

**[J-193-2004]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

**CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.**

WESLEY UNITED METHODIST CHURCH,		: No. 105 MAP 2004
		: : Appeal from the Order of the
Appellee		: Commonwealth Court dated March 4,
		: 2004 at No. 1424 CD 2003 affirming the
v.		: Order of the Court of Common Pleas of
		: Dauphin County dated May 27, 2003 at
		: No. 2002 CV 1780 TX
		: : 844 A.2d 57 (Pa. Cmwlth. Ct. 2004)
DAUPHIN COUNTY BOARD OF ASSESSMENT APPEALS,		: : ARGUED: December 1, 2004
Appellant		: : :

**DISSENTING OPINION**

**MR. CHIEF JUSTICE CAPPY**

**Decided: December 30, 2005**

I respectfully dissent. Unlike the majority, I believe that this court's decision in Second Church of Christ of Philadelphia v. City of Philadelphia, 157 A.2d 54 (Pa. 1959) construing the predecessor to Article VIII, Section 2(a)(i) of the Pennsylvania Constitution, PA. CONST. art. VIII, §2(a)(i),<sup>1</sup> and Section 204 of the General County Assessment Law, 72 P.S. §5020-204(a)(1), is as valid today as it was when it was decided in 1959. Therefore, I

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<sup>1</sup> The exemption from taxation in question originally appeared in the 1874 Pennsylvania Constitution in Article IX, Section 1. The 1968 Amendments to the Pennsylvania Constitution divided Article IX, Section 1 into two provisions and renumbered Article IX, Section 1 as Article VIII, Sections 1 and 2.

would uphold Second Church, rather than overrule it, and would apply the principles it pronounced to the present case. In doing so, I would conclude that the property that Appellee Wesley United Methodist Church (“Church”) owns and uses as a parking lot is not exempt from taxation and, thus, would reverse the Order of the Commonwealth Court.

Since 1874, the Pennsylvania Constitution has authorized the General Assembly to exempt from taxes “actual places of religious worship.” PA. CONST. (former) art. IX, §1.<sup>2</sup> At the present time, this authorization, which is in Article VIII, Section 2(a)(i) of the Constitution, provides:

§ 2. Exemptions and special provisions

The General Assembly may by law exempt from taxation:

(i) Actual places of regularly stated religious worship....

PA. CONST. art. VIII, §2(a)(i).

In 1933, the General Assembly exercised the authority the Constitution gives it in this regard and enacted a tax exempting statute, which states:

§ 5020-204. Exemptions from taxation

(a) The following property shall be exempt from all county, city, borough, town, township, road, poor and school tax, to wit:

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<sup>2</sup> Before the Constitution of 1874 was adopted, the General Assembly was free to grant exemptions from taxation without restriction, and did so with some frequency. During the debates that took place at the Convention to Amend the Constitution, the delegates sought to end the practice of special tax exemption legislation by defining the General Assembly’s authority to grant tax exemptions with specificity. 6 DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA 93 (1873). As to an exemption from taxation for church properties, some delegates at the Convention were of the opinion that no such exemption was in order while others believed that an exemption for churches, parsonages owned by churches, and attached lands up to five acres was desirable. Id. at 93-94. After discussion, the delegates voted to give the legislature the authority to grant exemption from taxation to “actual places of religious worship.” Id. at 93-98.

(1) All churches, meeting-houses, or other actual places of regularly stated religious worship, with the ground thereto annexed necessary for the occupancy and enjoyment of the same[.]

72 P.S. §5020-204(a)(1).

In the area of law in which this appeal arises, there are two well-settled principles that guide us. The first concerns constitutional construction and provides that the language of the Pennsylvania Constitution, which is to be interpreted in its popular sense and as understood by the people when they voted on its adoption, is controlling. Ieropoli v. AC&S Corporation, 842 A.2d 919, 925 (Pa. 2004). The second concerns statutory construction and holds that this court is duty bound to construe a statute, if at all possible, so as not to render it unconstitutional. Petition of Stieska, 135 A.2d 62, 65 (Pa. 1957) (citing the Statutory Construction Act of May 28, 1937, 46 P.S. § 552(3)). See 1 Pa. C.S. §1922(3).

In Second Church, this court applied these rules to construe Article IX, Section 1 of the Pennsylvania Constitution and 72 P.S. §5020-204(a) so as to determine whether the Superior Court correctly ordered that exemptions from taxes be granted to two churches for parking lots. Starting with the facts, Second Church is on all fours. As in this case, the land in question was contiguous to the church buildings; was used solely for parking; and was not necessary for ingress or egress or for air and light. Likewise, as in this case, the record showed that church members were increasingly residing in places that made driving to church essential; that parking spaces on the street were insufficient in number to accommodate all vehicles; and that given present-day conditions, inadequate parking could lead to a church's demise. Second Church of Christ of Philadelphia v. City of Philadelphia, 151 A.2d 860, 864-65 (Pa. Super. 1959). Based on such a record, the Superior Court concluded that the parking lots were tax exempt, falling within both the Constitution and the tax exempting statute. Id. at 866. This court on review, however, did not. Second Church, 157 A.2d at 54.

We began our analysis with the interplay between Article IX, §1 of the Constitution and 72 P.S. §5020-204(a), and noted that while the Constitution spoke to “actual” places of religious worship, the latter spoke to annexed ground that was “necessary” to occupying and enjoying such places. Id. at 55. Keeping in mind that a tax exempting statute cannot extend an exemption beyond that allowed by the Constitution, we referred to our decision in First Baptist Church of Pittsburgh v. City of Pittsburgh, 20 A.2d 209 (Pa. 1941), and reiterated that we had interpreted the word “necessary” as used in 72 P.S. §5020-204(a) as “reasonable and not absolute,” but not “merely desirable”; and clarified that we had “limited necessity to entrance, exit, light and air.” Second Church, 157 A.2d at 55 (quoting First Baptist, 20 A.2d at 123).

As to parking lots in particular, we pointed out the obvious -- that a parking lot on which there is no religious observance “cannot be an actual locus of worship without borrowing status from the church structure[.]” and found nothing in the case law or in the churches’ argument that persuaded us that this could be achieved. Id. We then discussed the well-settled principle that a church building does not lose its exemption under the Constitution or the tax exempting statute because of heating space, robing rooms, spaces for the storage of music or Bibles, and the like, and observed that it did not apply. Id.; see, e.g., Chevra Achewa Anshe Cheval v. City of Philadelphia, 176 A. 779 (Pa. Super. 1935).

Finally and significantly, we articulated the parameters that the Constitution required for the tax exempting statute, stating: “The status of an actual place of worship has not been extended beyond ingress and egress, and light and air. We see no reason *or, permission*, because of the constitutional provision to extend it farther.” Second Church, 157 A.2d at 55 (emphasis added). Accordingly, we concluded that parking is an adjunctive use of property that is not part of actual worship, and held that the churches were not entitled to the tax exemption they sought. Id. at 56 (citations omitted).

Turning to the instant case, on one point, the majority is correct -- “Times have changed since Second Church was decided in 1959.” Majority Opinion at 3. The Pennsylvania Constitution in relevant part, however, has not. Therefore, Second Church remains the law and is controlling. Simply put, under its teaching, a tax exemption to the Church for its parking lot is violative of Article VIII, Section 2(a)(i) of the Pennsylvania Constitution and Section 204 of the General County Assessment Law.

Accordingly, I respectfully dissent.