

State Fair, Inc.
a/k/a Plymouth State Fair Association

v.

Town of Plymouth

Docket No.: 12815-92EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" 1992 denial of the State Fair, Inc.'s request for charitable exemption as provided under RSA 72:23, V on a 34.7-acre lot containing fairgrounds and buildings known as the Plymouth State Fair (the Property).

The Taxpayer has the burden of showing it was entitled to the statutory exemption for the year under appeal. See Tax 204.06. For the reasons enunciated in this decision, we find the Taxpayer failed to meet its burden and therefore, the request for charitable exemption is denied.

INTRODUCTION

The board is unaware of any previous appeal of any other agricultural fairground seeking an exemption under RSA 72:23, V. The board has extensively reviewed New Hampshire and other states' statutes and caselaw and the historical origins of fairs in general and, specifically, in New Hampshire. The board has had much difficulty in arriving at this decision but concludes, that under the current statutes, the Town's denial of a charitable exemption is proper. As will be noted later in this decision, the specific issue of whether agricultural fairgrounds should qualify for an exemption is an

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issue the legislature may wish to address. However, the board finds the facts in this case do not qualify the Property for a charitable exemption because:

(1) the Taxpayer is not obligated by its organized purpose to perform a charitable function; and (2) the events and activities associated with the holding of the annual agricultural fair are not primarily charitable in nature.

SECTION I - FACTS

The State Fair, Inc. was originally incorporated with the State of New Hampshire in 1955. The original Articles of Agreement stated the objects for which the corporation was established were, "the promotion of agriculture, improvement of horse and cattle breeding, and the holding and conducting of agricultural fairs." 100 shares were issued at the original incorporation. In 1977, State Fair, Inc. was reincorporated, increasing the shares to 1,600 and modifying the purpose to simply the "operation of an annual agricultural Fair."

The State Fair, Inc. is registered as a charitable trust with the State of New Hampshire pursuant to RSA 7:19, and has received Section 501(c)(3) charitable-exempt status from the Internal Revenue Service.

The Property is used for an annual fair held in August, which includes customary fair functions and activities, including such events as harness racing, 4-H and agricultural exhibits, horse and ox pullings, bingo and the myriad of various food, midway and entertainment activities. Further, during the snow-free months of the year, State Fair, Inc. allows other organizations, largely, although not exclusively, not-for-profits, to also use the grounds for their meetings and shows (e.g., Pemigewasset Valley Pony Club, Harley

Davidson Riders Swap Meet, camper shows and craft sales).

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All the proceeds derived from ticket sales and rental of the Property are used for the maintenance and operations of the Property. Any fees paid to the officers of State Fair, Inc. are related to their services and appear in most cases to be nominal relative to the service performed. All of the shares, with the exception of 16, are owned by not-for-profit corporations. As of April 1, 1992, the Articles of Agreement stated that in the event of dissolution of the corporation, the assets would be distributed to the shareholders proportionate to the number of shares owned. Sixteen shares are owned by a private individual due to his long-term, voluntary service to the corporation.¹

SECTION II - THE STATUTES

RSA 72:6 states, "All real estate, whether improved or unimproved, shall be taxed except as otherwise provided."

Charitable property is specifically exempted pursuant to RSA 72:23, V, which reads,

"The following real estate and personal property shall, unless otherwise provided by statute, be exempt from taxation:

V. The real estate and personal property owned by charitable organizations and societies organized or incorporated in this state or having a principal place of business in this state, and occupied and used by them for the purposes for which they are established, provided that none of the income or profits thereof

¹Subsequent to April 1, 1992, the Articles of Agreement were amended and recorded with the Secretary of State on February 22, 1994, providing for the assets upon dissolution to be distributed to another Section 501(c)(3) organization selected by the directors with none of the assets going to any member or officer of the corporation. While the dissolution provision in effect April 1, 1992 could raise the question of monetary benefit to one of the Taxpayer's shareholders, that issue is moot by the board's ruling that the Taxpayer does not generally qualify as a charitable organization.

is used for any other purpose than the purpose for which they are established."

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Further, the definition of charitable was added in 1992 in RSA 72:23-1, which reads,

"The term "charitable" as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k, shall mean a corporation, society or organization established and administered for the purpose of performing, and obligated, by its charter or otherwise, to perform some service of public good or welfare for the benefit of the general public, or a substantial and indefinite segment of the general public, with no pecuniary profit or benefit to its officers or members, or any restrictions which confine its benefits or services to such officers or members, or those of any related organization. The fact that an organization's activities are not conducted for profit shall not in itself be sufficient to render the organization "charitable" for purposes of this chapter, nor shall the organization's treatment under the United States Internal Revenue Code of 1986, as amended. This section is not intended to abrogate the meaning of "charitable" under the common law of New Hampshire."

In short, for a property to be eligible for charitable exemption, two general provisions must be met:

- (1) the organization must be organized for a charitable purpose and under an obligation to provide the general public, or some indefinite segment of it, a service of public good or benefit without any special monetary or other benefit to its members (see Society of Cincinnati v. Exeter, 92 N.H. 348 (1943) and Nature Conservancy v. Town of Nelson, 107 N.H. 316 (1966)); and
- (2) the organization must occupy and use the property directly for the charitable purpose for which the organization was formed.

SECTION III - BOARD'S ANALYSIS

The paramount issue to be addressed by the board is whether State Fair,

Inc. is organized as a charity and obligated to perform a charitable function.

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The purpose of State Fair, Inc. is simply stated in its Articles of Agreement as "the object for which this corporation is established is the operation of an annual agricultural Fair." Because the Taxpayer's purpose is so generally stated, the board must review generally the nature of agricultural fairs and specifically the fair held by the Taxpayer to determine if an agricultural fair is a charitable activity and if the Taxpayer is obligated to perform a charitable function.

Therefore, the board's analysis will focus on two general areas:

- (1) the statutory and common definitions of "charitable"; and
- (2) the nature of the Plymouth State Fair and, in general, agricultural fairs.

A) THE ELEMENTS OF CHARITY

RSA 72:23-1 provides a general statutory definition of "charitable." Included in the definition is a caution that this general definition is not meant to abrogate the common meaning of charitable.

A review of several of the common definitions of charitable is helpful in understanding various elements of charity. Webster's Ninth New Collegiate Dictionary (1989) defines charity as "generosity and helpfulness, especially toward the needy and suffering *** a gift for public benevolent purposes ***."

Further, Webster's Third New International Dictionary (1976) defines charity as "an eleemosynary gift; a gift (as by grant or devise) of real or personal property to the use of the public or any portion of it as distinct from

specific individuals for any beneficial or salutary purpose." Black's Law Dictionary, 5th Ed. (1979) defines charity as,

"a gift for, or institution engaged in, public benevolent purposes *** a `charity,' in absence of legislative definition, is the attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefits in particular, without regard to their ability to supply that need from other sources and without hope or expectation *** of gains or profit by donor or by instrumentality of charity."

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Further, RSA 72:23-1 states that charitable organization's activities must provide, "some service of public good or welfare." Black's Law Dictionary, 5th Ed. (1979) defines public welfare as, "the prosperity, well being, or convenience of the public at large, or of the whole community *** it embraces the primary social interest of safety, order, morals, economic interest and nonmaterial and political interests."

While RSA 72:23-1 states that the United States Internal Revenue Code of 1986 (Code) is not controlling of New Hampshire tax statutes, it is interesting to note the types of organizations the Code finds as charitable. In summary, they are any organization that is religious, charitable, performing scientific testing for public safety, literary, educational, promoting national or international sports, or preventing cruelty to children or animals. Further, the Code includes the general concept that to be charitable, the organization should lessen the burden of government.

In summary, a charitable organization must provide a service that socially benefits mankind in general, or specifically, a broad segment of those in need. The definition of charitable is a broad one, including services that intellectually, socially, economically or spiritually enhance the welfare of mankind. See Nature Conservancy v. Town of Nelson, 107 N.H. 316 (1966); and Appalachian Mountain Club v. Meredith, 103 N.H. 5 (1960).

While not controlling of the definition of charitable, such features of gifting and lessening the burden of government are common in charitable organizations.²

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B) NATURE OF AGRICULTURAL AFFAIRS

Against this background of the elements of charity, the board will review the specific nature of the Plymouth State Fair and agricultural fairs in general.

²Inherent in the concept of exemptions is the transfer of exempted property tax to the shoulders of those not exempted. There appears to be a fine line that is drawn between the lack of requirement that a charity must lessen a governmental expense (see Young Women's Christian Association v. Portsmouth, 89 N.H. 40, 44 (1937)) and the prohibition that a specific segment of society or industry may not be benefitted at the expense of public funds. See Opinion of the Justices, 88 N.H. 484 (1937).

The word "fair" is derived from the latin word "feriae" meaning holiday or festival. Greeks, Romans and Egyptians all held fairs in conjunction with either religious or political events and festivals. The concept provided a safe forum for the merchants to gather and provided a ready gathering of people available to market their commodities. In England, fair charters were granted to the local churches by the crown, and polls and taxes were collected for the benefit of both the crown and the local church. The purpose in England was the same as it had been in earlier times for the Greeks, Romans and Egyptians -- that of trade and entertainment.³

The earliest record of a fair in New Hampshire, and in fact, purportedly, the United States, was a fair held in present-day Londonderry (then called Nuttfield) in the early 1700's. This fair modeled the English form in that the town's charter included an authority from the crown to hold a fair, and it was held on the town commons initially for the purpose of exchange of commodities and information. However, as the region became more settled and permanent markets established, the nature of the fair changed to be more of entertainment and "folly." Apparently, the fair became so

³Fairs, the Travelers, Hartford Connecticut, (undated).

disreputable that in 1850 the New Hampshire legislature repealed the part of Londonderry's charter authorizing the holding of fairs.⁴

Through the mid-1800's and into the early 1900's, fairs ebbed and flowed under the various leaderships of the New Hampshire State Agricultural Society, the Grange, and the New Hampshire Fairs Association. During this time period, the fairs were organized by local or regional associations and were self-supporting with only sporadic state subsidy. As in earlier times, there appeared to be the inherent conflict between the more noble purpose of providing a forum for exchange of knowledge and improved agricultural practices and the more lucrative and popular entertainment attractions such as wrestling and horse racing.⁵

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⁴"For some years it was of public use and convenience, affording an opportunity to the inhabitants of this and to adjoining towns, to meet and exchange commodities. It was conducted with order and propriety ... every variety of home manufacture was here collected. The Common was usually surrounded with tents containing merchandise, and with pens of cattle, sheep and swine, for sale or exchange.

The state of society at length changing, the country becoming generally settled, stores being multiplied, and the means of communication with our large towns generally improved, the Fair became of little or no use, was soon perverted from its original design, and for many years provided a moral nuisance, attracting chiefly the more corrupt portion of the community, and exhibiting for successive days, each year, scenes of vice and folly in some of their worst forms." Rev. Edward L. Parker, The History of Londonderry 62, 63 (1851).

⁵As summarized in the 1860 New Hampshire State Agricultural Society report, "We allow horse racing to monopolize all the large premiums and nearly all the time and attention of visitors at our fairs. *** We offer more to him that will run around the course quickest than to him who raises the best acre of corn. We offer to young ladies five times as much for the best riding on horseback as for the best bread. We offer twice as much for the best display of jewelry as for the best bushel of wheat. We offer ten times as much for the fastest trotting horse ... and without regard to his docility, strength, youthfulness or even beauty, as for the best pair of working oxen." Leon W. Henderson, New Hampshire Fairs, 1722-1970, (1970). And further as contained in the 1870 Board of Agriculture Report, "We consider these fairs incomplete without the evening gathering of farmers for discussion. We hold the managers of our fairs, who fail to provide a place for and call such meetings, and see that they are sustained, are as derelict in their duty as if they failed to offer a premium list or provide exhibition grounds." Id.

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In 1939, the legislature passed the predecessor to today's RSA 284:25, which provided for a portion of the parimutuel harness racing premiums be distributed to agricultural fairs based on their respective level of annual premiums. This apparently generated a very adequate source of revenue for fairs to expand. For many years, the Plymouth State Fair, due to its level of premiums, received a large share of the redistributed funds. While the statute is still in effect, it recently has been only nominally funded and has not been a significant source of revenue to either the Taxpayer or other agricultural fairs in the state.

A review of the Taxpayer's financial documents and the 1992 fair program indicates that a large share of the fair's activities and income are directly related to the entertainment aspect of the fair. For instance, in 1992, approximately 40% of the annual income was derived directly from entertainment activities such as parimutuel racing, amusements, concessions, and bingo. 52% of the income was derived from general admission tickets to the fair itself, with the balance of 8% from miscellaneous sources. In 1992, less than 15% of the fair's expenses were related to awards and premiums for agricultural events and entries. The balance of the expenses were generally related to the operation and maintenance of the fairgrounds.

While it is clear from the history of fairs that festivities and entertainment enliven the more mundane aspects of a fair and are a necessary component of a successful fair⁶, the testimony and evidence suggest

⁶ ..."a fair which presented only a collection of farm animals and samples of crops would be a drab affair and would arouse little enthusiasm for the general subject of agriculture, and although music and funmaking are not indispensable to agricultural exhibits, they are proper incidents which add entertainment to the program and thereby render the whole more effective." 89 ALR 2d 1109 § 3. Referencing York County Agr. Soc. v. York County, Pa Super 85 (1935), 179 A 893.

amusements have become a dominant feature of the Plymouth State Fair overshadowing the agricultural component. This trend has resulted from the diminishing agricultural community and economy, concerns of insurance liability, and the financial necessities of operating the fair.

CONCLUSION

The board's jurisdiction is completely statutory (see Appeal of Town of Sunapee, 126 N.H. 214 (1985)), and thus, the board does not have the latitude to vary from the law as it is written. The board finds that based on the statutory and common definitions of charitable, the operation of the annual agricultural fair by the Taxpayer does not meet the critical elements of a charity as defined in Section III (B). The fair is comprised of primarily two components: the promotion of agriculture and entertainment. Neither component is charitable either separately or in combination.

In arriving at its determination, the board has viewed the Taxpayer's activities in their entirety. See Appalachian Mountain Club v. Meredith, 103 N.H. 5 (1960) (determination of an organization's eligibility is determined by looking at its activities as a whole). If one looks at the activities that the Taxpayer generally provide for society, they are primarily entertainment in nature and not charitable. While arguably the agricultural components may provide some social benefit, (e.g., the education and premiums related to the better agricultural events and entries), such activities are to the benefit of a specific industry and have been significantly overshadowed by the general entertainment activities of the fair (e.g., parimutuel racing, concession stands, music, demolition derby, bingo, midway rides, etc.).

As stated earlier, the question of whether agricultural fairs qualify as charitable activities has not been addressed by this board or New Hampshire courts. Guidance from other states is also slim. 89 ALR 2d 1104 summarizes and cites cases from other states. However, the cases are not on point because in some cases, specific statutory exemptions exist for fairs or, in other cases, the issue focuses on whether certain uses qualify the property for exemption.⁷

Two cases that come the closest to providing some guidance are Maryland State Fair and Agricultural Soc. v. Supervisor of Assessments, 225 Md 574, 172 A2d 132 (1961), 89 ALR 2d 1095; and Lewiston v. All Maine Fair Assoc., 138 Me 39, 21 A2d 625 (1941). While both cases dealt primarily with use issues, the exemptions arose from general exemption statutes that exempted property of either "educational and charitable" institutions (Maryland) or "literary or scientific" institutions (Maine). However, these cases differ from the present one in two aspects: (1) the request by State Fair, Inc. is for a charitable, not educational, exemption and according to Appeal of C.H.R.I.S.T., Inc., 122 N.H. 982 (1982), organizations cannot claim or receive multiple exemptions; and (2) the organization's purposes in the Maryland and Maine cases are much more detailed than the purpose of State Fair, Inc., thereby obligating them to perform specific activities of public good; such specificity and obligation to perform charitable functions is lacking in State

⁷"Whether an agricultural association is a society within the meaning of a statute exempting such organizations from property taxation is a question which depends upon the terms of the statute and the corresponding characteristics of the organization." 89 ALR 2d 1107 § 2[a].

Fair, Inc.'s purpose.

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When our state had a primarily agricultural economic base, an argument could have been made that fairs provided a necessary educational forum for society in general. However, today with the general decline in the importance of agriculture in the region, fairs have focused more and more on the entertainment component. While society through its legislature may decide that such fairs do warrant an exemption, the board does not find that the current charitable exemption statutes provide an avenue for such an exemption.

The board notes that during its research and investigation, it determined that many of the northeastern states have specific statutes exempting the property of agricultural societies and fairs.⁸ These specific exemption statutes are in addition to charitable exemption statutes similar to New Hampshire's. While this is not controlling in the board's determination, it is interesting to note that other states have determined that agricultural fairs warrant a distinct exemption. Whether such an exemption is appropriate in New Hampshire is an issue that could be pursued legislatively by the fairs.

PARTIES' REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

Below are the board's responses to the parties' request for findings and rulings. If conflict exists between the board's response to a request and the board's written decision, the decision controls.

⁸McKinney's R.P.T.L. § 450 (amended 1978); C.G.S.A. Ch. 203 §12-81 (10) (1958); M.G.L.A. Ch. 59 § 5 Cl. (4) (1970); V.S.A.T. 32 § 3802 (1959).

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Taxpayer's request for findings of fact:

1. Granted.
2. Denied.
3. Neither granted nor denied.
4. Neither granted nor denied.
5. Neither granted nor denied.
6. Granted.
7. Denied.
8. Neither granted nor denied.
9. Denied.
10. Neither granted nor denied.
11. Denied.
12. Denied.
13. Granted.
14. Neither granted nor denied.
15. Granted.
16. Neither granted nor denied.
17. Granted.
18. Granted.
19. Neither granted nor denied.
20. Granted.

Taxpayer's request for rulings of law:

- A. Denied.
- B. Denied.
- C. Denied.
- D. Denied.
- E. Denied.

Town's request for findings of fact and rulings of law:

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Denied. (See Young Women's Christian Assoc. v. Portsmouth, 89 N.H. 40, 44 (1937)).
8. Granted.
9. Denied.
10. Granted.

11. Granted.
12. Granted.
13. Granted.
14. Neither granted nor denied.
15. Granted.
16. Granted.

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17. Denied.
18. Granted.
19. Granted.
20. Neither granted nor denied.
21. Neither granted nor denied.
22. Granted.
23. Granted.
24. Granted.
25. Granted.
26. Neither granted nor denied.
27. Granted.
28. Granted.
29. Granted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Luke A. Glavey, Esq., Attorney for State Fair, Inc., Taxpayer; and Daniel D. Crean, Esq., Attorney for the Town of Plymouth.

Dated: June 13, 1994

Valerie B. Lanigan, Clerk

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