

RENDERED: MAY 7, 2010; 10:00 A.M.  
TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2009-CA-001144-MR

CONNIE HANCOCK, FLOYD  
COUNTY PROPERTY VALUATION  
ADMINISTRATOR; AND THE  
KENTUCKY REVENUE CABINET,  
N/K/A THE DEPARTMENT OF REVENUE,  
FINANCE AND ADMINISTRATION  
CABINET, COMMONWEALTH  
OF KENTUCKY

APPELLANTS

v.

APPEAL FROM FLOYD CIRCUIT COURT  
HONORABLE DANNY P. CAUDILL, JUDGE  
ACTION NO. 05-CI-00638

THE KENTUCKY BOARD OF  
TAX APPEALS AND PRESTONSBURG  
INDUSTRIAL CORPORATION

APPELLEES

OPINION  
AFFIRMING

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BEFORE: MOORE, TAYLOR, AND THOMPSON, JUDGES.

TAYLOR, JUDGE: Connie Hancock, Floyd County Property Valuation Administrator, and the Kentucky Revenue Cabinet, n/k/a the Department of Revenue, Finance and Administration Cabinet, Commonwealth of Kentucky (collectively referred to as appellants) bring this appeal from a May 22, 2009, Opinion, Findings of Fact, Conclusions of Law and Judgment of the Floyd Circuit Court determining that Prestonsburg Industrial Corporation was exempt from paying ad valorem taxes and reversing an order of the Kentucky Board of Tax Appeals to the contrary. We affirm.

Prestonsburg Industrial Corporation (PIC) was formed as a nonprofit corporation in 1968 by “a group of local charitable-minded businessmen.” The intent was “to assist in the development of the City of Prestonsburg as a means to attract business and industry into the area.” Pursuant to PIC’s articles of incorporation, its purpose was to advance the societal and economic interests of Prestonsburg as well as the general welfare and prosperity of the area. It also was created to operate exclusively for religious, charitable, scientific or educational purposes for people residing in the Prestonsburg area.

Relevant to this appeal, PIC purchased a 100-acre tract of land from the City of Prestonsburg in 2001. The City of Prestonsburg agreed to accept \$1.00 for the property in exchange for a portion of the proceeds to be realized from the sale of the property by PIC. Shortly after the deed of conveyance from the City to PIC was recorded, the Floyd County Property Valuation Administration (PVA) placed the 100-acre tract on the “tax rolls” and notified PIC’s secretary, Burl

Spurlock, of such action. Spurlock notified the PVA that PIC was entitled to tax exempt status pursuant to Section 170 of the Kentucky Constitution. The PVA supplied Spurlock with an application for tax-exempt status to be filed with the Kentucky Revenue Cabinet (Cabinet). The Cabinet subsequently notified PIC that it was not entitled to tax exempt status.

PIC filed an appeal with the Floyd County Board of Assessment Appeals (Floyd County Board). Following a hearing, the Floyd County Board determined that the 100-acre tract owned by PIC was tax exempt. PIC was later informed, however, that the Floyd County Board did not have authority to make a determination regarding tax-exempt status and was advised to “appeal to Frankfort.”

PIC then filed a timely appeal to the Kentucky Board of Tax Appeals (KBTA). Following a hearing, KBTA rendered Order No. K-19361. Therein, the KBTA determined:

Under the Kentucky Constitution § 170, in order for real estate to be exempt from taxation the property must belong to a public entity and must be used for public purposes. The Appellant in this case [PIC] is not a governmental body or an agency of same, nor is it created and controlled by governmental body for the purpose of performing a governmental duty. Thus, the Appellant is not exempt from taxation.

PIC subsequently sought review of KBTA’s decision in the Floyd Circuit Court. By order entered May 22, 2009, the Floyd Circuit Court reversed

KBTA's decision and held that the 100-acre tract owned by PIC was tax exempt.

The circuit court specifically concluded:

[T]hat Section 170 of the Kentucky Constitution does not require PIC to pay the taxes which the BTA (Board of Tax Appeals) has sought to impose upon it. PIC is exempt from the payment of such taxes, or any taxes, since it is a charitable institution. Further, PIC's property is public property used for public purposes. That property, or any of PIC's property, is exempt from the payment of taxes.

As such, the circuit court held that PIC was a charitable organization and that the 100-acre tract was public property used for public purposes, thus excluding same from taxation pursuant to Section 170 of the Kentucky Constitution. Our review follows.

Appellants contend that the circuit court erroneously reversed the KBTA's decision and erroneously held that the 100-acre tract owned by PIC was tax exempt under Section 170 of the Kentucky Constitution. Judicial review of an administrative agency's decision is concerned with arbitrariness. *American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission*, 379 S.W.2d 450 (Ky. 1964). Arbitrariness has many facets, but an administrative agency's decision is arbitrary if the agency erroneously applied the law to the facts presented therein. *See id.* In this appeal, the material facts are undisputed. We are concerned with application of the law to those facts, which presents a question of law for the Court. *See Camera Center, Inc. v. Revenue Cabinet*, 34 S.W.3d 39 (Ky. 2000). Specifically, we are faced with the issue of

whether the 100-acre tract owned by PIC qualified for an exemption from ad valorem taxes under Kentucky Constitution Section 170 because either: (1) PIC constitutes a purely charitable organization or (2) the 100-acre tract constitutes “public property used for public purposes.” We initially address whether the 100-acre tract owned by PIC constitutes “public property used for public purposes” within the meaning of Kentucky Constitution Section 170.

Under Kentucky Constitution Section 170, property that is “public property used for public purposes” is exempt from ad valorem taxation. To constitute “public property” under Kentucky Constitution Section 170, the property must be “owned by all the citizens of the state, or by all the citizens of a community.” *Inter-County Rural Elec. Co-op. Corp. v. Reeves*, 171 S.W.2d 978, 982 (Ky. 1943).

In the case at hand, the 100-acre tract was titled in fee simple to PIC. PIC is not a governmental entity; rather, it is a private corporation. While it may be true that PIC promotes economic development and works closely with the City of Prestonsburg, the fundamental nature of PIC remains a private entity. And, the circuit court’s attempt to identify PIC as an agent of the city or county was simply misplaced. Indeed, the circuit court specifically observed that “PIC has agreed that it is neither a governmental agency nor a municipality subject to the open records law.”

It must be acknowledged that the citizens of the community did not actually own the 100-acre tract. Rather, the 100-acre tract was, in fact, owned by

PIC, a private corporation. However, the circuit court reasoned that since the 100-acre tract “will inure to the benefit of the aggregate of the community” such tract is essentially owned by the community. We, however, reject this reasoning. The circuit court confused the purpose of the 100-acre tract with the ownership of the 100-acre tract. The distinction between purpose and ownership is pivotal. As recognized by our Supreme Court:

The first observation to be made is that the devotion of its functions to public purposes does not clothe property with public ownership. It is obvious that a private person, firm, or corporation engaged in the distribution of electricity is engaged in an enterprise which serves a purpose no less public than a municipality or other governmental agency engaged in like enterprise. But such function does not wrest the ownership of the property from those who acquired it previous to the service to which it became devoted, and the service to which it is put does not of itself command exemption from taxation under section 170 of the Constitution, because the purpose of the service is not the only public attribute the property must have attained to be the subject of the exemption claimed. It must in addition be owned by the public.

*Reeves*, 171 S.W.2d at 981.

Under no interpretation can it be said that all citizens of Prestonsburg or Floyd County “own” the 100-acre tract. Consequently, we conclude that the 100-acre tract owned by PIC did not constitute public property used for a public purpose within the meaning of Section 170 of the Kentucky Constitution.

We now determine whether the 100-acre tract constitutes property belonging to a purely public charity within the meaning of Kentucky Constitution

Section 170. To be entitled to the charitable exemption under Kentucky Constitution Section 170, “the institution must itself be a charity and the income from its property must be used to further its charitable purpose . . . [and] the property must be employed for a purely charitable purpose.” *Iroquois Post No. 229, Am’n Legion v. City of Louisville*, 309 S.W.2d 353, 354 (Ky. 1958). When determining whether property is employed for a purely charitable purpose, “it is sufficient that the ultimate effect of the use of the property is to accomplish the charitable purposes of the institution.” *Banahan v. Presbyterian Hous. Corp.*, 553 S.W.2d 48, 51 (Ky. 1977).

In the case at hand, PIC was incorporated for the general purpose of:

[A]dvanc[ing] the educational, civic, social, commercial, and economic interests of the City of Prestonsburg and the general welfare and prosperity of its tributary territory; to promote integrity and good faith; just and equitable principles in business and professional activity; and uniformity in commercial usages and to acquire, preserve, and distribute educational, civic, social, commercial, and economic statistics and information of value; and further, to operate exclusively for religious, charitable, scientific or educational purposes for the people residing in the aforesaid area, including, but not limited to, receiving contributions and paying them over to one or more organizations described in Section 501(c)(3) and exempt from taxation under Section 501(a) of the Internal Revenue Code as now in force and afterwards amended. (Article IV, Section 1)[.]

Under PIC’s articles of incorporation, it is specifically stated that “[t]he corporation is organized to serve the public interests; accordingly, it shall not be operated for the benefit of private interests.” The articles of incorporation further

provide that PIC is to “exercise the general powers as set forth in Chapter 273, Kentucky Revised Statutes.” KRS Chapter 273 is titled Charitable and Educational Societies and sets forth the requirements of such societies. Moreover, PIC’s articles of incorporation prohibit paid compensation to its members, offices, or directors.

It is undisputed that PIC was incorporated for the purpose of promoting economic development in Prestonsburg and the surrounding area by attracting business and industry. PIC purchased the 100-acre tract from Prestonsburg for \$1.00. Concomitant thereto, PIC and Prestonsburg entered into an “agreement” concerning development of the 100-acre tract. Under this agreement, PIC promised “to use its best efforts to develop . . . [the 100-acre tract] for the creation of new jobs or in order to preserve existing jobs.”

From the above facts, we believe that PIC is a charitable organization. Although PIC’s purpose is not to provide society with such basic human needs as food, clothing, or shelter, our case law clearly holds that a charity should not be so narrowly defined and necessarily includes “activities which reasonably better the condition of mankind.” *Bahanah*, 553 S.W.2d at 52 (quoting *Commonwealth ex rel Lockett v. Bernheim Foundation, Inc.*, 505 S.W.2d 762, 764 (1974)). In contemporary society, economic development is a fundamental need and is directly linked to the general welfare of each member thereof. The creation and preservation of jobs in a community serves a societal need and performs one of the most basic functions of government. Moreover, the stated purpose of PIC’s



acquisition of the 100-acre tract was to develop the tract so as to promote job creation and job preservation in the community. Thus, it is clear that PIC's "activities . . . reasonably better the condition of mankind." *Banahan*, 553 S.W.2d at 52.

As such, we believe that PIC is a charitable organization and that its resources are used for the charitable purpose of promoting economic development in the community. The 100-acre tract of land at issue is clearly employed to fulfill that charitable purpose. We also note that neither the shareholders nor the directors receive any economic gain or profits from the activities conducted by PIC in promoting economic development.

Accordingly, we hold that PIC is a purely charitable organization and that the 100-acre tract is exempt from ad valorem tax under Section 170 of the Kentucky Constitution.

For the foregoing reasons, the Opinion, Findings of Fact, Conclusions of Law and Judgment of the Floyd Circuit Court is affirmed.

ALL CONCUR.

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