and scientific institutions incorporated by this state." P.L. 1845, ch. 159, § 5(2). Then, in 1849, the Legislature effectively took a step back by restricting the exemption available to literary institutions to their "academy and college buildings":

> *All real estate belonging to literary institutions* in this state, not exempted by the "articles of separation," *except their academy and college buildings* and the lots on which they are erected, shall be liable to be taxed for all purposes and in the same manner as other real estate is now taxed under existing laws.

P.L. 1849, ch. 118, § 1 (emphasis added). As the 1849 amendment makes clear, the Legislature contemplated that literary institutions own "academy and college buildings."

In 1869, the Legislature expanded the exemption for literary institutions by removing the reference to "academy and college buildings," and exempting "the real and personal property of all literary institutions." P.L. 1869, ch. 28, § 1. This amendment reversed the limitation imposed twenty years earlier by again making all of the real and personal property of literary institutions exempt from taxation--not just their "academy and college buildings."

In sum, past iterations of the tax exemption show a legislative understanding that "literary institution" includes organizations that would have reason to own "academy and college buildings." [2] They also demonstrate a consistent legislative intent to exempt these buildings from taxation. The eventual omission of the words "academy and college buildings" does not signal any change in the Legislature's understanding that "literary institution" includes academies.

2 As a historical footnote, between 1953 and 1979, the Legislature appears to have moved away from this understanding, and then back towards it. In 1953, the Legislature created a special exemption for "[a]ny college in this state authorized to confer the degree of bachelor of arts or of bachelor of science and having real estate liable to taxation." P.L. 1953, ch. 37. In 1979, the Legislature repealed the special tax exemption for colleges, P.L. 1979, ch. 467, § 7, and included in its Statement of Fact that "[i]t appears that qualifying institutions would also be exempt as a literary or scientific institution," L.D. 855 (109th Legis. 1979).

In light of the exemption's legislative history and our long-standing precedent recognizing a private liberal arts college and a public university as literary or scientific institutions, we hold that [HN4] the term "literary and scientific institutions" includes an organization that has as its primary purpose the engagement of students in the academic pursuit of literary or scientific knowledge through the provision of an accredited course of high school education. [3]

3 In addition, literary and scientific institutions seeking exemption pursuant to *section 652(1)(B)* must also satisfy *section 652(1)(C),* which requires that all profit derived from the operation of a literary or scientific institution, including proceeds from the sale of property, "be devoted exclusively to the purposes for which it is organized." *36 M.R.S. § 652(1)(C)(3)* (2012).

Hebron Academy is a literary and scientific institution because it has a primary purpose of engaging its students in the academic pursuit of both literary and scientific knowledge through the provision of an accredited course of high school education. We therefore turn to the issue of whether Hebron Academy satisfies the exemption requirement that its property be "occupied or used solely for [its] own purposes." *See 36 M.R.S. § 652(1)(B).*

2. Whether Hebron Academy's property is "occupied or used solely for [its] own purposes"

Whether an institution's property is "occupied or used solely for [its] own purposes" is a finding of fact, which we review for clear error. *See City of Lewiston v. Salvation Army, 1998 ME 98, P 7, 710 A.2d 914*. We will affirm that finding if it is supported by the record. *See id.* We have previously determined that an institution's property is "occupied or used solely for [its] own purposes" if the institution (1) occupies the property solely for its own tax-exempt purposes, or (2) uses the property solely for its own tax-exempt purposes. *See Alpha Rho Zeta, 477 A.2d at 1136*; *see also Me. Med. Ctr. v. Lucci, 317 A.2d 1, 2 (Me. 1974)* (analyzing the exemption status of occupied property by looking to whether the use of the property promoted the organization's tax-exempt purposes). [4]

4 The tax-exempt purposes in *Lucci* were "benevolent and charitable" purposes, not "literary and scientific" purposes. *Me. Med. Ctr. v. Lucci, 317 A.2d 1, 2 (Me. 1974).* [HN7] Because the operative language in the exemption for property owned by benevolent and charitable institutions, *36 M.R.S. § 652(1)(A)* (2012), is the same as the operative language in the exemption for property owned by literary and scientific institutions, *36 M.R.S. § 652(1)(B)* (2012), we have routinely considered case law interpreting one subsection as applicable to the other. *See, e.g., Alpha Rho Zeta of Lambda Chi Alpha, Inc. v. Inhabitants of Waterville, 477 A.2d 1131, 1136 (Me. 1984)* (commenting on the occupation or use requirement for property "owned by [an] institution, whether a benevolent and charitable organization or a literary and scientific one").

As a general proposition, an organization does not occupy or use its property solely for its own tax-exempt purposes if it allows any use of the property that does not promote its tax-exempt purposes. For example, in *City*

of Lewiston v. Marcotte Congregate Housing, Inc., 673 A.2d 209, 211-12 (Me. 1996), we determined that a charitable organization did not use its building solely for its own tax-exempt purposes because it leased a significant portion of the building to tenants for reasons other than the furtherance of the organization's tax-exempt purpose. Similarly, in *Nature Conservancy of the Pine Tree State, Inc. v. Town of Bristol, 385 A.2d 39, 43 (Me. 1978),* a conservancy did not use its property solely for its own tax-exempt purposes because the property was subject to significant non-exempt rights of use that were reserved in the land grants to the conservancy.

However, we have recognized an exception to the rule we applied in *Marcotte* and *Bristol.* Property may be "occupied or used solely for" an organization's own tax-exempt purposes if its use for non-exempt purposes is sufficiently "incidental" to the organization's tax-exempt purposes. Our decisions have recognized two types of "incidental use" that qualify for this exception.

a. Incidental use related to institutional necessity

The first type of incidental use relates to institutional necessity, and involves property uses that are appurtenant to an institution's major tax-exempt purpose. To qualify as this kind of incidental use, the use must not be "oriented toward pecuniary profit but, rather, toward providing necessary services and facilities." *Lucci, 317 A.2d at 3*. For example, in *Lucci*, a hospital's operation of a parking garage was reasonably incidental to its major purpose of providing medical care because it provided hospital employees, patients, and visitors a place to park. *See id. at 2-3*. *See also Salvation Army (Lewiston), 1998 ME 98, PP 3, 4, 7, 710 A.2d 914* (concluding that a rehabilitation center operated a thrift store solely for its own purpose of rehabilitating participants, because it provided "work therapy" for those participants); *Alpha Rho Zeta, 477 A.2d at 1138* (concluding that a college's housing a fraternity on college property was reasonably incidental to its major purpose of providing college education, where it provided students a place to live while receiving that education).

b. Incidental use involving de minimis use of property

The second type of incidental use that does not preclude the exemption involves de minimis uses of property that do not interfere with the institution's major tax-exempt purpose. For example, in *Salvation Army v. Town of Standish, 1998 ME 75, PP 2, 6, 7, 709 A.2d 727,* a non-profit summer camp's rental of its facilities to organizational officers was an "incidental use" not precluding exemption where the camp charged a nominal fee and rented the facilities only when otherwise vacant. *See also Episcopal Camp Found., Inc. v. Town of Hope, 666 A.2d 108, 108-09 (Me. 1995)* (affirming tax exemption for a non-profit summer camp that leased its property in the off-season); *Bristol, 385 A.2d at 43-44* (determining a property's exemption status by analyzing the scope of non-exempt rights of use to the property and whether they interfered with the organization's tax-exempt purposes).

c. Incidental use in this case

Here, the trial court found that Hebron Academy's rental activity amounted to approximately one percent of its operating budget and did not interfere with its tax-exempt purpose. As such, Hebron Academy's property rental is a de minimis "incidental use" within the meaning of that term, as contemplated by *Salvation Army (Standish), Episcopal Camp,* and *Bristol.* [5] Similarly, the court found that the restrictions on Hebron Academy's land were minimal in scope and did not interfere with the school's use of the property for its own tax-exempt

purposes. As such, these restrictions, too, fall under the classification of a de minimis "incidental use." Because the record evidence supports these findings, the court did not commit clear error in concluding that Hebron Academy occupied or used its property solely for its own purposes. *See Salvation Army (Lewiston), 1998 ME 98, P 7, 710 A.2d 914*.

5 Because we conclude that Hebron Academy's rental of its property qualifies as a de minimis incidental use, we need not consider whether it might also qualify as an incidental use by virtue of institutional necessity.

Because Hebron Academy is a literary and scientific institution, and because the properties at issue are "owned and occupied or used solely for [its] own purposes," the Superior Court properly concluded that the properties qualify for the exemption established in *36 M.R.S. § 652(1)(B)*. B. Res judicata and Hebron Academy's 2009 tax exemption

Hebron Academy contends that the trial court erred by concluding that res judicata precluded the declaratory judgment from applying to the 2009 tax year, because the denial of its 2009 abatement request by the Oxford County Board of Assessment Review was not a final judgment on the merits. [6]

6 To the extent that Hebron Academy asserts in this appeal that it met the statute of limitations in its initial filing, or that it was "unjust" to bar its claim, we do not consider those assertions because an appeal was not taken from the Board's decision to the Superior Court. *See* M.R. Civ. P. 80B.

"[T]he decisions of state and municipal administrative agencies are to be accorded the same finality that attaches to judicial judgments." *Me. Cent. R.R. Co. v. Town of Dexter, 588 A.2d 289, 292 (Me. 1991)*. Thus, when a party does not challenge the administrative denial of a tax abatement request by pursuing direct judicial review in a timely manner, administrative res judicata may bar the Superior Court from exercising its declaratory judgment jurisdiction to review the merits of the abatement request. *See id.* However, to have preclusive effect, an administrative adjudication must have been rendered on the merits of the case. *See Penkul v. Matarazzo, 2009 ME 113, P 8, 983 A.2d 375* (stating that res judicata applies only when there is a decision on the merits in a prior action).

A decision on the merits for res judicata purposes includes "a dismissal for failure to come within an applicable statute of limitations." *Beegan v. Schmidt, 451 A.2d 642, 644 (Me. 1982)*. Although a decision on the merits for res judicata purposes generally does not include a dismissal for procedural defects, *see Dutil v. Burns, 1997 ME 1, P 5, 687 A.2d 639*, "[t]he question whether an action is barred by a statute of limitations is a matter of substance," *Bellegarde Custom Kitchens v. Leavitt, 295 A.2d 909, 911 (Me. 1972)* (citing 1 Field, McKusick & Wroth, *Maine Civil Practice*, § 1.2. (2d ed. 1970)).

In this case, Hebron Academy sought a tax abatement for the 2009 tax year, which the Town denied because the filing did not meet the applicable statute of limitations. Hebron Academy appealed to the Oxford County Board of Assessment Review, which denied the abatement request on the same ground. Because the Board denied the abatement request based on Hebron Academy's failure to meet a statute of limitations, its decision was a decision on the merits for res judicata purposes. *See Beegan, 451 A.2d at 644*. Thus, administrative res judicata bars Hebron Academy from seeking a declaration regarding the 2009 exemption status of its property. *See Me. Cent. R.R. Co., 588 A.2d at 292*.

The entry is:

Judgment affirmed

HOLBROOK ISLAND SANCTUARY vs . THE INHABITANTS OF THE TOWN OF BROOKSVILLE, ET AL.

Maine Supreme Judicial Court

161 Me. 476; 214 A.2d 660; 1965 Me. LEXIS 189

November 16, 1965

JUDGES: SITTING: WILLIAMSON, C.J., WEBBER, TAPLEY, SULLIVAN, MARDEN, RUDMAN, JJ. SULLIVAN, J., sat at argument but retired before the opinion was adopted.

OPINION BY: WILLIAMSON

This is a complaint for a declaratory judgment and other relief designed to establish whether plaintiff's real estate used as a wildlife sanctuary is exempt from taxation by statute. R.S., 1954, c. 91-A, § 10-11 (now *36 M.R.S.A. § 652*). [1] The plaintiff Holbrook Island Sanctuary is a corporation without capital stock organized under R.S., c. 54, § 1 (now *13 M.R.S.A. § 901*) "or for any... scientific,... charitable,... or benevolent purpose;..."

1 "*§ 652*. Property of institutions and organizations

The following property of institutions and organizations is exempt from taxation:

"1. Property of institutions and organizations.

"A. The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State, and none of these shall be deprived of the right of exemption by reason of the source from which its funds are derived or by reason of limitation in the classes of persons for whose benefit such funds are applied."

* * *

"B. The real estate and personal property owned and occupied or used solely for their own purposes by literary and scientific institutions.

"C. Further conditions to the right of exemption under paragraphs A and B are that:

"(1) Any corporation claiming exemption under paragraph A shall be organized and conducted exclusively for benevolent and charitable purposes;..."

The defendants are the Inhabitants of the Town of Brooksville, and the assessors and tax collector of the twon for the year 1963. While the action in terms tests the assessment and taxation of the real estate in 1963, the purpose is to determine its taxable status as well for the future under like laws and like circumstances. In the Lsuperior Court the defendants moved to dismiss the complaint on two grounds: First, that plaintiff had not filed a true and perfect list of all its assets, real and personal, not by law exempt from taxation on April 1, 1963; and secondly, that there is no allegation of a written request for abatement or denial of application for abatement. R. S., 1954, c. 91-A, §§ 34, 48 (now *36 M.R.S.A. §§ 706, 841*).

The motion was dismissed and subsequently the parties joined in an agreed statement of facts and a request granted in the Superior Court that the case be reported to the Law Court for "such decision as the rights of the parties require." We consider that the defendants in agreeing to a report of the case waived any claim of error in the refusal of the court to dismiss the complaint.

The case is before us on the merits, not on appeal from adverse rulings below. No jurisdictional issue was raised by the motion, which indeed begs the very question whether the property was exempt from taxation. If exempt, there was no necessity of filing the list and seeking an abatement, or of paying the tax and then suing to recover, although such procedures have been followed. *Stockman v. South Portland, 147 Me. 376, 87 A. (2nd) 679* (recovery of taxes paid); *Green Acre Baha'i Inst. v. Eliot, 150 Me. 350, 110 A. (2nd) 581*; *159 Me. 395, 193 A.2d 564* (denial of abatement).

We need not consider what interest the assessors of 1963 and the tax collector of 1963 presently have in the case. It is sufficient that the defendant town has an interest. Counsel at oral argument agreed that the taxes for 1963, 1964, and 1965 will be governed by our decision. The action comes within the principles governing declaratory judgments. R.S., 1954, c. 107, § 50 *et seq*. (now *14 M.R.S.A. § 5951 et seq*.). See Borchard, Declaratory Judgments (2d ed. 1941) p. 844.

From the agreed statement of facts we find:

The corporate purposes of Holbrook Island Sanctuary, as amended in January 1963, are:

"Charitable, educational and benevolent purposes, to wit: to acquire by gift, purchase, lease or otherwise real estate within the State of Maine and personal property; to set aside an area or areas to devote the same to the preservation and protection of and the prevention of cruelty to such wild birds and beasts as may come thereon; to maintain facilities for their feeding and shelter; to preserve the unspoiled natural beauty of said areas; tof expend moneys for the prevention of cruelty to animals, for the furtherance of humane education and for any or all other purposes connected therewith which shall be conducive to the welfare of animals and wildlife, whether on land owned by the corporation or not; to accept gifts of personal property; to accept and receive donations of money, general legacies and devises of real estate to be used for the foregoing purposes; provided, however, that the corporation shall not be conducted for gain or profit, and that no part of the net earnings shall inure to the benefit of any member upon dissolution of the corporation or otherwise, but shall always be devoted to the aforesaid charitable purposes; to sell, mortgage, lease or convey any and all real and personal property acquired as aforesaid, and doing and performing all things in connection therewith or incidental thereto in carrying out the foregoing purposes."

The real estate in the plaintiff's sanctuary "comprises approximately eleven hundred acres of uninhabited wildlands in the Harborside section of Brooksville, heavily wooded and containing in excess of one mile of waterfront property bordering the waters of Penobscot Bay,... The only building on the land which is presently used for any purpose is a small single-story three room structure used as an office and housing a small library of books on nature and conservation belonging to the corporation."

* * *

"As of April 1, 1963, said real estate of Holbrook Island Sanctuary was used in the following manner: The entire area was left in its natural state for the protection and preservation of animal, bird, tree and plant life within its boundaries. Roads for the passage of vehicles were within the area but it is intended that existing roads (except for the rown road) be permitted to grow back to their natural state. Several old cemeteries exist within the area and the access roads to these are presently blocked by felled trees and fences. Present inhabitants of the town have relatives buried in these cemeteries. These roads have been used by the public for

over 100 yrs. A minimum of footpaths were and will be maintained for the purposes of fire patrol and study and observation by persons admitted to the area accompanied by the warden. The area was posted with signs reading 'WILD LIFE SANCTUARY NO DOGS OR FIREARMS ALLOWED.' The corporation employed a full-time Warden (not a member of the Warden Service but a Constable appointed by the Town) with an additional helper during the summer months and the hunting season. All persons wishing to enter the sanctuary were and are asked to register at the office and to apply to the Warden for permission to enter the sanctuary. Persons and organizations engaged in nature study were permitted in the Sanctuary accompanied by the Warden for the purpose of nature study, observation and photography. The public was directed not to enter the sanctuary for any other purpose. The Warden and his assistant were instructed to prohibit hunting in the area. The Warden kept a census of animal and plant life within the area and is instructed to make regular patrols of the area to prevent fire. The policy of the corporation was and is, in general, that there be no interference with the balance of nature. Therefore, even restricted hunting, of the game management type now favored by the Maine State Department of Inland Fisheries and Game, is prohibited. The corporation provided and will provide hay, salt and other foods for the animal population and grain for the birds. A number of bird-feeding stations have been established."

* * *

"The valuation of the properties presently owned by the Holbrook Island Sanctuary amounts to $43,840.00, producing a tax of $920.64. The deletion of the Holbrook Island Sanctuary property from the tax rolls as tax exempt would result in approximately 30c per thousand increase in taxes to the residents of the Town."

The entire property was given to the plaintiff in 1963 by Miss Anita Harris of Brooksville who with her sister had acquired it between 1939 and 1963.On the death of her sister in 1962, Miss Harris decided to make plans for the wildife sanctuary during her life. Her attorneys and financial advisers advised her (1) to create the plaintiff corporation; (2) that the gift of the real estate would be income tax deductible; (3) that the real estate would be exempt from local taxation, and (4) that aditional property would be exempt from estate and inheritance tax. Miss Harris was in part motivated by the advice relating to tax exemption. Her motive, we point out, is not material in reaching our decision. *Camp Emoh Associates v. Inhabitants of Lyman, 132 Me. 67, 166 A. 59.*

The plaintiff has received no money or property from any sources other than Miss Harris and a trust created by her for its benefit. Except for certain cutting of wood in 1960-62, "the area has, in general, remained unchanged over the past twenty-five years." The plaintiff will receive the proceeds from wood cut since its organization in 1962.

"The funds of the corporation have been used for the following purposes relating to the land in Brooksville, namely: Payment of wages and travel expense to the Warden and assistants; surveying and blueprinting; constructing and painting signs; purchase of salt, hay, feed and bird seed; employment taxes on employees; construction of birdfeeding stations; office repairs; insurance permiums for liability and fire insurance; and legal fees in organizing the corporation and acquring the real estate."

* * *

"At or about the time that this property was transferred to the Sanctuary, Anita Harris, President of Holbrook Island Sanctuary, contacted the Maine Fish and Game Department seeking cooperation in the control of hunting in the area. Mr. J. William Peppard, Regional Game Biologist, of the Department, came to Brooksville and inspected the premises. he was and is familiar with the policies of the Department. He advised the officers of the Sanctuary that it was the policy of the State not to acquire or accept any properites to be operated as a game sanctuary or a game preserve; that the State prefers to operate game management areas in which the animals are

protectee but the deer population, from time to time, in the discretion of the Department, may be reduced by killing some of the animals; that the experience of the Department has been that, unless the deer herd in a given sanctuary or preserve is periodically reduced, the animals tend to increase to a point where the food supply is insufficient, resulting in the starvation of some animals; and that consequently the State prefers to be able to reduce the number of deer on a scheduled program which cannot be done in a sanctuary of this type."

The plaintiff contends that it is either a benevolent and charitable or a scientific institution, and is tax exempt in whichever category it may belong. The burden of establishing tax exemption is upon the plaintiff. "Exemption is a special favor conferred. The party claiming it must bring his case unmistakably within the spirit and intent of the act creating the exemption." *Bangor v. Masonic Lodge, 73 Me. 428*. See also *Green Acre Baha'i Institute v. Eliot, supra; Camp Emoh Associates v. Inhabitants of Lyman, supra* .

The purpose in the plaintiff's charter in which we have a particular interest reads: "... to set aside an area or areas and to devote the same to the preservation and protection of and the prevention of cruelty to such wild birds and beasts as may come thereon; to maintain facilities for their feeding and shelter;..." The meaning of the charter provision may be gathered from the action of the corporation. It has acquired, as we have said, by gift eleven hundred acres of uninhabited wild land with a mile frontage on the Atlantic Ocean at Brooksville. It uses the land as a game preserve with restrictions more stringent in the protection of game than would be the case in a game preserve created by the Legislature. The public use of the area is limited to persons and organizations engaged in nature study.

We accept the contention of the plaintiff that the corporation purposes include the creation and maintenance of a game preserve with the conditions and limitations expressed in the agreed statement.

In determining whether the plaintiff is a benevolent or charitable institution under the tax exemption statute, we need give no consideration to the word "benevolent." In the leading case *Bangor v. Masonic Lodge, supra*, the court said, at p. 433:

"The statute upon which the defendants rely, uses the word benevolent, but there is no question that this word, when used in connection with charitable, is to be regarded as synonymous with it and as defining and limiting the nature of the charity intended."

We conclude that the purposes so stated are not "charitable" within the meaning of the word in the tax exemption statute. First, the interested parties here endeavor to place in the ownership of a tax exempt corporation nothing in substance more than a game preserve. The purpose is plainly to benefit wild animals. We find no benefit to the community or to the public in the proposed sanctuary within the principles relating to charitable trusts involving animals.

The general rule relating to charitable trusts other than those for the relief of poverty, advancement of education and religion, promotion of health, and governmental or municipal purposes is found in *Restatement, Trusts (2nd) § 374*, as follows:

"Promotion of Other Purposes Beneficial to the Community. A trust for the promotion of purposes which are of a character sufficiently beneficial to the community to justify permitting property to be devoted forever to their accomplishment is charitable."

* * *

"c. Relief of animals. A trust to prevent or alleviate the suffering of animals is charitable. Thus, a trust for the prevention of cruelty to animals, or a trust to establish a home for animals, or a trust for the prevention or cure or treatment of diseases or of injuries to animals, is charitable."

In England the Court of Appeals in *Re Grove-Grady* (1929), 1 Ch. 557, 66 A.L.R. 44, with annotation, held, with one justice dissenting, that a bequest in trust for a sanctuary for animals and birds could not be sustained as a valid charitable trust. The court found lacking therein that benefit to mankind which must appear in a charitable trust. Lord Justice Russell said, at 66 A.L.R. 463: "Assuming that I have correctly interpreted object No. 1, it comes down to this, that the residuary estate may be applied in acquiring a tract of land, in turning it into an animal sanctuary, and keeping a staff of employees to ensure that no human being shall ever molest or destroy any of the animals there. Is that a good charitable trust within the authorities?

"In my opinion it is not. It is merely a trust to secure that all animals within the area shall be free from molestation or destruction by man. It is not a trust directed to ensure absence or diminution of pain or cruelty in the destruction of animal life. If this trust is carried out according to its tenor, no animal within the area may be destroyed by man no matter how necessary that destruction may be in the interests of mankind or in the interests of the other denizens of the area or in the interests of the animal itself; and no matter how painlessly such destruction may be brought about. It seems to me impossible to say that the carrying out of such a trust necessarily involves benefit to the public."

In *R.S.P.C.A., New South Wales* v. *Benevolent Society of N.S.W., et al* ., 33 A.L.J.R. 436 (1960), the High Court of Australia held "(that) the requirement that a small area of suburban land near the sea coast should be made accessible to birds and that there should be food and water for them did not come with the principles on which trusts for the benefit of animals were held charitable, and was void."

For unfavorable comment on *Re Grove-Grady, supra*, see IV Scott on Trusts § 374.2 (2d ed.) and Bogert Trusts § 379, p. 188 (2d ed.).

The purposes of the Holbrook Island Sanctuary are not limited to the prevention of cruelty to animals. *Massachusetts S.P.C.A. v. City of Boston (Mass.), 142 Mass. 24, 6 N.E. 840*; *Pitney v. Bugbee (N.J.), 98 N.J.L. 116, 118 A. 780* (S.P.C.A.); 15 Am. Jur. (2nd) *Charities* § 88.

The plaintiff is not engaged in research or disease control. In *The University of London* v. *Yarrow* (1857), 1 De Gex and Jones's Reports 57, 44 Eng. Reprint 649, the Court of Appeal in Chancery [to quote the headnote] held: "A bequest to a corporation for founding, establishing, and upholding an institution within a mile of Westminster, Southwark, or Dublin, for studying and endeavoring to cure maladies of any quadrupeds or birds useful to man, held a good charitable bequest..."

The purposes here are not those of the New Jersey Corporation, of which the court said:

"We, therefore, hold that when, as here, the purposes of a non-profit corporation are to conserve game birds, to establish hatcheries, refuges and to teach vermin control, those purposes are charitable purposes." *More Game Birds in America, Inc. v. Boettger (N.J.), 125 N.J.L. 97, 14 A. 2d 778, 780.*

The instances we have mentioned in each of which the charitable purpose plainly appears, differ widely in our view from the case at bar. We conclude that the community, that is to say the public, does not benefit from the proposed game preserve within the requirements of the established law relating to charitable trusts.

Furthermore, the public policy of the State prohibits the classification of the declared purpose as charitable.

"Purpose contrary to public policy. A trust for a purpose the accomplishment of which is contrary to public policy, although not forbidden by law, is invalid. Thus, a trust to establish a course of lectures in a medical school in which a theory of treatment of disease should be taught which has been proved to be dangerous, is invalid." *Restatement, Trusts (2nd) § 377, comment c.*

The control of wildlife rests with the State. "There can be no question of the right of the State to conserve, protect and regulate its wild life.... The results of proper and efficient wild life conservation in large measure promote the economic welfare and well-being of the citizenry of the State. One of the most important and effective means of wild life conservation is the medium of the game preserve established and regulated by legislative enactment." *State of Maine v. McKinnon, 153 Me. 15, 18, 133 A. (2nd) 885*.

The State may establish game management areas and for this purpose may acquire or lease land. [2]

2 *12 M.R.S.A. § 1901*

"7. Game management. 'Game management' is the art or science of producing wild animals and birds and of improving wildlife conditions in the State. It may specifically include the following:

"A. Regulation of hunting, fishing and trapping;

"B. Environmental controls (control of water, food or cover, special features and animal diseases);

"C. Research or investigations to provide a basis for sound management in Maine;

"D. Manipulation of hunting pressure;

"E. Establishment of game lands (parks, forests, refuges, game management areas, etc.);

"F. Predator control;

"G. Artificial replenishment (game farming and restocking);

"H. Introduction of exotic species of wild animals or birds where needed.

"8. Game management area. A 'game management area' is any tract of land or body of water owned or leased by the department of Inland Fisheries and Game for the purposes of game management as defined in subsection 7 or created by an Act of the Legislature."

The Legislature has designated a long list of areas as sanctuaries and preserves, and has authorized for example temporary game preserves, state game farms, and cooperative action with the Federal Government in wildlife restoration projects. [3] The inclusion of one's land in a game preserve is not a taking of property. *State of Maine v. McKinnon, supra* . The State may where it will and when it will prohibit hunting on any land within the State. We are satisfied, therefore, that it is the policy of the State and not the wish of the individual which controls the protection and preservation of the wildlife of our State.

3 *12 M.R.S.A. § 2101 et seq* . (Chap. 309 -- entitled "Sanctuaries and Preserves").

" *§ 2101*. Designation of preserves and sanctuaries

"No person shall, except as provided, at any time, trap, hunt, pursue, shoot at or kill any wild animal or any game or other wild birds within the following described territories: ..."

Operating under its stated charter purposes, the plaintiff seeks to create a game preserve or at most a game management area with conditions deemed harmful by the regional game biologist of the Fish and Game Department. The Holbrook Island Sanctuary in face of this expert opinion adverse to its desires seeks an exemption from the normal support of government. Such a purpose may not be called a charitable purpose. It follows that the plaintiff is a corporation not "organized and conducted exclusively for benevolent and charitable purposes" within the meaning of the tax statute *Section 652*, note 1, *supra*, and accordingly is not entitled to tax exemption.

The plaintiff urges that it is a scientific institution and is thus entitled tof tax exemption. We are fully satisfied that the purposes for which the plaintiff was organized and to which its property was exclusively devoted are not scientific within the meaning of *Section 652*, note 1, *supra* . The purpose of the corporation was to establish a game preserve, as we have stated above. The availability of the area for nature study, observation and photography, the small library of books on nature and conservation, and the census of animals by the warden, are uses too small on which to place the plaintiff in the ranks of scientific institutions. Such uses are only incidental to the main object of the plaintiff.

The property in question is subject to taxation by the town.

The entry will be

Remanded for entry of a decree in accordance with this opinion .

CITY OF LEWISTON v. MARCOTTE CONGREGATE HOUSING, INC.

SUPREME JUDICIAL COURT OF MAINE

673 A.2d 209*; *1996 Me. LEXIS 60

January 2, 1996, Argued

March 5, 1996, Decided

JUDGES: Before WATHEN, C.J., and ROBERTS, GLASSMAN, RUDMAN, DANA, and LIPEZ, JJ. All concurring.

OPINION BY: GLASSMAN

Marcotte Congregate Housing, Inc. (MCH) appeals from the judgment entered in the Superior Court (Androscoggin County, *Marden, J.)* vacating the decision of the State Board of Property Tax Review determining that, pursuant to *36 M.R.S.A. § 652(1)(A)* & *(J)* (1990 & Supp. 1995), [1] a portion of one of MCH's properties and the entirety of another of its properties are exempt from taxation. MCH contends that because the Board properly applied the statute by granting the exemptions, the trial court erred in vacating the Board's decision. We affirm the judgment.

1 *Section 652(1)* exempts from taxation certain property of qualifying organizations. Specifically, *section 652(1)(A)* exempts from taxation "the real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State . . . ." *36 M.R.S.A. § 652(1)(A)* (Supp. 1995). *Section 652(1)(J)* exempts from taxation "the real and personal property owned by [benevolent and charitable] organizations and occupied or used solely for their own purposes by one or more other... organizations" qualifying for exemption pursuant to *section 652(1)(A)-(C) (E)*-(H). *36 M.R.S.A. § 652(1)(J)* (1990).

The record reveals the following pertinent facts: MCH is a non-profit corporation organized under the law of Maine. It owns two parcels of real estate that are the subject of the instant appeal: (1) a five-story multiple use building that houses a congregate care facility, a kitchen and cafeteria, a chapel, and various office and storage spaces (the building), and (2) a tunnel that connects the building to St. Mary's Regional Medical Center.

In 1992, the City of Lewiston (City) issued tax bills imposing real estate taxes on the building and the tunnel. [2] In response, MCH submitted to the City two applications for abatement of the assessed taxes, claiming the properties were exempt pursuant to *36 M.R.S.A. § 652(1)(A)* and *(J)*. Following the City's denial of the applications, MCH filed two petitions for assessment review with the Board.

2 The building and tunnel were acquired by MCH by separate deeds. Accordingly, the City treated them as separate properties by issuing separate tax bills.

After hearings on the petitions, [3] the Board determined that MCH qualifies, for purposes of *36 M.R.S.A. § 652(1)*, as an institution organized and conducted exclusively for benevolent and charitable purposes. [4] The Board found that the building contains 110 residential units that are leased pursuant to a United States Housing

and Urban Development Housing Assistance Payments Contract administered by the Lewiston Housing Authority and an additional 18 residential units that are leased to low-income and disabled elderly tenants at market rental rates without federal subsidies. The Board further found that in addition to containing these congregate housing units, the building also contains (1) storage space that is leased at market rental rates to the Sisters of Charity Health System, Inc., Campus Cuisine, Inc., St. Mary's Regional Medical Center, and Marcotte Nursing Home; [5] (2) a kitchen and cafeteria space that is leased at market rental rates to Campus Cuisine; and (3) office space that is leased at market rental rates to Sisters of Charity, Campus Cuisine, and private physicians. [6] Based on these findings of fact, the Board concluded that the dominant use of the building is to provide federally subsidized housing for low-income and disabled elderly tenants. Accordingly, the Board determined that 82 percent of the building is tax exempt pursuant to *36 M.R.S.A. § 652(1)(A)* and *(J)*, and that the remaining 18 percent, representing the physicians' offices and the nonsubsidized congregate housing units, is taxable.

3 The two petitions were consolidated into a single action.

4 As provided by *36 M.R.S.A. § 652(1)(C)(1)* (Supp. 1995), "any corporation claiming exemption under *[section 652(1)(A)*] must be organized and conducted exclusively for benevolent and charitable purposes."

5 Sisters of Charity is the parent corporation to MCH, Campus Cuisine, St. Mary's Regional Medical Center, and Marcotte Nursing Home. The Board found that Sisters of Charity and each of its above-named subsidiaries is a Maine non-profit corporation and that each one is organized and conducted exclusively for benevolent and charitable purposes within the meaning of *36 M.R.S.A. § 652(1).*

6 Physicians leasing office space in the building provide medical services both to the general public and to some of the congregate housing residents. Many of them specialize in areas other than gerontology, including pediatrics, child and adult psychology, obstetrics and gynecology, and pediatric dentistry.

With respect to the tunnel, the Board found that it is used to transport meals and patients from the building to St. Mary's Regional Medical Center. It determined that this use is incidental to the use of the building and that therefore the entire tunnel property is tax exempt.

From the Board's decision concluding that a portion of the building and all of the tunnel are exempt from taxation, the City sought review by the Superior Court pursuant to *5 M.R.S.A. § 11002* and M.R. Civ. P. 80C. MCH filed a cross-petition for review in which it asserted the Board erred in finding 18 percent of the building to be taxable. After a hearing, the trial court concluded that MCH qualifies as a benevolent and charitable organization for tax exemption purposes but that the building and tunnel are used in such a manner as to not be exempt. From the judgment entered accordingly, MCH appeals.

I

When, as here, the Superior Court acts in the capacity of an appellate tribunal, "we review directly the decision of the Board for abuse of its discretion, error of law or findings unsupported by substantial evidence in the record." *IBM Credit Corp. v. City of Bath, 665 A.2d 663, 664 (Me. 1995)* (citing *Town of Vienna v. Kokernak, 612 A.2d 870, 872 (Me. 1992)).* It is well settled that "a strict construction of the exemption statute is appropriate . . . because of the basic principle, upon which we have repeatedly relied, that 'taxation is the rule and tax exemption is the exception." *Connecticut Bank & Trust Co., N.A. v. City of Westbrook, 477 A.2d 269, 271 (Me. 1984)* (quoting *Silverman v. Town of Alton, 451 A.2d 103, 105 (Me. 1982)).* Accordingly, for MCH to

prevail on its appeal. It must bring its claim "unmistakably within the spirit and intent of the act creating the exemption." *Episcopal Camp Found. Inc., v. Town of Hope, 666 A.2d 108, 110 (Me. 1995)* (quoting *Holbrook Island Sanctuary v. Town of Brooksville, 161 Me. 476, 483, 214 A.2d 660, 664 (1965)* (citations omitted)).

II

To qualify for an exemption pursuant to *sections 652(1)(A)* and *(J)*, MCH must establish that it is "organized and conducted exclusively for benevolent and charitable purposes." *36 M.R.S.A. § 652(1)(C)(1)* (Supp. 1995). The Board determined that MCH satisfies this requirement, and the City contends such determination constitutes error.

As stated in its articles of incorporation, MCH "is organized exclusively for charitable, religious, educational and scientific purposes." Such purposes include, *inter alia, (1)* "functioning as an integral part of . . . a Roman Catholic religious congregation . . . engaged in providing for the health, social and spiritual needs of people through apostolic and charitable services"; (2) owning and operating hospitals, nursing homes, congregate housing and other such facilities "for the care, treatment and healing of human ailments and prevention of disease"; and (3) "coordinating activities of affiliate and subsidiary organizations . . . as those organizations pursue their charitable, religious, educational, scientific and other purposes. . . ." MCH is controlled by the Sisters of Charity, its sole corporate member, which in turn is controlled by the Covenant Health Systems, Inc., a Massachusetts nonprofit corporation. No part of MCH's net earnings inure to the benefit of any private individual, and, except for reasonable compensation for services rendered, none of its income is distributed to its members, directors, or officers.

In determining whether an organization is organized and conducted exclusively for benevolent and charitable purposes, we recently described a charity to be

> 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 in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Episcopal Camp Found., 666 A.2d at 110 (quoting *Johnson v. South Blue Hill Cemetery Ass'n, 221 A.2d 280, 287 (Me. 1966))*. We conclude that MCH falls within the above description. We also conclude that, contrary to the City's contention, neither MCH's religious purposes nor its corporate affiliation with religious organizations removes it from the purview of the tax exemption statute. *See Episcopal Camp Found., 666 A.2d at 108* (Episcopal Camp Foundation qualified for exemption despite stated purpose "to maintain camps . . . which will carry on moral, cultural, religious and recreational training and education. . . ."); *Green Acre Baha'i Inst. v. Town of Eliot, 150 Me. 350, 352, 110 A.2d 581 (1954)* (organization qualified for exemption despite stated purpose to, *inter alia*, "conduct educational facilities . . . for the exposition of spiritual truths, principles and religious precepts based upon the extent and available sacred literature of all revealed faiths, with particular reference to the Baha'i teachings on progressive revelation, religion, unity, and the oneness of mankind . . . ."); *Town of Poland v. Poland Spring Health Inst., Inc., 649 A.2d 1098 (Me. 1994)* (organization qualified for tax exemption despite operating properties consistent with religious tenets, and despite religious affiliation when such affiliation did not compromise charitable purpose). Accordingly, the Board did not err in determining that MCH qualifies as a benevolent and charitable organization.

III

MCH must next establish that its uses of the building and tunnel qualify the properties for tax exemption pursuant to *section 652(1)(A)* or *section 652(1)(J).* The Board determined that portions of the building leased to private physicians and nonsubsidized congregate housing tenants, constituting 18-percent of the building's value, do not qualify for exemption pursuant to these sections. Nevertheless, the Board exempted the remaining 82 percent [**10] of the building's value. [7] The City contends this award of a partial exemption constitutes a misapplication of the statute. We agree.

7 The Board exempted the entire value of the entire based on its finding that it is incidental to the uses of the building.

Section 652(1)(A) exempts from taxation real property that is "owned and occupied or used *solely* for their own purposes by benevolent and charitable institutions . . . ." *36 M.R.S.A. § 652(1)(A)* (emphasis added). Contrary to MCH's contentions, the plain language of *section 652(1)(A)* precludes exempting the building from taxation because 18 percent of the building is not used in furtherance of MCH's charitable purposes, i.e., the building is not used "solely" for MCH's charitable purposes. [8] Similarly, *section 652(1)(J)* exempts from taxation, *inter alia,* real property owned by charitable and benevolent organizations that is "occupied or used *solely* for their own purposes by one or more other [qualifying] organizations." *36 M.R.S.A. § 652(1)(J)* (emphasis added). Because the private physicians and residents paying full market rental value for their quarters are not qualifying organizations pursuant to *section 652(1)(J),* the building is not within the purview of this exemption.

8 Although a prior provision of Maine's tax exemption statute permitted the exemption of portions of real property owned by benevolent and charitable institutions, R.S. 1944, ch. 81, § 6, sub § III, the Legislature repealed and replaced such provision by enacting language that, like the current statutory scheme, exempts "real and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by the state." P.L. 1953, ch. 37 (emphasis added).

Because we conclude that MCH's building is not used in a manner qualifying it for tax exemption pursuant to either *section 652(1)(A)* or *section 652(1)(J),* we conclude that the tunnel, which is incidental to the building's use, also is not tax exempt.

IV

Finally, we need not consider MCH's contention that the Board erred by determining that the nonsubsidized congregate housing units are taxable. [9] Regardless of whether these units are exempt, the portion of the building leased to private physicians renders the entire property subject to taxation.

9 MCH alleged on its cross-appeal to the Superior Court that the Board erred in determining that the nonsubsidized congregate housing units and the space leased to private physicians are taxable. On its appeal to this Court, however, MCH alleges that the Board erred in determining that the nonsubsidized housing units are taxable. MCH does not challenge the Board's determination regarding space leased to private physicians.

The entry is:

Judgment affirmed.

All concurring.

MAINE MEDICAL CENTER v. Alfred LUCCI

Supreme Judicial Court of Maine

317 A.2d 1; 1974 Me. LEXIS 364

March 20, 1974

JUDGES: Dufresne, C.J., and Weatherbee, Pomeroy, Wernick, Archibald and Delahanty, JJ.

OPINION BY: ARCHIBALD

The defendant, Tax Assessor of the City of Portland, has appealed from a decision of a Justice of the Superior Court ordering an abatement of certain real estate taxes assessed in 1972 against the plaintiff, Maine Medical Center. The taxes for which an abatement was denied by the defendant were assessed against property owned by the plaintiff and used for off-street parking. We deny the appeal.

Plaintiff is a charitable institution incorporated under *36 M.R.S.A. § 652*. In order to alleviate the parking problems incident to operating a large hospital [1] and to comply with a City ordinance requiring "one automobile off-street parking space for each 500 square feet of floor space" so that an additional wing of 150,000 square feet could be constructed, the plaintiff in 1964 acquired the so-called "Reservoir Lot." At the time this litigation originated the Center had additional buildings under construction which included a garage with a capacity of 840 parking spaces. This parking garage became operational in November of 1972. In terms of land and buildings the Center had a capital investment of $3,300,000 in the parking facilities.

1 Maine Medical Center contains 565 patient beds. The employees number approximately 2000 and there are 375 physicians on the staff. Public off-street parking in the vicinity of the Center is completely inadequate to serve the needs of hospital personnel and patients' visitors.

Although Maine Medical Center charges a variety of parking fees to its staff, employees, patients and patients' visitors, the general public is not allowed to utilize either parking area. Despite the fees charged, the parking garage was being operated at a loss. However, projected estimates of income and expense indicated a possible recovery of the capital investment over a period of twenty years.

While appellant has argued that plaintiff is not a "benevolent and charitable corporation," we understand this argument to be directed at the status of the parking areas only. Appellant's counsel stated at trial:

> "Our defense is simply that the Maine Medical Center in operating these parking lots in question for fees is not entitled to a charitable and benevolent institution's exemption."

The Maine Legislature has determined that "real estate . . . owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State" is exempt from taxation. *36 M.R.S.A. § 652(1)(A).*

The record clearly supports the premise upon which the decision of the Justice below was based, namely, both the parking lot and garage serve the purposes for which the plaintiff hospital was organized. The isolated fact that income was either being derived or expected from parking fees cannot defeat the right to tax exemption, where the dominant purpose was eleemosynary.

This holding is entirely consistent with the philosophy underlying our past interpretation of *36 M.R.S.A. § 652(1)(A)*, where tax exemption has been allowed under a variety of circumstances. The statutory language "used solely for their own purposes" has been held not to preclude tax exemption where property is used only seasonally, [2] or where occasional rent is received, [3] or where land is owned and held for future expansion, [4] or is undeveloped land, [5] or is occupied rent free by a regularly employed caretaker. [6]

2 *Ferry Beach Park Ass'n v. City of Saco, 127 Me. 136, 142 A. 65 (1928).*

3 *Curtis v. Androscoggin Lodge, No. 24, I.O.O.F., 99 Me. 356, 59 A. 518 (1904).*

4 *Osteopathic Hospital v. City of Portland, 139 Me. 24, 26 A.2d 641 (1942).*

5 *Green Acre Baha'i Institute v. Town of Eliot, 150 Me. 350, 110 A.2d 581 (1954).*

6 *State Young Men's Christ. Ass'n v. Town of Winthrop, 295 A.2d 440 (Me. 1972).*

In all of these cases the dominant purpose for which the property was acquired and owned was benevolent and charitable. This is likewise true of the parking facilities here sought to be taxed by the City of Portland. The effective operation of the Main Medical Center was enhanced by providing employees, staff, patients and visitors with parking facilities adjacent to the hospital. We would be completely naive if we ignored the practical operational problems of a large medical center absent adequate areas for vehicular parking.

Our holding is consistent with the conclusions reached in other jurisdictions with specific reference to hospital owned and operated parking facilities and where the tax exemption statute contained language comparable to the Maine Statute. *See Bowers v. Akron City Hospital, 16 Ohio St.2d 94, 243 N.E.2d 95 (1968)*; *Ellis Hospital v. Fredette, 27 A.D.2d 390, 279 N.Y.S.2d 925 (1967)*; *University Circle Development Foundation v. Perk, Ohio App., 32 Ohio Op.2d 213, 200 N.E.2d 897 (1964)*. As to parking facilities generally when owned by tax exempt corporations, see Annot., *33 A.L.R.3d 938*.

We have no hesitancy in holding that where the utilization of property is reasonably incident to the major purpose for which a benevolent and charitable institution is incorporated, and such utilization is not oriented toward pecuniary profit but, rather, toward providing necessary services and facilities, such property under Maine law is exempt from taxation. Such is the case here.

The entry is:

Appeal denied.

All Justices concurring.

The NATURE CONSERVANCY OF the PINE TREE STATE, INC. v. TOWN OF BRISTOL and William E. Benner, Stanford L. Tukey and Carroll M. Hanna in their capacity as Board of Tax Assessors for the Town of Bristol

Supreme Judicial Court of Maine

385 A.2d 39*; *1978 Me. LEXIS 859

April 24, 1978

JUDGES: Wernick, Archibald, Godfrey and Nichols, JJ. Wernick, J., Wrote the opinion. McKusick, C. J., and Pomeroy and Delahanty, JJ., did not sit.

OPINION BY: WERNICK

Plaintiff, The Nature Conservancy of the Pine Tree State, Inc. (Conservancy), commenced a civil action on May 19, 1976 in the Superior Court (Lincoln County) for a declaratory judgment against defendants, the Town of Bristol and three individuals, -- William E. Benner, Stanford L. Tukey and Carroll M. Hanna in their capacities as members of that Town's Board of Tax Assessors. Subsequently, each of the parties moved to be awarded summary judgment. On April 11, 1977 the Justice presiding in the Superior Court denied plaintiff's motion for summary judgment, granted those filed by defendants and ordered entry of judgment in favor of each defendant.

Plaintiff has appealed. We deny the appeal.

Plaintiff is organized as a Maine corporation, without capital stock, under *13 M.R.S.A. § 901*. Plaintiff's stated purposes are:

> "To receive and administer property and funds for the promotion and advancement of conservation, educational, scientific and literary purposes; including the preserving or aiding in the preservation of all types of wild nature, including natural areas, features, objects, flora and fauna, and biotic communities; together with the establishment of natural reserves and other protected areas to be used for scientific, educational and esthetic purposes; promoting the conservation and proper use of our natural resources; to engage in or promote the study of plant and animal communities and of other phases of ecology, natural history, and conservation, to promote education in the fields of natural preservation and conservation; and to cooperate with other organizations having similar or related objectives.
>
> "In conformity with the purposes stated in . . . [the foregoing paragraph], to take and hold absolutely in fee simple or in trust by gift, devise, bequest, purchase or lease any property, real, personal or mixed; and to manage and invest the same, as well as to give, grant, convey or otherwise dispose of the same or any part thereof or interest therein, for the accomplishment of the purposes of the corporation."

Plaintiff seeks a tax exemption pursuant to *36 M.R.S.A. § 652* for the five of its parcels of land located within the Town of Bristol. [1] *Section 652* provides, as here relevant, that: "The following property of institutions and and organizations is exempt from taxation:

"*1. Property of institutions and organizations*.

> "*A.* The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State . . . ."

1 Plaintiff's complaint originally sought a declaration in regard to a sixth parcel conveyed by Robert M. Search and Helen C. Search to "The Nature Conservancy." Plaintiff does not direct its argument on appeal to the ruling by the Superior Court that: "Plaintiff is not the owner of the property described in the 1967 warranty deed from Robert M. and Helen C. Search since this deed vested fee simple ownership in The Nature Conservancy, a District of Columbia corporation. Since plaintiff does not own this property, it cannot claim a tax exemption for it under either *36 M.R.S.A. § 652(1)(A)* or *(B)*." We find nothing in the record to question this ruling; *Section 652* provides a tax exemption only for institutions "incorporated by this State."

For purposes of the decision of this case, the relationship of plaintiff to the five parcels of land for which plaintiff claims a tax exemption is sufficiently described as follows.

One parcel was conveyed by warranty deed dated December 28, 1966 (Lincoln County Registry, Book 627, Page 259) to the Conservancy by Elizabeth Gardner, Helen G. Williams and Anne G. Hinners (referred to hereafter as the Gardner deed). In accepting this deed, the Conservancy agreed

> "[to] permit access at any time to any part of the property by the Grantors, their heirs and assigns",

and

> "[to] invite participation by any of the Grantors in the custodianship of the land."

By warranty deed Bryan and Edith E. M. Holme (Lincoln County Registry, Book 756, Page 190) granted a parcel of land to the Conservancy but excepted and reserved

> "a right of way to pass and repass to and from the shore by the footpath as now used; a right of way to pass and repass to and from the shore by a footpath the location of which shall be determined, from Lot A hereinbefore described, as the parties may agree, said rights of way to be for pedestrian use only, and a right to pass and repass [**5] over and across the shore . . . [and] . . . a right to prune and cut trees on said conveyed premises to the extent reasonably necessary, from time to time, to maintain a view of the Bay . . . ."

A third parcel of land was conveyed by warranty deed from the Directors of the La Verna Foundation of Round Pond, Maine to the Conservancy (dated December 2, 1965 and recorded in Lincoln County Registry, Book 616, Page 288). This deed was subject to the agreement therein that the "custodianship" of the land

> "be placed in the hands of the Trustees (Directors) of the La Verna Foundation so long as those Trustees maintain the principles of conservation laid down by the Conservancy, including access to the property for scientific, educational, aesthetic and empathetic purposes, including the right to erect a shelter on the property for those purposes."

The parties

> "further agreed that if the Conservancy fails to acquire clear title to the Tibbetts shore property within 6 years or fails to secure or comply with any of the conditions of this Agreement and the Tibbetts Agreement made at the same time with it, the ownership of the present La Verna Preserve shall revert to the La Verna Foundation."

By warranty deed dated December 13, 1965 (Lincoln County Registry, Book 616, Page 213) Frederick N. Tibbetts also conveyed a parcel of land to the Conservancy with the Conservancy granting to Tibbetts

a

> "right of access to the shore over existing roads so long as he is a member of the Nature Conservancy, Inc., and acts as necessary to maintain the shore property in its present natural state in accordance with the objectives of the Conservancy."

Finally, by quit-claim deed, Elizabeth E. Hoyt and Anna Hoyt Mavor conveyed their title to another parcel of land (Lincoln County Registry, Book 771, Page 70). This deed excepted and reserved

> "to the grantors, their heirs and assigns, a right of way to pass and repass on foot or by vehicle from said remaining land of grantors to the shore across said granted premises." This deed was also subject to the grantors' right "to a limited amount of cutting for access purposes" to the adjacent land of the Conservancy. The deed further specified that in the case the Conservancy fails to comply with any of the conditions set forth therein, the ownership of the premises "shall revert to the Hoyt sisters, their heirs and assigns." The Hoyt deed was also subject to the "condition" that the Hoyt property, as well as the property previously conveyed to the Conservancy in the La Verna and Tibbetts deeds, shall be placed in the custodianship of the Trustees of the La Verna Foundation.
>
> "So long as these Trustees maintain the principles of conservation laid down by the Conservancy, including access to the property for scientific, educational, aesthetic and emphathetic purposes, and so long as said Trustees desire to exercise such responsibility and do exercise it . . . ."

All of the aforesaid deeds, except the Tibbetts deed, required that the Conservancy hold the land as a nature preserve.

Under *36 M.R.S.A. § 652*, the tax exemption is available to charitable institutions and organizations only for

> "real estate . . . owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State . . . ."

Plaintiff argues that the five above-described parcels of its land which it owns in Bristol are also *used solely* for its own purposes of a general, public or charitable nature. [2]

2 Plaintiff does not argue that the properties were "occupied", as distinguished from "used" by plaintiff for its own purposes.

Although the parties raise several additional issues with regard to the questions of the Conservancy's charitable nature and the effect of *36 M.R.S.A. § 585 et seq.* on *§ 652*, under the approach we take to the decision of this case we need not reach these other issues. [3] We conclude that the use of the properties here involved is not *solely* for the Conservancy's own purposes, as required by *§ 652*.

3 *Section 652* also provides a tax exemption for [the] real estate and personal property owned and occupied or used solely for their own purposes by literary and scientific institutions." (*§ 652(1)(B)*). Although in its brief, plaintiff argues in the alternative that it qualifies for the exemption as a scientific institution, the argument was not pressed at oral argument. In *Hurricane Island Outward Bound v. Vinalhaven, Me., 372 A.2d 1043 (1977)* we denied a tax exemption under *§ 652(1)(B)* to Outward Bound because there was no statement in Outward Bound's charter that its objects were exclusively scientific. We concluded that: "Science is not its only primary object and hence it is not entitled to enjoy immunity within *36 M.R.S.A. § 652(1)(B)* from the tax imposed." (*372 A.2d at 1047*) Similarly, plaintiff could not prevail here in claiming a tax exemption as a scientific institution; plaintiff was organized for scientific, literary, *conservation, educational and aesthetic purposes*. See also *Holbrook Island Sanctuary v. Brooksville, 161 Me. 476, 488, 214 A.2d 660 (1965)* (availability of land for scientific study incidental to main purpose of preservation of the land as a game preserve).

In reaching this conclusion, our foundational premise is that *§ 652*, as a tax exemption statute, must be

> "strictly construed, and all doubt and uncertainty as to the meaning of the statute must be weighed against exemption." *Hurricane Island Outward Bound v. Vinalhaven, Me., 372 A.2d 1043, 1046 (1977)* "The burden of establishing tax exemption is upon the plaintiff. . . The party claiming it must bring his case unmistakably within the spirit and intent of the act creating the exemption." *Holbrook Island Sanctuary v. Brooksville, 161 Me. 476, 483, 214 A.2d 660, 664 (1965)*

See also *City of Bangor v. Rising Virtue Lodge No. 10, Free and Accepted Masons, 73 Me. 428 (1882).*

Prior to 1953, the tax exemption for the real property of charitable institutions was subject to the exception that

> "so much of the real estate of such corporations as is not occupied by them for their own purposes shall be taxed in the municipality in which it is situated." (R.S. 1944, chap. 81, § 6, subsection III) Under this prior version of the law this Court had ruled that the Legislature did not intend to confine the exemption to such property as is occupied (or used) *exclusively* by the charitable institution. *Curtis v. Androscoggin Lodge, No. 24, I.O.O.F., 99 Me. 356, 358-359, 59 A. 518 (1904).*

In 1953 the Legislature changed the language delineating the tax exemption to read real property "owned and occupied or used solely for their own purposes" by charitable institutions. (P.L. 1953, chap. 37) In *State Young Men's Christian Association of Maine v. Town of Winthrop, Me., 295 A.2d 440 (1972)* we held that this new language did not preclude the charitable tax exemption where another person may be occupying the property of the charitable institution provided that the charitable institution has authorized the occupancy as necessary to the carrying out of its purposes. *Maine Medical Center v. Lucci, Me., 317 A.2d 1 (1974)* reflects this same principle.

Here, there is no indication that the reservations would be required by "institutional necessity" so that, thereby, they might be taken to be "exclusively" for the institution's charitable purposes. See *State Young Men's Christian Association of Maine v. Town of Winthrop, supra, at 443, n.2.*

As to the instant parcels of real estate the Conservancy's claim to tax exemption is defeated by the requirement that the property, in addition to being "owned" by the charitable institution, must (if, as here, it is not "occupied") be ". . . used *solely* for" the institution's own purposes. (emphasis supplied) By reserving rights of access or rights of way, the deeds from Tibbetts, Holme, Hoyt and Gardner subjected the real estate to private individual uses in addition to, and possibly inconsistent with, the uses contemplated by the plaintiff's stated purposes.

Plaintiff argues that the word "used" means the exercise of any incident of ownership, including merely holding the property for the purpose of preserving it in its natural state without any other actual use of it. We need not here decide whether the term "used" appearing in *§ 652* may be so construed. We conclude that tax exemption is precluded as to the instant five parcels of land by the statutory requirement that the property be ". . . used *solely* for their own purposes by . . . charitable institutions." (emphasis supplied) We hold that [HN3] the intendment of this language is to deny the tax exemption where there is an attempt by grantors to reserve private rights of use without the incident burden of paying taxes for the enjoyment of the property. The word "solely" is employed to indicate that a grantor who conveys property to the charitable institution may not retain any strings in terms of use. Land held in its natural state does not become tax exempt by transfer to a charitable institution where the grantor retains the rights to access, passage or custodianship, more particularly since these tend to be the only private rights of ownership exercised while land is privately being held in its natural state.

By reserving private rights of access or rights of way or other private rights, the deeds from Tibbetts, Holme, Hoyt and Gardner make the real estate subject to private noncharitable uses. That the plaintiff Conservancy happens presently to be holding its land open to pedestrian access by the public cannot be controlling. The rights of the private individuals as grantors would remain effective even if plaintiff should decide to bar general

access by the public in the belief that such action had become necessary to further the stated purposes of establishing natural preserves and other protected areas for use for scientific, educational, conservation and aesthetic purposes.

The former La Verna, Tibbetts and Hoyt properties are also subject to the control and custodianship of the La Verna trustees. Similarly, the property conveyed in the Gardner deed is subject to participation by the grantors in the custodianship of the land. Such provision that the Conservancy remain subject to a private entity's custodial control of the use of the premises, notwithstanding that the control is to be exercised harmoniously with the Conservancy's purposes, is inconsistent with the "sole use" condition for tax exemption.

We conclude that since none of the five parcels of land is "used solely . ." for the Conservancy's "own purposes", the Conservancy's claim to a charitable tax exemption for each of them fails.

The entry is:

Appeal denied.

Judgment affirmed.

McKUSICK, C.J., and POMEROY and DELAHANTY, JJ., did not sit.

THE OSTEOPATHIC HOSPITAL OF MAINE vs. CITY OF PORTLAND.

SUPREME JUDICIAL COURT OF MAINE, CUMBERLAND

139 Me. 24*; *26 A.2d 641*; *1942 Me. LEXIS 23

May 21, 1942, Decided

JUDGES: SITTING: THAXTER, HUDSON, MANSER, WORSTER, MURCHIE, JJ.

OPINION BY: MANSER

The Osteopathic Hospital of Maine, Inc., was incorporated in 1935 and for some years conducted a hospital on Pleasant Ave. in Portland. Finding the premises insufficient for its expanding needs, the corporation acquired other property in Portland which had been used as a private hospital. This was effected March 15, 1940. The tract of land purchased contains approximately 5 acres and extends from Brighton Ave. to Prospect St. in Portland.

For the purposes of taxation, however, the assessors divided the tract into two parcels, assessing one and exempting the other. The exempted plot has a frontage of 220 ft. on Brighton Ave. and extends back to the rear of two vacant lots which border on Prospect St. Upon this lot are the buildings, and the present hospital is located so that its northerly side wall is 50 ft. southerly of the dividing line. The remainder of the land was taxed. It has a frontage on Brighton Ave. of 185 ft. It contains approximately 2 1/2 acres, and consists of a wooded pine grove and some vacant land, including the two lots fronting on Prospect St. No actual physical demarcation was made. There are no fences or markers.

By their action the assessors conceded that the Hospital was a benevolent and charitable institution and was entitled to tax exemption of so much of its real estate as was "occupied for its purposes" as provided by R. S., c. 13, § 6, Par. III. The Referee found such to be the fact, and the record amply supports the finding.

The hospital paid the tax under protest and brought this action to recover back the amount paid. The Referee reported that judgment should be for the defendant.

The case comes forward on exceptions to the acceptance of the Referee's report. The gist of the exceptions is that the Court should not have accepted the report because the Referee erred in finding and ruling

> that the right of the hospital to tax exemption must be determined in the light of the use being made of the property on the date of the assessment, April 1, 1940;
>
> that the Referee erred in concluding as a matter of law that, under the evidence, the land taxed was not shown to be occupied for its own purposes;
>
> that although the Referee properly found the land taxed was held for intended use by the hospital, it was error to hold that such use was to be at some indefinite future time, and the land was therefore currently taxable.

Aside from a stipulation as to certain facts not now in issue, the record upon which the Referee made his rulings consisted of the testimony of Dr. Campbell, the Treasurer of the hospital. On March 15, 1940 the hospital conveyed the property it then owned to Dr. Westcott and purchased from him the property now owned at the price of $ 30,000, the original property being valued at $ 12,500 in exchange. At the time of the conveyance, there were 24 beds in the original hospital and the business having doubled in four years and being consistently on the increase, the present facilities were obtained. At the time of the hearing, there were 35 beds, an elevator and sprinkler had been installed, and a garage was being remodeled for staff meetings and quarters for hospital interns. The property was bought as one parcel. With reference to utilization of the property, Dr. Campbell testified:

> "We hope to be able in time to enlarge our hospital. We feel certain we are going to have to. (This has reference to the present building which was exempted from taxation.) We will, of necessity, have to provide quarters for our nurses, as a nurses' home. We will build a solarium. Over there near the woods, in the grove, or near the grove, we intend to put rest places where patients may be taken by the nurses during their convalescence. We intend to use the entire hospital property for hospital uses."

The Doctor further testified that it was not the intention to sell any part of the property or to use it for any purpose not connected with the hospital work. He further said:

> "We had the opportunity of purchasing this property from Doctor Wescott, to give the hospital proper setting, proper quietness, and sufficient land there to meet any necessities for future development, and that is the reason why we exchanged property with Doctor Wescott."

The Referee, evidently relying upon the theory that present use was essential to tax exemption, elicited the fact that the only buildings then occupied were the hospital and garage, and that the grove and vacant land were not in actual use except as patients and nurses walked therein and occupied chairs scattered throughout the grove. Further, that there had been no definite determination as to the location of the proposed solarium and nurses' home, although the witness testified that an appropriate site for the home would be on one of the vacant lots fronting on Prospect St.

The first ruling complained of is as follows:

> "All taxes are assessed in this state as of the first day of April of each year. It is the use of the property at the time when a tax is assessed which determines whether the property is or is not exempt from taxation."

Such rule is not arbitrarily controlling or decisive. In *Camp Emoh Associates v. Lyman, 132 Me. 67, 166 A. 59, 60,* the plaintiff corporation acquired property for the erection and support of camps for the care, maintenance and assistance of poor and indigent Jewish children. In 1930, the corporation had on its land a group of camps.

The property was assessed for taxes. During July and August of that year, upwards of 250 children were at the camps by invitation or assignment. Under these facts, our Court said:

> "At the end of the season, the camp was closed, not to be opened again until the next year. The property, it is true, was not in actual use on the day of the assessment, i.e., the first day of April, 1930. To hold that to secure exemption, it must have then been in actual use, would ignore the spirit and intendment of the law. Actual use on that particular day is not the test."

In *Ferry Beach Park Assn. v. Saco, 136 Me. 202, 7 A.2d 428*, as in the former case of *Ferry Beach Park Assn. v. Saco, 127 Me. 136, 142 A. 65*, property found to be definitely devoted to the purposes of the Association was held to be exempt, although in both cases the property was occupied only during the summer months.

As distinctly pointed out in *Camp Emoh Associates v. Lyman*, *supra*, it is the "actual appropriation of its property for the purposes for which the plaintiff corporation was incorporated," not the physical use on the exact date of the assessment, which controls.

Concerning the broader question of exemption by reason of occupation or appropriation of real estate for the purposes of the corporation, confusion sometimes arises by undertaking to apply identical rules of construction as to tax exemption statutes which are essentially different. Thus in Maine, as in Massachusetts, we find that the statute itself places benevolent and charitable institutions in a different category from purely religious institutions. As to the first group, the law provides, R. S., c. 13, § 6, Par. III:

> "The following property and polls are exempt from taxation . . . the real and personal property of all benevolent and charitable institutions incorporated by the state; . . . but so much of the real estate of such corporations as is not occupied by them for their own purposes shall be taxed in the municipality in which it is situated."

The exempting statute as to the second group is found in Par. V of the same section, as follows:

> "Houses of religious worship, including vestries, and the pews and furniture within the same, except for parochial purposes; tombs and rights of burial; and property held by a religious society as a parsonage, not exceeding six thousand dollars in value, and from which no rent is received, and personal property not exceeding six thousand dollars in value. But all other property of any religious society, both real and personal, is liable to taxation the same as other property."

The term "real estate" is not found in the exemption of the statute as to the last group. The central purpose is to exempt the church or house of worship and a parsonage of limited value. Even this statute has been sanely interpreted as including the land on which the buildings stand and such as may be necessary for convenient ingress and egress, light, air or appropriate and decent ornament, as the Massachusetts court has held in *All Saints Parish v. Brookline, 178 Mass. 404, 59 N.E. 1003, 52 L. R. A. 778*; *Trinity Church v. Boston, 118 Mass. 164*; *Third Congregational Society v. Springfield, 147 Mass. 396, 18 N.E. 68, 69*.

In the case last cited above, the distinction is clearly pointed out. The exempting statute, of similar import as at present, provided for benevolent and charitable institutions in the third clause, and for religious institutions in the seventh clause of the section. The Court said:

> "It will be observed, that religious societies are not included in the enumeration of the third clause, and that the exemption of their property from taxation is found in the seventh clause . . . and it is impossible to extend by construction the operation of the third clause above cited to religious societies."

The procedure of the assessors of Portland in the present case, however, is patterned after that adopted in *All Saints Parish v. Brookline, supra*, concerning a religious society. In that case, a corner lot on Beacon St. and Dean Road in Brookline was conveyed to the Society with the provision that a church edifice should be erected on the premises. In the first instance, a wooden church was built on the westerly half. During the year that the tax was assessed, the erection of a stone church was begun, and it was planned that the wooden church would be removed to a corner of the lot to be used as a Sunday School room. There were no fences and the land had never been leased or occupied by any parties other than the plaintiff. There was no intention of using the land taxed for secular purposes. The assessors exempted the wooden church and about 21,000 square feet of land and assessed a tax on the remaining 20,000. The plaintiff offered testimony to show that the entire lot was not more than sufficient for convenient ingress or egress, light, air and decent and appropriate ornament. This evidence was rejected. The decision upheld the assessment. The reason given was:

> "The portion of the lot which was intended for use in the erection of the stone church could not be exempted, for there was no house of religious worship, nor any part of such a house upon it.
>
> The evidence which was offered and rejected had no tendency to show that the whole lot was needed for the small wooden church, or that it was used as a reasonably necessary or proper incident to the maintenance and use of that church."

The case of *Redemptorist Fathers v. Boston, 129 Mass. 178*, cited by the defendant and used by the Referee as authority that actual use for the purposes warranting exemption is essential to preclude taxation, also concerned a religious society. Moreover, the facts are entirely dissimilar. This is demonstrated in the statement of the Court:

> "The lot of land which, as the plaintiff contends, was wrongfully taxed in this case, has not been so appropriated. No church edifice has been erected upon it, and we do not find upon the facts agreed that any such edifice is intended to be erected upon it. On the contrary, it was found to be an unsuitable place for the church, and it is the plaintiff's intention to occupy it with one or more light buildings of wood for school purposes. It is separated by a clearly defined lane or passageway from the portion upon which the church stands; it is not necessary or incidental to the use of the church as a house of public worship, and the avowed intention of the plaintiff is to appropriate it to a purpose, which, however useful and praiseworthy in itself, is not public worship, and therefore not entitled to the exemption from taxation provided for in the second clause."

Further, the defendant argued that the "dominant use" principle had application, asserting that the record showed that the property taxed was currently used only for trivial and inconsequential purposes which were subordinate to the dominant purpose that the property be held for future expansion of the hospital. But this is an attempt to contrast two uses for the same general purpose, one actual and the other prospective. The cases which construe the principle contended for demonstrate that it has application when there are two or more divergent uses to which the property is subjected, one promotional of the charitable purpose and the other of a non-exempt character. Thus we find in *Foxcroft v. Campmeeting Association, 86 Me. 78, 29 A. 951*, our Court held that

> "If it be a benevolent and charitable institution, the property used for the stabling of horses for hire, let for victualing purposes and for the use of cottages is clearly not occupied by the association for its own purposes . . . It is property from which revenue is derived--just as much business property as a store or mill would be."

In *Auburn v. Y. M. C. A. 86 Me. 244, 29 A. 992*, of the defendant's real estate, a portion was let for a boarding-house and another portion for stores and it was held that such portions were not exempt from taxation.

Application of the principle to different circumstances, held sufficient to warrant exemption, is found in *Curtis v. Odd Fellows, 99 Me. 356, 59 A. 518, 520*, in which the Court said:

> "where a building of such an association is designed for use by it for its own purposes, and a substantial use is made of all of the building by the association for its own purposes, in good faith, the property is exempt from taxation under our statutes, notwithstanding such occupation may not be exclusive, and the owner may sometimes allow other associations and individuals to use some portions of the property for a rental, when it can be done without interfering with the use of the same by the owner for its own purposes."

This statement was confirmed in *Lewiston v. All Maine Fair Association, 138 Me. 39*; *21 A.2d 625*, in which it was held that certain property was non-exempt, and certain other property although temporarily and occasionally used for purposes foreign to the conduct of its Fair was exempt because such use did not interfere with its general occupation for its own purposes.

If the property is not used at all for other purposes, it must be determined whether use was made thereof for its own purposes, which may be shown by incidental uses and by an actual appropriation to the purposes of the owner with a definite intention to broaden the scope of its use thereof in the future, thus counteracting any implication of evasion of taxation.

Upon the whole record such clearly appears to be the case here. True, the exact location of additional buildings has not been determined, or the date of their erection. The Referee recognizes in his report that the tract was acquired in one unit "to give the hospital proper setting, proper quietness and sufficient land there to meet any necessities for future development;" that it was intended to "develop an osteopathic center here in Portland,"

that there was an existing intention to hold the vacant land as a site or sites for new and additional buildings to take care of its growing business, and that such land was used by convalescent patients, and by nurses and employees. Because these purposes had not all attained fruition, the Referee held that uncertainty as to the time of fulfillment precluded exemption.

The Massachusetts court has given consideration to the claim of tax exemption by benevolent corporations as to large tracts of land held under circumstances analogous to those here existing. Upon the legal principles involved, our own Court has been in agreement with the Court of that jurisdiction.

In *Massachusetts Gen. Hospital v. Somerville, 101 Mass. 319*, the Court in construing a statute of like import with our own, held:

> "The statute contains no limitation of the amount of real estate that may be thus held exempt from taxation; and we know of no authority under which, or rule by which, the court can affix any such limitation. The only condition upon which the exemption depends is the proviso as to the purposes for which the real estate is occupied.
>
> In construing and applying this proviso, the court cannot restrict it to the limit of necessity. The statute does not indicate such an intention on the part of the legislature; and we do not think that any considerations of public policy require us to confine the exemption to narrower limits than the terms of the statute fairly imply. What lands are reasonably required, and what uses of land will promote the purposes for which the institution was incorporated, must be determined by its own officers. The statute leaves it to be so determined, by omitting to provide any other mode. In the absence of anything to show abuse, or otherwise to impeach their determination, it is sufficient that the lands are intended for and in fact appropriated to those purposes.
>
> In this case, it is manifest that the intention with which the lands in question were purchased and held was to promote the purposes for which the institution was incorporated."

In the above case, the area of lands so held was 110 acres.

So in *Thayer Academy v. Braintree, 232 Mass. 402 at 408, 122 N.E. 410, at page 412*, the Court said:

> "The dominant purpose of the managing officers of the corporation, in the use of the property which they direct or permit, is often, although not always, controlling. So long as they act in good faith and not unreasonably in determining how to occupy and use the real estate of the corporation, their determination cannot be interfered with by the courts." *Emerson v. Milton Academy, 185 Mass. 414, 415, 70 N.E. 442*.

> Again, in passing on a situation as to occupation of land similar to that actually existing here, and entirely aside from prospective use, the Court in *Wheaton College v. Norton, 232 Mass. 141, at 148, 122 N.E. 280, 282*, said:

> "The two and one half acre lot on April 1, 1914, was a grove of old growth pines; it was free from underbrush, had a few benches, was unenclosed, and was used by students and townspeople. It was not used for college purposes except for recreation purposes for students who wished to walk, stroll or saunter there. The judge rightly found and ruled that this tract was exempt within the rule laid down in *Amherst College v. Amherst, 193 Mass. 168, 79 N.E. 248*," *79 N.E. 248*.

We adopt the reasoning of the Court in the above cited cases. In view of the indisputability of the facts and the conclusions to be drawn therefrom, the accuracy of the ruling of the Referee is one of law and is open for consideration by the Court. On the record the plaintiff was entitled to tax exemption.

Exceptions sustained.

PENTECOSTAL ASSEMBLY OF BANGOR v. MELVIN H. MAIDLOW AND THE CITY OF BANGOR

Supreme Judicial Court of Maine

414 A.2d 891*; *1980 Me. LEXIS 571

May 7, 1980, Argued

May 19, 1980, Decided

JUDGES: McKusick, C.J., and Godfrey, Nichols, Glassman, Roberts, JJ., and Archibald, A.R.J.

OPINION BY: GODFREY

The issue in this case is whether certain real estate owned by the plaintiff-appellant is exempt from taxation. Appellant is Pentecostal Assembly of Bangor, an independent local church organized as a corporation in 1950 pursuant to the provisions of chapter 53 of the Revised Statutes of 1944, sections 24 to 32. [1] In 1976, the Assembly moved into a new building which serves as its house of worship, school, and administrative office. Soon thereafter, the Assembly consulted with the Bangor chief of police for advice on how to deter vandalism at the new building. By written opinion, the chief replied that the presence of persons living on the grounds would be the best deterrent. He stated that an alarm system was likely to be ineffective.

1 Now 13 M.R.S.A. ch. 93, subch. II (1974 & Supp. 1979-80).

Following the chief's advice, the Assembly constructed a single-family residence on a one-acre lot formed out of the large lot on which the main church building had been constructed. The custodian of the church and his family have lived in the house since its completion before April 1, 1977. The house is used only as the custodian's residence. The Assembly owns the house and lot and pays all expenses of maintaining the residence, including installments of the mortgage debt, utility bills, and insurance premiums. The custodian is required to live in the residence, which is provided to him free of rent, as a condition of his employment. He is a full-time custodian and security person for the main building. His salary is reduced to take into account his rent-free housing.

Defendant Maidlow, tax assessor for Bangor, assessed a real estate tax on the one-acre lot for the tax year 1977. The Assembly's petition to the assessor for abatement of the assessment, on the ground that the property was exempt from taxation, was denied on February 15, 1978. The plaintiff duly appealed the denial of the abatement to the Superior Court pursuant to the provisions of *36 M.R.S.A. § 845* then in effect. [2] In its petition to the assessor for abatement and in its complaint in Superior Court the plaintiff contended that the property should be exempt as "real estate . . . owned and occupied or used solely" by a "benevolent and charitable institution" within the meaning of subsection (1)(A) of *36 M.R.S.A. § 652*, which provides, in pertinent part, as follows:

> The following property of institutions and organizations is exempt from taxation:
>
> 1. Property of institutions and organizations.

> A. The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State . . . .

The Assembly advanced no other reason for demanding the exemption and stipulated with the defendants on June 11, 1979, that the only issues before the Superior Court were (1) whether the Assembly was a "benevolent and charitable institution" under *36 M.R.S.A. § 652(1)(A)*, and *(2)* whether the property used by the custodian was "occupied or used by" the Assembly solely for its own purposes under the same subsection.

2 *Section 845* was repealed by P.L. 1977, ch. 694, effective July 1, 1978.

On September 20, 1979, the Superior Court denied the Assembly's prayer for relief, and judgment was entered for the defendants. In its decision, the court stated:

> From the evidence produced at trial, this Court finds that although Plaintiff, like other religious organizations, has among its purposes those which would qualify as "charitable" in the widest sense, [citation omitted], it cannot qualify as a benevolent and charitable organization within the scope of *36 M.R.S.A. § 652*.

The plaintiff filed a timely notice of appeal to this Court.

Taxation is the general rule; exemption from taxation is the exception, "and all doubt and uncertainty as to the meaning of the statute must be weighed against exemption." *Hurricane Island Outward Bound v. Town of Vinalhaven, Me., 372 A.2d 1043, 1046 (1977)*. The plaintiff has the burden of establishing an exemption from property taxation. "Exemption is a special favor conferred. The party claiming it must bring his case unmistakably within the spirit and intent of the act creating the exemption." *City of Bangor v. Rising Virtue Lodge, 73 Me. 428, 433 (1882)*, quoted in *Holbrook Island Sanctuary v. Inhabitants of Brooksville, 161 Me. 476, 483, 214 A.2d 660, 664 (1965)*.

The Pentecostal Assembly of Bangor was incorporated under the statutes providing for incorporation of an independent local church. The uncontroverted testimony of its pastor at the hearing in Superior Court makes it plain that the functions of the Assembly include, among other things, the holding of religious services and the education, both secular and religious, of children and adults. The pastor testified also that the Assembly participates with other churches in the support of missions in the Middle East, Colombia, Rhodesia, South Africa, Alaska, and New York City. The Assembly carries on a training program for marriage counselors and a program for senior citizens.

Pointing to all those activities, the Assembly contends that it is a "benevolent and charitable institution" within the meaning of *36 M.R.S.A. § 652(1)(A)*, set forth above. In particular, it argues that its missionary activities are, as a matter of law, "benevolent and charitable" under the cases upholding the property tax exemption of missionary societies. *E.g., Green Acre Baha'i Institute v. Town of Eliot, 150 Me. 350, 110 A.2d 581 (1954)*; *Ferry Beach Park Ass'n v. City of Saco, 136 Me. 202, 7 A.2d 428 (1939)*; *Maine Baptist Missionary Convention v. City of Portland, 65 Me. 92 (1876)*. However, participating in missionary activities is not the sole or even the

primary purpose of the Assembly, which functions basically as a church in accordance with its certificate of incorporation. After the *Green Acre Baha'i* case, *supra*, was decided, the tax laws relating to towns were revised extensively, [3] and the exemption provisions were changed to include, among other things, what is now subsection 1(C)(1) of *section 652*, providing as follows:

> C. Further conditions to the right of exemption under paragraphs A and B are that:
>
> (1) Any corporation claiming exemption under paragraph A shall be organized and conducted exclusively for benevolent and charitable purposes.

3 P.L. 1955, ch. 399, § 1. The former tax laws relating to towns were repealed and replaced by the new legislation. P.L. 1955, ch. 399, § 2.

Even if some activities of the Assembly may be properly classified as benevolent and charitable, it does not meet the condition for exemption prescribed by the quoted subsection: The Assembly was organized as a church in 1950 and is still conducted primarily as a church. The Assembly's by-laws, as amended in 1970, expressly state that it is "intended to be operated exclusively for religious and/or educational purposes as contemplated in *Section 501(c)(3) of the Internal Revenue Code*." It is well settled that for purposes of exemption from property taxation, religious purposes are not to be equated with benevolent and charitable purposes. *E.g., Osteopathic Hospital v. City of Portland, 139 Me. 24, 26 A.2d 641 (1942)*.

Since the Assembly cannot be characterized as a "benevolent and charitable institution" for purposes of *36 M.R.S.A. § 652(1)(A)*, we do not reach the question whether the property used by the custodian was "occupied or used by" the Assembly solely for its own purposes. *Maine Medical Center v. Lucci, Me., 317 A.2d 1 (1974)*, and related cases are not in point.

During oral argument, appellant advanced the suggestion that the custodian's house might be exempted under subsection (1)(G) of *section 652*, on the theory that its purpose is to promote the security of the church building itself. However, appellant did not claim exemption on that ground either in its petition to the assessor or, later, to the Superior Court, and the stipulation of June 11, 1979, removed any possibility of such an issue from the case. If the argument has any validity -- a matter on which we intimate no opinion -- it is not cognizable for the first time on appeal. *Teel v. Colson, Me., 396 A.2d 529 (1979)*; *Reville v. Reville, Me., 289 A.2d 695 (1972)*.

The entry is:

Appeal denied.

Judgment affirmed.

THE SALVATION ARMY v. THE TOWN OF STANDISH, et al.

SUPREME JUDICIAL COURT OF MAINE

1998 ME 75*; *709 A.2d 727*; *1998 Me. LEXIS 79

February 13, 1998, Submitted on Briefs

April 14, 1998, Decided

JUDGES: Panel: WATHEN, C.J., and ROBERTS, CLIFFORD, RUDMAN, DANA, LIPEZ, and SAUFLEY, JJ.

OPINION BY: WATHEN

The Town of Standish and its Tax Assessor appeal from a judgment entered in the Superior Court (Cumberland County, *Mills, J.*) exempting a parcel of The Salvation Army's real property from taxation pursuant to *36 M.R.S.A. § 652* (1990 & Supp. 1997). On appeal, the Town contends that the property is not exempt because The Salvation Army, as a religious organization, is not organized primarily for benevolent or charitable purposes and, in any event, the property is not used solely for the organization's benevolent and charitable purposes. Finding no error, we affirm the judgment of the Superior Court.

The undisputed facts may be summarized as follows: The Salvation Army owns and operates a summer camp for underprivileged children in Standish. The camp consists of four contiguous parcels of land all owned by The Salvation Army. Only the status of the second of these parcels is contested. Parcel 2 includes three residential buildings, tennis courts, and a fishing pier. The residential buildings are used as overflow housing for campers and staff during the normal operating season. Beginning in 1994, The Salvation Army allowed its officers and their families to vacation in the residential buildings when vacant. The Salvation Army charged its officers a nominal fee for the use of the buildings. Although The Salvation Army has owned the property for over forty years, the Standish Assessor first assessed taxes on Parcel 2 in December of 1996 for the 1996, 1995, and 1994 tax years.

Following the assessment, The Salvation Army filed a complaint for declaratory relief, seeking a declaration that Parcel 2 is exempt from taxation. It then filed a motion for summary judgment, and the court ruled in its favor. The Town now appeals.

A summary judgment will be affirmed when there is no genuine issue of material fact and the movant is entitled to a judgment as a matter of law. *Episcopal Camp Found, Inc. v. Town of Hope, 666 A.2d 108, 110 (Me. 1995).* The statutory exemption involved in this appeal provides in relevant part:

> The following property of institutions and organizations is exempt from taxation:
>
> **1. Property of institutions and organizations.**
>
> **A.** The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State . . . .
>
> . . . .
>
> **C.** Further conditions to the right of exemption under paragraphs A and B are that:

(1) Any corporation claiming exemption under paragraph A must be organized and conducted exclusively for benevolent and charitable purposes;

(2) A director, trustee, officer or employee of an organization claiming exemption is not entitled to receive directly or indirectly any pecuniary profit from the operation of that organization, excepting reasonable compensation for services in effecting its purpose or as a proper beneficiary of its strictly benevolent or charitable purposes.

36 M.R.S.A. § 652(1) (Supp. 1997).

Initially, the Town argues that The Salvation Army's purpose and mission is religious and, therefore, it does not qualify as a benevolent and charitable organization. Recently, we reaffirmed the principle that an organization's religious affiliation or religious purpose will not "remove it from the purview of the tax exemption statute." *City of Lewiston v. Marcotte Congregate Hous., Inc., 673 A.2d 209, 212 (Me. 1996)*. The Salvation Army operates as a non-profit corporation devoted to the "religious, charitable, educational or missionary purposes" of The Salvation Army. The Christian faith is an integral part of the organization, but that fact alone does not contradict its benevolent and charitable purpose. *See Episcopal Camp Found., Inc. v. Town of Hope, 666 A.2d 108, 110 (Me. 1995)*; *Green Acre Baha'i Inst. v. Town of Eliot, 150 Me. 350, 110 A.2d 581 (Me. 1954)*; *Town of Poland v. Poland Spring Health Inst., Inc., 649 A.2d 1098 (Me. 1994)*.

The Town next argues that the property must be used solely in furtherance of The Salvation Army's charitable purposes. The statute provides that: "The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State . . . ." *36 M.R.S.A. § 652(1)(A)* (Supp. 1997) is tax exempt. Here, it is undisputed that The Salvation Army owns and occupies Parcel 2. The buildings on the land serve many functions, and each is for the organization's own purposes.

Finally, the Assessor argues that by using the buildings to provide inexpensive vacation lodging for its officers, The Salvation Army has violated *section 652(1)(C)(2)*. The statute provides that officers of a charitable organization may not receive any pecuniary profit either directly or indirectly from the operation of the organization, "excepting reasonable compensation for services in effecting its purposes or as a proper beneficiary of its strictly benevolent or charitable purposes." *36 M.R.S.A. § 652(1)(C)(2)* (Supp. 1997). Here, the incidental use of the buildings constitutes nothing more than "compensation" for the services the officers perform on behalf of the charitable organization.

The Superior Court correctly ruled that Parcel 2 remains exempt from taxation.

The entry is:

Judgment affirmed.