

Roman Catholic Bishop of Manchester

v.

City of Berlin

Docket No.: 18328-99EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the denial of applications for tax exemptions on two properties within the “City.” The appeal is granted and a full exemption is ordered for the 1999 tax year on the properties described below.

The Taxpayer, a corporation created by a special act of the legislature in 1901, is responsible for all Roman Catholic church institutions and activities in the City and surrounding areas. The Taxpayer owns a number of properties in the City, all of which, until 1999, were apparently granted the religious exemption provided in RSA 72:23, III. In 1999, however, the City denied a religious exemption on two specific properties: the St. Joseph School Building, at 618 Third Avenue, Map 110, Lot 1 (first assessed by the City at \$115,400, and then reduced to \$104,000); and the St. Anne Parish Hall at 58 Church Street, Map 129, Lot 4 (first assessed by the City at \$163,800, and then reduced to \$81,900) (the “Properties”).

Board’s Rulings

RSA 72:34-a authorizes the board to “order an exemption . . . if a tax has been assessed” and the City has “refuse[d] to grant an applicant an exemption . . . to which the applicant may be entitled under the provisions of RSA 72:23 . . .” The Taxpayer timely filed an application for exemption on each property.

RSA 72:23, III exempts from taxation:

“Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state. . .”

The burden of proof is on the Taxpayer, see RSA 72:23-m and TAX 204.06.¹ The board finds the Taxpayer carried this burden and is entitled to an exemption on the Properties in this case.

The City does not dispute the Taxpayer is a “regularly recognized and constituted denomination, creed or sect,” but questions whether the present use of the Properties qualifies the Taxpayer for an exemption under RSA 72:23, III. At the hearing held on April 2, 2001, Rev. Richard A. Roberge, the pastor in charge of all Catholic churches in the area (the “Parish”), testified at length regarding the past and present uses of each of the Properties.

The St. Joseph School Building is a large 5-story structure presently being used for

¹See also New Canaan Academy v. Town of Canaan, 122 N.H. 134, 138 (1982): “At the outset, the burden of proving an institution’s entitlement to a tax exemption rests on the applicant. (Citations omitted)”

storage purposes. It was built in the late 1920's and early 1930's. It was first used as a Catholic school for approximately 50 years and then as a "Christian Life Center" and a parish hall. In the mid-1980's, however, because of high heating costs and declines in the number of active church participants, it was converted to a "cold storage" facility for the parish and affiliated church organizations, including the St. Vincent dePaul Society. In 1999, when the City denied the exemption, the building had electricity, but no heat, hot water or elevator; as a result, only about 60 percent (the lower three floors) of the building was being used to store clothing, furniture, building supplies and other items used to support church functions; the rest of the building was unused. According to Reverend Roberge, the Taxpayer is unable to find a better use or alternative occupant for the St. Joseph School Building that would be consistent with the church's mission.

The St. Anne Parish Hall was built in the early 1960's and has served as a church activity center, with varied facilities and a number of uses. Its facilities include a stage and canteen, kitchen, conference and meeting rooms, and, at one time, a candlepin bowling alley for the youth ministry. Its lower level is used for the Parish's maintenance workshop and storage of the Parish's vehicles (dump truck, front end loader, backhoe, lawn mowers, compressor, etc.), many used for maintenance of the Parish's four cemeteries. The St. Anne Parish Hall is used as a place of assembly for church worship, wedding receptions and funerals, and for meetings of church and auxiliary organizations. As the largest assembly hall in the City, the building is also used for bingo events sponsored by the church and by the American Red Cross. Use is also offered to Parish-chartered Boy and Girl Scout Troops, and to other "not-for-profit" community

organizations, such as AA (Alcoholics Anonymous) and MESH (Motivated Elderly Self Help). On occasion, “donations” are given to the church by community groups who wish to use the hall. For example, the local Fish and Game Association donates \$400 when it uses the hall for its annual banquet. These donations help cover the church’s insurance, cleaning and other maintenance costs, but the building is not used for any commercial purpose. As Reverend Roberge testified, the uses of the Properties are consistent with church policy and its mission of serving the needs of the community.

By letters dated May 12, 1999 (Taxpayer Exhibits 1 and 3), the City denied the Taxpayer’s application for exemptions on each of the Properties. Although the letters are not explicit on the reasons for the denial, testimony by the City’s representatives (Andy Blais and Dave Woodward) indicate the City questioned whether the uses described above met the requirements of the exemption statute and New Hampshire case law. The City, in that year, made, and then reduced, tax assessments on the properties; these reductions reflect a belief by the City that some type of apportionment (10% exemption to the St. Joseph School Building and 50% exemption to the St. Anne Parish Hall) between religious and non-religious uses is appropriate.

In Municipality Exhibit A, the City submitted headnote citations from the annotated statute (“2000 Cumulative Supplement”), highlighting the proposition that “RSA 72:23 does not prevent apportionment by the City between exempt and nonexempt uses in religious exemption cases.” While this may be true in the abstract, determinations of religious exemptions are made on a case-by-case basis. The City failed to apply the case law to the facts presented by the

Taxpayer or present evidence of its own to support the method or basis for apportionment. The board concludes no apportionment is warranted and a full (“100%”) exemption is appropriate for the Properties.

The board is persuaded by the Taxpayer’s evidence that the ‘highest and best use’ of the St. Joseph School Building in 1999 was for storage and, if the Taxpayer did not use this building for this purpose, other church operations and facilities would have been adversely affected. Since no feasible use was shown for the upper two floors of this building, no apportionment (reduced assessment) is warranted, as might be the case when “exempt and non-exempt uses” (such as religious and commercial) are both present in one property.

As for the St. Anne Parish Hall, the uses described by Reverend Roberge all appear to be either church-related or part of an integrated set of community-based activities either directly sponsored or actively supported by the church. Among its case citations, the Taxpayer correctly relies upon St. Paul’s School v. City of Concord, 117 N.H. 243 (1977). In that case, the supreme court reviewed the legislative history of the tax exemption statute and prior New Hampshire case law to reject an “exclusive use” test in favor of one focusing on the “integrated activities of the association as a whole” and what facilities are “reasonably necessary” to accomplish the institution’s charitable purpose. The court also found support in cases decided by other jurisdictions to conclude a “strong presumption [exists] in favor of the judgment of an . . .

institution's officers as to what uses of land or buildings are necessary to promote the institution's purposes."²

Reverend Roberge's testimony supports the Taxpayer's position that the present uses of the St. Joseph School Building and St. Anne Parish Hall buildings help advance the overall purposes and mission of this church. In Appeal of Kiwanis Club of Hudson, 140 N.H. 92, 93-94 (1995), the supreme court reversed an order of the board awarding a partial ("25%") exemption and instead awarded a "full exemption" even though other organizations used the Kiwanis function hall four of five nights per week (for fund-raising through bingo games), where such fund-raising uses were for "the betterment of the community." The court in Kiwanis quoted with approval a Maine case involving a religious institution: "Green Acre Baha'i Institute v. Town of Eliot, 110 A.2d 581, 583 (Me. 1954)([W]here dominant use . . . is for [charitable] purposes, tax exemption will not be defeated by either occasional or purely incidental [use].');" and also relied on another New Hampshire case involving multiple uses of charitable property: "cf. Wentworth

² Although St. Paul's School involved a claim of exemption by an educational institution under RSA 72:23, IV, the same reasoning supports an exemption claim by a religious institution under RSA 72:23, III, and the statutory language regarding 'direct' use is quite similar in these paragraphs.

Home v. Portsmouth, 108 N.H. 514, 517, 238 A.2d 730, 732 (1968) (parking lots of exempt property are exempt).” Id. at 95.

The board notes very strong similarities between this case and St. Paul’s Church v. Concord, 75 N.H. 420 (1910), where the municipality attempted to deny a tax exemption to a church “parish house” used both for religious functions and other purposes (including “meetings of societies, lectures, musical recitals and private dancing parties” conducted by others). The supreme court held the church was entitled to a full tax exemption, even at a time when the religious exemption statute was much more limited in scope (to “houses of public worship” only). It is instructive to review the court’s reasoning, because it is no less applicable today than it was in 1910:

“There is no suggestion that the plaintiff does not use the building for all such religious exercises as it was devoted to, or that its use of it for such purposes is interfered with, or curtailed, by the fact that it is sometimes . . . used for entertainment of a non-religious character. . . . Its religious use is not rendered less because of its secular use. The plaintiff’s occupation of it for the promotion of religion has not in fact been abandoned or diminished in consequence of its temporary use”

“. . . When it is not required or needed for religious services, and when its use for other purposes would not curtail or interfere with the full and free accomplishment of its original and essential design, its remaining unoccupied and useless would not seem to be a necessary requisite for its exemption from taxation. . . . The church activities in it are not lessened or interfered with by its occasional use for entertainments.”

“. . . While it may be true that church property leased to and permanently occupied by others for business purposes would not be exempt (Citations omitted), it does not follow that an occasional and temporary occupation by third parties who pay for the privilege deprives the property of its nontaxable character.”

Id. at 422-26. In brief, property of a religious institution like the Taxpayer that may not be fully used (the St. Joseph School Building) or that may be used ‘occasionally and temporarily’ by

“secular” organizations (the St. Anne Parish Hall) will not lose a religious exemption simply for these reasons.

In light of these decisions, the evidence presented by the Taxpayer and the lack of rebuttal evidence by the City to justify either its original or reduced assessments (reflecting 10% and 50% exemptions), the board finds the Taxpayer is entitled to a full exemption for the tax year 1999 on the Properties. Since tax exemptions require annual applications, the Taxpayer must, of course, continue to apply to the City and qualify for an exemption on the Properties in future years, to the same extent as its compliance obligations on other church properties.

Responses to Taxpayer’s Proposed Findings of Fact and Rulings of Law

In these responses, “neither granted nor denied” generally means one of the following:

- a. The request contained multiple requests for which a consistent response could not be given;
- b. The request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. The request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. The request was irrelevant; or
- e. The request is specifically addressed in the decision.

Findings of Fact

1. Granted.
2. Granted, except the Taxpayer requested an “exemption” rather than an “abatement” on each

property.

3. Granted.

4. Granted.

5. Granted.

6. Granted.

7. Granted.

8. Granted.

9. Granted.

10. Granted.

11. Granted.

12. Granted.

13. Granted, except the Taxpayer requested an “exemption” rather than an “abatement.”

14. Granted.

Rulings of Law

1. Granted.

2. Neither granted nor denied.

3. Granted.

4. Granted.

5. Granted.

6. Granted.

7. Granted.

Further Proceedings

A motion for rehearing, reconsideration or clarification (collectively “rehearing motion”) of this decision must be filed within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; TAX 201.37(a). The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board’s decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(f). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board’s denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Wayne T. Moynihan, Esq., Counsel for Roman Catholic Bishop of Manchester, Taxpayer; and Chairman, Board of Assessors of Berlin.

Date: May 9, 2001

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Lisa M. Moquin, Temporary Clerk

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