

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

UNIVERSITY OF DELAWARE,	)	
	)	
Plaintiff-Below, Appellant,	)	
	)	
v.	)	
	)	
NEW CASTLE COUNTY DEPARTMENT	)	C.A. No. 02A-03-001 RRC
OF LAND USE and NEW CASTLE	)	
COUNTY BOARD OF ASSESSMENT	)	
REVIEW,	)	
	)	
Defendants-Below, Appellees.	)	

Submitted: November 25, 2002  
Decided: January 30, 2003

**MEMORANDUM OPINION**

**UPON APPEAL FROM A DECISION OF THE NEW CASTLE  
COUNTY BOARD OF ASSESSMENT REVIEW. REVERSED.**

William E. Manning, Esquire and Richard A. Forsten, Esquire, Klett Rooney Lieber & Schorling, Wilmington, Delaware, Attorneys for Plaintiff-Below, Appellant.

Mary Ann Kelly, Esquire, Assistant New Castle County Attorney, Michael P. Kelly, Esquire and A. Richard Winchester, Esquire, McCarter & English, LLP, Wilmington, Delaware, Attorneys for Defendants-Below, Appellees.

COOCH, J.

## I. INTRODUCTION

This is an appeal from a decision of the New Castle County Board of Assessment Review (“the Board”) sustaining an earlier assessment of property taxes made by the New Castle County Department of Land Use (“the County”). The property found to be taxable, 726 square feet of the Trabant Student Center (“the Student Center”) of the University of Delaware (“the University”), had been leased by the University to Wilmington Savings Fund Society, FSB (“the Bank”) to provide certain banking services to the University community. After receiving evidence (including the hearing of testimony), the Board, by decision dated January 31, 2002, upheld the County’s determination that the Bank’s rented area was not exempt from property taxation.<sup>1</sup> The relevant facts are not in dispute, and this Court, in considering the University’s appeal, adopts (with certain additions) the facts as set forth in the Board’s decision.

The issue below and on appeal is the effect to be given the term

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<sup>1</sup> The four present and voting members of the Board split evenly 2-2 on the question of whether the Bank’s rented area of the Student Center was exempt from taxation; because of this split, and because “there was no majority in favor of [the University’s] motion [that the property was exempt from taxation]...the [University’s] appeal was denied.” University of Delaware v. New Castle County Dep’t of Land Use, No. 1058, at 5 (New Castle County Board of Assessment Review Jan. 31, 2002) (R. at 61) (hereinafter “Bd. Decision at \_\_\_, R. at \_\_\_”). Title 9, section 1317 of the Delaware Code provides that the Board of Assessment Review “shall consist of 7 members.”

“school purposes” contained in title 9, section 8501 of the Delaware Code; that statute provides, in pertinent part, “[p]roperty belonging to...any college or school and used for educational or school purposes... shall not be liable to taxation and assessment for public purposes by any county or other political subdivision of this State.”<sup>2</sup> The University concedes that the property in question (726 square feet of an approximately 107,000 square foot building) is not used for “educational purposes,” but maintains that it is used for a “school purposes.” The Court must therefore determine whether the phrase “school purposes” has a meaning distinct from that of “educational purposes” so that the University-leased parcel is exempt from property taxation under the statute. This is an issue of apparent first impression under this statute.

This Court finds that the Board committed an error of law when it failed to conclude that the term “school purposes” has a meaning and rationale different from that of “educational purposes.” Under the facts of this case, the Board should have concluded that “school purposes”

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<sup>2</sup> A parallel New Castle County ordinance provides, in pertinent part, “[p]roperty not held by way of investment and belonging to...any non profit college or any non profit school and used for educational or school purposes...shall be exempt from all real property taxes.” NEW CASTLE COUNTY, DEL., CODE § 14.06.101 (2002). Because the language of the New Castle County ordinance is nearly identical to that of the state statute (with the exception of the insertion into the ordinance of the language “not held by way of investment” which is not at issue here), the Court disposes of the current appeal through analysis of the state statute only.

encompassed a small, leased banking operation that primarily served the University by promoting the legitimate convenience of the University's students, faculty, administrators, and employees. Accordingly, the Board's decision is **REVERSED**.

## **II. FACTS AND PROCEDURAL HISTORY**

The factual findings made by the Board follow in their entirety:

The University of Delaware is the owner of the Trabant Student Center, located at 5 West Main Street in Newark (Parcel No. 18-020.00-005). The Trabant Student Center is a building of approximately 107,000 square feet containing dining facilities, a restaurant, offices, a travel office, a branch bookstore, a movie theater/lecture hall, a student study lounge, and a branch bank that is leased to Wilmington Savings Fund Society FSB ("WSFS").

The area of the building that the County has assessed and taxed is limited to the approximately 700 square feet that the University has leased to WSFS.[ ] According to the information provided by the University with its appeal, an area of 341 square feet was provided to WSFS without charge. An additional area of 385 feet was recently provided at a rental of \$12 per square foot. It was in connection with the request by WSFS for a building permit for renovations for that space that New Castle County became aware of the existence of the University's lease to WSFS and issued the assessment change notice that led to the University's appeal.

The University's lease with WSFS is part of a comprehensive banking agreement that resulted from a competitive process in which the University solicited bids from various financial institutions, asking them to provide banking services to the students and employees of the University. Among those services are operating a branch bank in the Trabant Student Center, providing automated teller machines at various locations around the campus, and providing identification cards that can be used by students in the ATM machines and at participating area merchants. Approximately 11, 500 [of about 19,000] students have availed themselves of these services and have opened accounts with WSFS.<sup>3</sup>

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<sup>3</sup> Bd. Decision at 3, R. at 59.

As set forth above, the University and the Bank had entered into a “competitive banking agreement” (“the Agreement”) that in part led to the Bank’s real property lease. At least two parts of the Agreement state that the Agreement’s purpose was “to provide [or implement] enhanced levels of banking service to...[University] students....”<sup>4</sup>

Additionally, some portions of the testimony presented at the hearing (although not referenced in the Board’s decision) are relevant to this Court’s review on appeal. The following exchange between Ramona Adams, Assistant Treasurer of the University, and counsel for the County took place:

Q: Ms. Adams,...the University of Delaware does charge rent for this facility?

A: A minimal amount, to cover the cost.

Q: Are you aware whether or not there is a transaction fee for the MAC cards?

A: We don’t earn any money on our banking agreement.

Q: Does...[the Bank]?

A: I don’t know.

....

Q: But you don’t charge any type of tuition or fee to enter into this bank, do you?

A: No.

Q: So it’s open to the public.

A: It’s open to the public—although again, its location is not something that I...think a lot of people coming of the street [would utilize]...

Q: But it’s not limited just to students?

A: Right.<sup>5</sup>

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<sup>4</sup> See Agreement at 1 para. 1 (R. at 13), 2 para. 3 (R. at 14).

<sup>5</sup> R. at 34.

The following additional exchange took place between Ms. Adams and counsel for the University:

Q: And in the absence of the branch bank in the Trabant Center, where would the 11,500 students who currently bank there need to go for their services? Would they be loosed [sic] on the other banks of Newark?

A: Yes.

....

Q: So is it in the school's interests, in the interest of the convenience and safety of the students, that they have a place to bank on campus?

A: Yes, very much so. And we don't feel like we're in competition with the general banking community, because it's so specific to the students.<sup>6</sup>

And relative to the \$12 per square foot rental fee the University charged for the Bank's additional 385 square foot area:

Q: Does the University charge rent to the [B]ank?

A: We do...just to cover our expenses.<sup>7</sup>

The University (represented before the Board by counsel other than present appellate counsel) argued below that “the disputed area [in the Student Center and leased to the Bank] [wa]s entitled to [property tax] exemption under both State and County law.”<sup>8</sup> The University relied upon title 9, section 8105 of the Delaware Code and section 14.06.101 of the New Castle County Code to the Board in support of its argument. In response,

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<sup>6</sup> Id. at 36.

<sup>7</sup> Id. at 26.

<sup>8</sup> Bd. Decision at 3, R. at 59.

the County argued to the Board that “[c]ommercial banking . . . has no nexus to education[ ]”<sup>9</sup> and that “[w]hile there may [have] be[en] convenience to the students resulting from that service, the fact is inescapable that the activity itself is unrelated to the University.”<sup>10</sup>

The Board placed the burden on the University “to prove its entitlement to a tax exemption[ ]”;<sup>11</sup> it noted that the University would have had to have shown that it was an educational body that used the parcel for educational or school purposes. The Board ultimately framed the issue as “whether renting facilities to a private financial institution in order to provide convenient banking services to its students and faculty constituted a use for [‘]school purposes[’] sufficient to bring it within the scope of the [state] exemption statute and [county] ordinance.”<sup>12</sup> When the four members of the Board split evenly on this question, “the Chairman announced that the motion [to exempt the leased area from taxation] was not carried and the appeal was denied.”<sup>13</sup>

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<sup>9</sup> Bd. Decision at 5, R. at 61.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id. at 4, 60.

<sup>13</sup> Bd. Decision at 5, R. at 61.

### III. CONTENTIONS OF THE PARTIES

#### A. THE UNIVERSITY'S CONTENTIONS

In its Opening Brief, the University provides a concise summary of its argument on appeal, substantially all of which follows:

The inclusion of a bank branch in the University's Student Center is for "school purposes" and therefore not subject to taxation by New Castle County [under title 9, section 8105 of the Delaware Code and section 14.06.101 of the New Castle County Code]. Indeed, if the [B]ank branch was not for "school purposes" why else would it be located in the *student* center? The University is not in the banking business nor does the University lease the space to make money, so the property is clearly not being used by the University for commercial or non-school purposes. Rather, the University is providing a host of services to its students at the Student Center, including banking.

Neither the Department [of Land Use] nor the Board has articulated any reasons why the offering of banking services at the Student Center—the cultural and social hub of the University—is not a "school purpose."...[T]he statute providing for...exemption goes beyond education to cover "educational *or* school purposes." In other words, it is enough if the bank branch is for "school purposes."...In short, the convenience of a small bank branch is no different than any of the other numerous services the University provides to its students, faculty and employees at its Student Center.

The Board itself split 2-2 on this issue. Its "Decision" is contrary to law, arbitrary and capricious. The University should not be forced to pay property taxes for providing a valuable and convenient service to its students at its Student Center.<sup>14</sup>

The essence of the University's position on appeal is that "school purposes" has a separate and distinct meaning from "educational purposes," and that, under the exemption statute, the services offered by the Bank at the Student Center fulfill a "school" purpose. The University argues that because the

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<sup>14</sup> Appellant's Opening Br. at 7 (emphasis in original).

rent charged by the University for that Student Center space “is designed solely to defray costs and...not [to] profit from the lease...[,]”<sup>15</sup> the Court should not view the purposes of the Bank otherwise.

The University additionally argues that by virtue of title 14, section 5106 of the Delaware Code, its Board of Trustees “ha[s] been given control over and management over the University’s affairs, including exclusive control over the University’s lands and property.”<sup>16</sup> (That statute begins with the statement that “[t]he [University] Board of Trustees shall have the entire control and management of the affairs of the University[ ]” before detailing *seriatim* what those affairs may involve.<sup>17</sup>) The University argues that this authority cannot be “usurped” by the County through its taxing ability.

## **B. THE COUNTY’S CONTENTIONS**

On appeal, the County “agrees that the University serves educational purposes” but “disputes that a public banking establishment falls within the meaning of ‘school purposes’.”<sup>18</sup> The County argues that “[s]ince [‘]school

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<sup>15</sup> Appellant’s Opening Br. at 5.

<sup>16</sup> Appellant’s Opening Br. at 14.

<sup>17</sup> See DEL. CODE ANN. tit. 14, § 5106 (1999).

<sup>18</sup> Appellee’s Answering Br. at 7 (emphasis in original).

purpose['] is not defined in Delaware case law, the [Court's] analysis must focus on the statutory interpretation of...[title 9, section 8105 of the Delaware Code and section 14.06.101 of the New Castle County Code].”<sup>19</sup> The County believes that the statute and ordinance unambiguously “suggest[ ] [that the term ‘school purpose’ means] an institution for learning and has nothing to do with a bank branch.”<sup>20</sup> The County further contends that “[p]roviding convenient banking facilities does not promote instruction or education,”<sup>21</sup> and that “commercially leased space in the [Student] Center...[does] not qualify for an educational exemption....”<sup>22</sup>

Moreover, the County asserts that the use to which the Student Center is put should be the predominant factor this Court looks to in determining taxability. While the County concedes that the relationship between the Bank and the University “is definitely a convenience for the University,”<sup>23</sup> and that “the primary and dominant purpose [of the Bank] is for the convenience of the students,”<sup>24</sup> it nevertheless argues that the Bank itself

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<sup>19</sup> Letter from Mary Ann Kelly to the Court of 7/23/02, at 1.

<sup>20</sup> Id. at 2.

<sup>21</sup> Id.

<sup>22</sup> Appellee’s Answering Br. at 9.

<sup>23</sup> Id. at 10.

<sup>24</sup> Id. at 11.

does not “further any educational or school purpose of the University[ ]”<sup>25</sup> resulting in the University’s entitlement to tax exemption for the subject parcel. The County in effect asserts that “school” and “educational” purposes are the same.

The County has not directly responded to the University’s argument that the authority of the University Trustees pursuant to title 14, section 5106 of the Delaware Code cannot be “usurped” by the County through its taxing ability.

The County cites decisions from other jurisdictions holding that the character of school-owned real property must directly relate to the educational goals of the institution in order for the realty to be exempt from taxation. Because the County argues that the University (through its generally tax exempt status) “could unfairly compete (or allow[ ] its tenants to unfairly compete) with private businesses[ ][,]”<sup>26</sup> it asserts that “[t]he University [cannot] hide in its tax-exempt cloak to shield profit seeking banking establishments.”<sup>27</sup> The County therefore urges that “[t]he

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<sup>25</sup> Id.

<sup>26</sup> Id. at 14.

<sup>27</sup> Appellee’s Answering Br. at 15.

Court...affirm the Board’s decision to deny an educational property tax exemption to...[the Bank].”<sup>28</sup>

#### IV. STANDARD OF REVIEW

In New Castle County, a decision of the Board of Assessment Review regarding exemption or non-exemption from property taxation “shall be prima facie correct and the burden of proof shall be on the appellant to show that...[the Board of Assessment Review] acted contrary to law, fraudulently, arbitrarily or capriciously.”<sup>29</sup> If (as here) “the issue [on review from a decision of an administrative agency] is one of construction of statutory law and the application of the law to undisputed facts, the [appellate] court’s review is plenary.”<sup>30</sup> Thus “[a] reviewing court will not defer to...an [agency’s] interpretation [of a statute administered by it] as correct merely

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<sup>28</sup> Id.

<sup>29</sup> DEL. CODE ANN. tit. 9, § 8312 (Supp. 2002); Board of Assess. Review for New Castle County v. Stewart, 378 A.2d 113 (Del. 1977) (citing identical language in predecessor statute). But cf. Migration Dialogue, Inc. v. New Castle County Bd. of Assess. Review, C.A. No. 98A-09-009, 1999 WL 464039 (Del. Super. May 28, 1999) (stating without discussion that on appeal the Superior Court “must consider first whether the Board’s factual findings are supported by substantial evidence”), aff’d, No. 273, 1999, 1999 WL 1090587 (Del. Supr. Oct. 27, 1999).

<sup>30</sup> Public Water Supply Co. v. DiPasquale, 735 A.2d 378, 381 (Del. 1999) (en banc) (holding (in the context of a reversal of a decision of the Superior Court affirming an earlier Environmental Appeals Board ruling) that a *de novo* standard of review applies to review of an administrative agency’s interpretation of a statute) (citations omitted).

because it is rational or not clearly erroneous.”<sup>31</sup> While a reviewing court “may accord due weight,[ ] but not defer, to an agency interpretation of a statute administered by it[ ],”<sup>32</sup> statutory interpretation “is ultimately the responsibility of the courts.”<sup>33</sup> Statutes that provide property tax exemptions for real property devoted to educational purposes “are in general construed more liberally [within the bounds of the statutory language].”<sup>34</sup>

## V. DISCUSSION

### A. REAL PROPERTY TAX ASSESSMENT AND EXEMPTION IN NEW CASTLE COUNTY, DELAWARE

#### 1. GENERALLY

In New Castle County, the Department of Land Use prepares initial tax assessments of real property.<sup>35</sup> A taxpayer aggrieved by the assessment of that taxpayer’s property has the right to bring an appeal

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<sup>31</sup> Id. at 382-383. But cf. Tatten Partners, L.P. v. New Castle County Bd. of Assess. Review, 642 A.2d 1251 (Del. Super. Ct. 1993) (stating (in the context of Superior Court review of factual findings made by the Board of Assessment Review) that reversal should occur “only if [ ]the Board’s findings are clearly wrong and its conclusions not the product of an orderly and logical deductive process[ ]”) (citations omitted).

<sup>32</sup> Id. at 382 (footnote omitted).

<sup>33</sup> Id.

<sup>34</sup> Burris v. Tower Hill Sch. Ass’n, 179 A. 397, 399-400 (Del. Super. Ct. 1935).

<sup>35</sup> DEL. CODE ANN. tit. 9, § 1301(15) (Supp. 2002); 1001 Jefferson Plaza P’ship, L.P. v. New Castle County Dep’t of Fin., 695 A.2d 50 (Del. 1997) (citing predecessor statute).

before the Board of Assessment Review.<sup>36</sup> The taxpayer may appeal the decision of the Board of Assessment Review to the Superior Court.<sup>37</sup> A decision of the Department of Land Use or the Board of Assessment Review (to which an appeal is taken) “shall be prima facie correct.”<sup>38</sup>

With regard to statutory property tax exemptions, they “must be in unambiguous language and appear clearly within the intention of the legislative body.”<sup>39</sup> Thus, “[s]tatutory exemptions from taxation are strictly construed [according to the statutory language] and any doubt is resolved in favor of the public and against the claimed exemption.”<sup>40</sup>

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<sup>36</sup> DEL. CODE ANN. tit. 9, § § 1318, 8312 (Supp. 2002); Tatten Partners, L.P., *supra* (citing predecessor statute).

<sup>37</sup> DEL. CODE ANN. tit. 9, § 8312(c) (Supp. 2002); 1001 Jefferson Plaza P’ship, L.P., *supra*.

<sup>38</sup> DEL. CODE ANN. tit. 9, § 8312 (Supp. 2002); Stewart, *supra*.

<sup>39</sup> Mayor and Council of Wilm. v. Riverview Cemetery Co. of Wilm., 190 A. 111, 113 (Del. Super. Ct. 1937) (holding that under statute cemetery was exempt from tax assessment for local improvement so as not to give statute “such a strict or rigid construction as to defeat its obvious purpose and intent.”).

<sup>40</sup> Id.

## **2. PROPERTY TAX EXEMPTIONS FOR REAL PROPERTY HELD BY “ANY COLLEGE OR SCHOOL AND USED FOR EDUCATIONAL OR SCHOOL PURPOSES”**

The State of Delaware and New Castle County provide property tax exemptions for any “college” or “school” by statute and ordinance respectively. Title 9, section 8105 of the Delaware Code provides, in pertinent part, “[p]roperty belonging to...any college or school and used for educational or school purposes, except as otherwise provided, shall not be liable to taxation and assessment for public purposes by any county or other political subdivision of this State.” Section 14.06.101 of the New Castle County Code provides, in pertinent part, “[p]roperty not held by way of investment and belonging to...any non[-]profit college or any non[-]profit school and used for educational or school purposes...shall be exempt from all real property taxes.”

Apparently only one Delaware court has construed the “educational or school purposes” criteria of section 8105, and no court appears to have considered section 14.06.101 of the New Castle County Code. In Burris v. Tower Hill School Association,<sup>41</sup> this Court determined 68 years ago that a parcel of land which Tower Hill School had purchased for use by its headmaster solely as his residence was “not used for educational purposes[ ]

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<sup>41</sup> 179 A. 397 (Del. Super. Ct. 1935).

and[ ] [was] therefore...not exempt from taxation....”<sup>42</sup> Although the Burris Court recognized “the rule that statutes exempting from taxation property devoted to educational purposes are in general construed more liberally [within the bounds of statutory language][,]”<sup>43</sup> the Court nonetheless determined “that the interest of [the] school...[was not] furthered in any way by the use of the property[ ]” because “[t]he primary and dominant purpose of the [subject] property [wa]s for the convenience of the headmaster.”<sup>44</sup> Significantly, the Burris Court took note of the fact that Tower Hill was a “day” school and all of the headmaster’s duties were performed at the school, but the property owned by the school was used by the headmaster solely as his personal residence.<sup>45</sup>

The Burris Court distinguished the facts of the case before it from those cases decided in other jurisdictions based on other statutes that upheld challenged property tax exemptions for educational institutions. As noted by the Court, the facts of the cases from foreign jurisdictions generally “had to do with colleges, or boarding schools, and...[it] [wa]s...reasonabl[y]

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<sup>42</sup> Burris, 179 A.2d at 400.

<sup>43</sup> Id. at 399-400.

<sup>44</sup> Id. at 399.

<sup>45</sup> Id.

necessary for the acquisition and maintenance of presidential and professorial residences in close proximity to the student body...as a convenient place for holding meetings and social affairs in connection with the institution[ ][.]”<sup>46</sup> The Burris Court also noted “that where the dominant consideration in acquiring a residence for a school employee [wa]s to promote the efficient administration of the institution rather than to furnish a habitation for the employee, the residence is considered as being used for educational purposes.”<sup>47</sup> However, no argument was apparently made by Tower Hill School that the headmaster’s residence “promote[d] the efficient administration of the...[school].” The Burris Court, denying the claimed exemption, held “[t]he factor of the greatest materiality is the character of the use of the property....”<sup>48</sup>

Notably, the Burris Court did not separately analyze “educational” and “school” purposes, and it does not appear that the issue of whether the two terms had different meanings was ever raised in that case.

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<sup>46</sup> Id.

<sup>47</sup> Burris, 179 A.2d at 399.

<sup>48</sup> Id. at 398.

**B. THE BOARD’S DECISION MUST BE REVERSED BECAUSE IT WAS CONTRARY TO LAW IN THAT THE BOARD FAILED TO SEPARATELY CONSIDER “EDUCATIONAL” AND “SCHOOL” PURPOSES**

**1. STATUTORY CONSTRUCTION AND “PLAIN MEANING”**

As stated, if on review “the issue is one of construction of statutory law and the application of the law to undisputed facts, the [appellate] court’s review [of an agency’s interpretation of a statute] is plenary.”<sup>49</sup> Moreover, “[w]here there is a dispute over the meaning or effect of a statute, courts seek to ascertain legislative intent.”<sup>50</sup> But “[i]n construing a statutory or regulatory provision, it is fundamental that the Court ascertain and give effect to the intent of the legislative or administrative body as clearly expressed in the language of the statute or regulation.”<sup>51</sup>

Here, there is apparently no legislative history for the Court to rely upon in construing the statute,<sup>52</sup> and the Court finds that legislative intent is not clearly expressed in the statute’s language. The Court therefore must

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<sup>49</sup> DiPasquale, 735 A.2d at 381.

<sup>50</sup> 1001 Jefferson Plaza P’ship, L.P., 695 A.2d at 52 (citation omitted).

<sup>51</sup> New Castle County v. Chrysler Corp., 681 A.2d 1077, 1081 (Del. Super. Ct. 1995) (holding that New Castle County did not possess a right of appeal to the Superior Court from a decision of the Board of Assessment Review).

<sup>52</sup> See, e.g., DEL. CODE ANN. tit. 9, § 8103 (1935) (current version at DEL. CODE ANN. tit. 9, § 8105 (Supp. 2002)); 64 Del. Laws, c. 77, § 1 (1983).

analyze the statute according to its own terms.

Delaware courts emphasize the “plain meaning” of words when interpreting statutes.<sup>53</sup> The cases have acknowledged the “well recognized canon of statutory construction that every sentence, phrase or word will, if possible, be given weight and consideration.”<sup>54</sup> Moreover, “words in a statute should not be construed as surplusage if there is a reasonable construction which will give them meaning...and [Delaware] courts...ascribe a purpose to the use of statutory language, if reasonably possible.”<sup>55</sup>

Relatedly, Professor Singer has written that “legislative bod[ies]...[are] presumed not to have used superfluous words.”<sup>56</sup> And Professor Singer has noted “[l]ike[ ] [the presumption that the same words used twice in the same act have the same meaning], the courts do not construe different terms within a statute to embody the same meaning.”<sup>57</sup>

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<sup>53</sup> Chrysler Corp., 681 A.2d at 1081.

<sup>54</sup> Riverview Cemetery Co., 190 A. at 114.

<sup>55</sup> Oceanport Indus., Inc. v. Wilmington Stevedores, Inc., 636 A.2d 892, 900 (Del. 1994) (citations omitted).

<sup>56</sup> 2A NORMAN A. SINGER, STATUTES AND STATUTORY CONSTRUCTION, § 47:37, at 392 (Rev. 2000) (popularly known as “Sutherland Statutory Construction”).

<sup>57</sup> Id. § 46:06, at 193.

Turning to the statute at hand, this Court finds that the inclusion of the word “school” in the phrase “used for educational or school purposes” indicates that the legislature meant that “school” purposes should have a meaning different from that of “educational” purposes. Such a finding is in keeping with the presumption against superfluosity in legislative choice of words. Strengthening the Court’s finding of distinct separate meanings is the fact that dictionary definitions of the terms “education” and “school” have discrete meanings. Thus “education” has been defined:

**education 1** : the act or process of educating or of being educated. ...**2 a** : a process or course of learning, instruction, or training that educates or is intended to educate. ...**b** : a system of formal education as a whole. ...**3** : the product of an education<sup>58</sup>

But “school” has been defined:

**1 school 1 a (1)** : an organized body of scholars and teachers associated for the pursuit of and dissemination of knowledge (as in a particular advanced field) and constituting a college. ...**b (1)** : the body of pupils or students attending a school. ...**(2)** : the members of a school including both faculty and students. ...<sup>59</sup>

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<sup>58</sup> WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 723 (1961). This particular dictionary has been described by a preeminent legal writing scholar as a “recommended” unabridged dictionary that “[e]very self-respecting writer ought to own[ ] [.]” BRYAN A. GARNER, THE ELEMENTS OF LEGAL STYLE 99-100 (2d ed. 2002).

<sup>59</sup> Id. at 2031.

Hence “education” focuses on the “act or process” of learning while “school” focuses on the “body” of students, faculty, administrators, and employees that has come together for the “act or process” of education itself.

The University concedes that the property leased to the Bank does not qualify under the “educational purposes” prong of the exemption. This Court must therefore construe the term “school purposes” under the facts of this case.

## **2. “EDUCATIONAL” AND “SCHOOL” PURPOSES ARE DISTINCT AND SEPARATE THINGS**

The Court starts with the tenet of the Burris Court’s decision that (current) section 8105 should be construed “more liberally” (within the bounds of its statutory language) than other statutory exemptions from taxation.<sup>60</sup> The Burris Court’s decision suggests that “convenience” itself merits strong consideration: while property that had been purchased for Tower Hill School’s headmaster was taxable in Burris because its “primary and dominant purpose...[wa]s for the convenience of the headmaster[ ][,]”<sup>61</sup> “presidential and professorial residences [located] in close proximity to the student body...as a convenient place for holding meetings and social affairs

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<sup>60</sup> Burris, 179 A.2d at 399-400.

<sup>61</sup> Id. at 399.

in connection with the institution[ ]”<sup>62</sup> were exempt from taxation.

Likewise, the Burris Court noted that property owned by an institution is not subject to taxation “where the dominant consideration...[is] the efficient administration of the institution...”<sup>63</sup> In formulating these rules, however, this Court notes that the Burris Court did not discuss whether “educational” or “school” purposes could mean different things; after announcing the preferred liberal construction of the “educational or school purposes” tax exemption statute, the Burris Court stated that “the conclusion is compelled that the property in question is not used for educational purposes, and, therefore, is not exempt from taxation for public purposes.”<sup>64</sup> For whatever reason, the Burris Court did not include (let alone discuss) the term “school purposes” in its analysis or its conclusion.

Here, the character of the property leased by the University to the Bank for banking services demonstrates a University community need that fulfills a “school” purpose. The Court finds that by locating a banking facility within the Student Center, the University has met an objective not that remote from the Burris Court’s emphasis of “convenience” and

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<sup>62</sup> Id.

<sup>63</sup> Id.

<sup>64</sup> Id. at 400.

“efficient administration” relative to student learning and the daily living of all members of the University community; this is particularly true since one “purpose” of an institute of higher education is to provide a safe and efficient means for its students to attend classes and otherwise enrich themselves, as well as to provide for the appropriate “convenience” of those associated with the University. And if the nearest bank were, hypothetically, many miles distant from the University, there would indisputably be a heightened and important convenience to all members of the University community for banking services to be available at the University.

The Court’s view that the placement of the Bank’s facilities within the Student Center serves “school purposes” is further buttressed by the fact that the Agreement between the school and the Bank frequently notes that its purpose was “to provide [or implement] enhanced levels of banking service to...[University] students....”<sup>65</sup> When one thinks of a “school” as encompassing the body of students, faculty, administrators, and employees which constitute the institution’s makeup, it is not illogical to view “enhanced levels of banking service” directed at those persons as serving a “school” purpose; this is to be contrasted with the term “education,” which, as noted above, is more directed to the actual process of learning itself.

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<sup>65</sup> See Agreement at 1 para. 1 (R. at 13), 2 para. 3 (R. at 14).

By contrast, the County, although couching its arguments against property tax exemption in terms of “school purposes,” focuses solely on the connotation of the “educational” purpose portion of section 8105. The County relies heavily on cases from other jurisdictions decided under differently-worded statutes. It argues that “school” purpose means “an institution for learning...”<sup>66</sup> and that “[p]roviding convenient banking facilities does not promote instruction or education[.]”<sup>67</sup> But this analysis fails to take into account that the term “school” is not necessarily limited to the actual process of learning, in contrast to the term “education,” which tends to be more exactly limited. And when one considers that the predominant use of the Bank in the Student Center is student “convenience,”<sup>68</sup> this Court’s finding that that the Bank serves “school purposes” is warranted; the Burris Court itself noted that student “convenience” is entitled to consideration when it found that the property at issue was taxable because it was for the headmaster’s convenience and not “a convenient place for holding meetings and social affairs” in connection

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<sup>66</sup> Letter from Mary Ann Kelly to the Court of 7/23/02, at 1.

<sup>67</sup> Id. at 2.

<sup>68</sup> The County itself concedes this point when it argues “the primary and dominant purpose [of locating the Bank within the Student Center] is for the convenience of the students, not to further any educational or school purpose of the University.” Appellee’s Answering Br. at 11.

with the school. The County's argument that tax exemption of the Bank's facility would lead to a commercial advantage in its favor, while colorable, is ultimately unpersuasive.

By focusing the test for tax exemption solely on a use that serves to instruct students, *i.e.*, "educational" purposes, the County's arguments, if logically extended, might well lead to unintended results: if a small branch bank that provides admittedly "convenient" banking services to the University community is not to be exempt from property taxation in that it does not serve "school purposes," then what of that bank's ATM machines situated around the campus? Should the dining facilities, the travel office, the bookstore, and/or the movie theater/lecture hall (all located within the Student Center) similarly be taxed as not fostering "school purposes"? What about space provided to telecommunications providers elsewhere on University property? Indeed, the County acknowledged at oral argument that University parking lots do serve "school purposes" and should not be subject to property taxation.

When section 8105 is considered as whole, with separate effect given to "educational" and "school" purposes, "school purposes" means the promotion of the legitimate convenience of some or all members of the University community. The County's concern about any competitive

advantage gained by the Bank through its enjoyment of tax-exempt status is allayed by the fact that this particular branch location (inside the Student Center) seems, in the words of Ms. Adams, “so specific to the students.”<sup>69</sup>

Moreover, the fact that the University charges the Bank rent “to cover...[its] expenses[ ]”<sup>70</sup> (an issue that troubles the County), does not mean that the property should not be exempted from taxation. As is stated in Eugene McQuillin’s treatise on municipal corporations, property held by educational bodies can be exempt from taxation “even though a small profit is derived from the property.”<sup>71</sup> Delaware has similarly held in the context of homes for the aged owned by and rented out by a charitable organization<sup>72</sup> and historical structures owned by and rented out by a non-profit historical society.<sup>73</sup> And where, as here, the amount of “profit”—if any—appears nominal and is used only to “cover expenses,” a finding of exemption from taxation is logical.

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<sup>69</sup> R. at 36.

<sup>70</sup> R. at 26.

<sup>71</sup> 16 EUGENE McQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS, § 44.78.30 (rev. 1994)

<sup>72</sup> See Electra Arms Apt. and Med. Center Found., Inc. v. City of Wilm., 254 A.2d 244 (Del. 1969).

<sup>73</sup> See New Castle County v. Historical Society of Del., 580 A.2d 578 (Del. 1990).

In light of the fact that “educational or school purpose” exemptions are to be more liberally construed than other statutory exemptions (while remaining faithful to the language of those exemptions), the Board should have determined that the University’s claimed exemption for the property leased to the Bank was justified as a valid “school purpose” in that it promoted the legitimate convenience of all members of the University community. When viewed according to its “plain meaning” (and in view of the general purpose of the statute), this Court on review will not give the term “school purposes” as contained in section 8105 “such a strict or rigid construction as to defeat...[the statute’s] obvious purpose and intent[ ][,]”<sup>74</sup> even taking into account that the Court must deem the Board’s split decision as “prima facie” correct.<sup>75</sup> The Court therefore determines that the Board committed an error of law in construing the statute in a way that denied the University tax exemption under the facts of this case. The Court cannot defer to the Board’s decision “merely because it [wa]s rational...[,]”<sup>76</sup> and particularly where as many Board members agreed with the University’s position as disagreed with it.

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<sup>74</sup> Riverview Cemetery Co., 190 A. at 115.

<sup>75</sup> DEL. CODE ANN. tit. 9, § 8312 (Supp. 2002); Stewart, supra.

<sup>76</sup> DiPasquale, 735 A.2d at 382-383.

## CONCLUSION

For all of the above reasons,<sup>77</sup> the January 31, 2002 decision of the Board of Assessment Review denying the University of Delaware's appeal and sustaining the property tax assessment made by the New Castle County Department of Land Use is **REVERSED**.

**IT IS SO ORDERED.**

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Richard R. Cooch

oc: Prothonotary  
xc: New Castle County Board of Assessment Review

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<sup>77</sup> The Court need not reach the University's separate argument that the County "usurped" the University Board of Trustees' control and management of the University (as codified at title 14, section 5106 of the Delaware Code) when it taxed the portion of the Student Center leased to the Bank.