

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO

GROWTH PARTNERSHIP FOR ASHTABULA COUNTY,	:	OPINION
	:	
Appellant,	:	CASE NO. 2011-A-0002
	:	
- vs -	:	
	:	
JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO,	:	
	:	
Appellee.	:	

Administrative Appeal from the Ohio Board of Tax Appeals, Case No. 2008 K 1030.

Judgment: Affirmed.

Kenneth L. Piper, 185 Water Street, Geneva, OH 44041 (For Appellant).

Mike DeWine, Ohio Attorney General, and *Ryan P. O'Rourke*, Assistant Attorney General, Tax Section, 30 East Broad Street, 25th Floor, Columbus, OH 43215 (For Appellee).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Growth Partnership for Ashtabula County, appeals the decision of the Ohio Board of Tax Appeals denying tax exempt status to appellant's real property.

{¶2} Appellant, originally incorporated as Jobs Development Task Force, is an Ohio nonprofit corporation and has been granted tax exempt status under Section 501(c)(3) of the Internal Revenue Code. Appellant filed an application with the Tax

Commissioner of Ohio¹ seeking exemption from property taxation for 2004 pursuant to R.C. 5709.12 and R.C. 5709.121. The Commissioner concluded that exemption could not be considered for that year because appellant did not acquire legal title to the property until October 22, 2004, the date the purported exemption use began. His consideration was instead made for tax year 2005.

{¶3} On January 27, 2006, an examiner with the Department of Taxation recommended denial of appellant's application, concluding that appellant's purpose is to promote business ventures within Ashtabula County, and that in order to qualify for exemption under the statute, the entity "**** must belong to a charitable or educational institution or the state or political subdivision, and it must be used for a charitable, educational, or public purpose." On May 21, 2008, the Commissioner thereafter affirmed the recommendation of the examiner, noting that the subject property, while inhabited by appellant, was also being leased to other entities in 2005: the County Port Authority and the County Revolving Loan Fund.

{¶4} Thereafter, appellant appealed the Commissioner's decision to the Board of Tax Appeals and, on March 24, 2010, a hearing was held on the appeal. On December 7, 2010, the Board of Tax Appeals affirmed the decision of the Commissioner, determining that appellant did not meet the criteria required by R.C. 5709.12 or R.C. 5709.121 and was therefore not entitled to an exemption from property taxation.

{¶5} Appellant has timely filed the following two assignments of error:

1. We note that at the time this appeal was initiated, Richard A. Levin was the Tax Commissioner of Ohio.

{¶6} “[1.] Board of Tax Appeals (BTA) erred to the prejudice of Growth Partnership of Ashtabula County (GPAC) by failing to find that GPAC is a charitable institution.

{¶7} “[2.] Board of Tax Appeals (BTA) erred to the prejudice of Growth Partnership of Ashtabula County (GPAC) by failing to find that the subject real estate is used for charitable purposes.”

{¶8} R.C. 5717.04 provides for an appeal from the Board of Tax Appeals’ decision to the supreme court or the court of appeals and explains this court’s standard of review:

{¶9} “If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.”

{¶10} Stated differently, the Board of Tax Appeals “is responsible for determining factual issues and, if the record contains reliable and probative support for these BTA determinations,” we will affirm. *Satullo v. Wilkins*, 111 Ohio St.3d 399, 2006-Ohio-5856, at ¶14, quoting *Am. Natl. Can Co. v. Tracy* (1995), 72 Ohio St.3d 150, 152. Conversely, we “will not hesitate to reverse a [Board of Tax Appeals] decision that is based on an incorrect legal conclusion.” *Id.*, quoting *Gahanna–Jefferson Local School Dist. Bd. of Edn. v. Zaino* (2001), 93 Ohio St.3d 231, 232.

{¶11} “It does not matter whether we [as a reviewing court] might have weighed the evidence differently from the board had this court been making the original

determination. As long as there is evidence which reasonably supports the conclusion reached by the board, its decision must stand.” *Highlights for Children, Inc. v. Collins* (1977), 50 Ohio St.2d 186, 187-188, citing *Jewel Cos. v. Porterfield* (1970), 21 Ohio St.2d 97, 99. “[T]he Board of Tax Appeals has wide discretion in determining the weight to be given the evidence and the credibility of witnesses that come before it *** [and] the burden of demonstrating that the determination is unlawful and unreasonable falls upon the appellant. ***” (Internal citations omitted.) *Kister v. Ashtabula Cty. Bd. of Revision*, 11th Dist. No. 2007-A-0050, 2007-Ohio-6943, at ¶12, quoting *Mobile Instrument Serv. & Repair, Inc. v. Tax Commr. of Ohio* (Dec. 6, 2000), 3d Dist. No. 8-2000-20, 2000-Ohio-1757, at *5-6.

{¶12} Appellant first argues that it was both unreasonable and unlawful for the Board of Tax Appeals to conclude that appellant is not a charitable institution within the meaning of the applicable statute.

{¶13} In Ohio, real property belonging to a charitable and/or educational institution is granted tax exempt status. R.C. 5709.12(B) provides, in pertinent part, that “[r]eal and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation[.]” The Supreme Court of Ohio has long held “that under the general exemption for ‘exclusive charitable use’ of property set forth at R.C. 5709.12(B), it is the *owner’s use* of the property, not a lessee’s use, that determines whether the property should be exempted.” (Emphasis sic.) *Northeast Ohio Psych. Inst. v. Levin*, 121 Ohio St.3d 292, 2009-Ohio-583, at ¶11, citing *First Baptist Church of Milford v. Wilkins*, 110 Ohio St.3d 496, 2006-Ohio-4966, at ¶12-13, and *Lincoln Mem. Hosp., Inc. v. Warren* (1968), 13 Ohio St.2d 109, 110. Applying

that principle to the case sub judice, the subject property clearly would not qualify for exemption, since appellant is largely using the property for leasing—collecting a monthly fee, though modest, from the tenants.

{¶14} However, R.C. 5709.121 was subsequently enacted as a limited expansion to the real property exemption such that ownership and use of property “need not coincide for that property to be tax exempt.” *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, at ¶24. The statute states:

{¶15} “(A) Real property and tangible personal property belonging to a charitable or educational institution or to the state or a political subdivision, shall be considered as used exclusively for charitable or public purposes by such institution, the state, or political subdivision, if it meets one of the following requirements:

{¶16} “(1) It is used by such institution, the state, or political subdivision, or by one or more other such institutions, the state, or political subdivisions under a lease, sublease, or other contractual arrangement:

{¶17} “(a) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;

{¶18} “(b) For other charitable, educational, or public purposes.

{¶19} “(2) It is made available under the direction or control of such institution, the state, or political subdivision for use in furtherance of or incidental to its charitable, educational, or public purposes and not with the view to profit.”

{¶20} Appellant is not the state, nor a political subdivision. Contrary to the analysis of the dissent, it has not argued that it is an educational institution. Therefore,

as acknowledged by appellant's first assignment of error, it may only qualify for the exemption if it is determined to be a "charitable" entity. If it is such an entity, it must then be determined whether it meets one of the requirements set forth in R.C. 5709.121(A)(1) or (A)(2). If it is not a "charitable" entity, there is no need to analyze whether it meets either of those requirements.

{¶21} Neither R.C. 5709.12 nor R.C. 5709.121 defines "charitable institution"; however, case law has supplied the definition. An entity's status as a "charitable institution" is based upon a review of the core activities of the entity seeking the exemption. *Northeast Ohio Psych. Inst.*, 2009-Ohio-583, at ¶14, citing *OCLC Online Computer Library Ctr., Inc. v. Kinney* (1984), 11 Ohio St.3d 198.

{¶22} "[C]harity,' in the legal sense, 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 benefit in particular, without regard to their ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity." *Planned Parenthood Assn. v. Tax Commr.* (1966), 5 Ohio St.2d 117, paragraph one of the syllabus.

{¶23} Case law has further "predicated entitlement to the charitable-use exemption on services being provided 'on a nonprofit basis to those in need, without regard to race, creed, or ability to pay.'" (Emphasis deleted.) *Dialysis Clinic, Inc.*, 2010-Ohio-5071, at ¶26, quoting *Church of God in N. Ohio, Inc. v. Levin*, 124 Ohio St.3d 36, 2009-Ohio-5939, at ¶19, citing *Vick v. Cleveland Mem. Med. Found.* (1965), 2 Ohio St.2d 30, paragraph two of the syllabus.

{¶24} In this case, appellant's corporate purpose is to work with community organizations in an effort to facilitate the development of the business community. Though appellant engages in philanthropic endeavors, its core activities are centered on business and economic development. The focus of appellant is to spur economic growth by enticing and retaining business in Ashtabula County, as expressly provided under the "purpose" section of its articles of incorporation. The company's "purpose" is:

{¶25} "To work with business, labor and other groups in the community to retain existing jobs in Ashtabula County and coordinate efforts with existing organizations to develop the participation of key representatives of labor, management and the public sector; to conduct conferences and public forums to educate the community on labor-management cooperation to form an area labor-management committee on a non-profit basis within the meaning of Section 501(c)(3) of the Internal Revenue Code."

{¶26} It certainly could be argued that if an institution qualifies as charitable under 501(c)(3) of the Internal Revenue Code, it should also qualify as charitable under R.C. 5709.121. However, the Supreme Court of Ohio has rejected this argument, finding such an "expansive constriction" of the statute inconsistent with both the legislative purpose of the statute and the principles of statutory construction. *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, at ¶20-21. As noted supra, the sole purpose of the statute is to refine the prior requirement that the owner and the user of the subject parcel must be the same to qualify for exemption. Additionally, this argument raises the danger of conflating Ohio law with federal standards: "[T]ying charitable use so tightly to Congress's policy goals is wrong because Congress does

not define the scope of charitable use under Ohio law.” Id. at ¶25, quoting *NBC-USA Hous., Inc.-Five v. Levin*, 125 Ohio St.3d 394, 2010-Ohio-1553, at ¶20.

{¶27} While appellant attempts to dismiss the “purpose” section of its articles of incorporation as “nothing more than boiler plate language,” it is evident that appellant’s chief focus is based in the realm of economic development. The Board of Tax Appeals considered over 30 exhibits from appellant, the authenticity of which was stipulated by both parties. These exhibits support the conclusion that appellant is devoted to economic development, rather than providing services to those in need.

{¶28} Appellant’s 2005 annual report states its mission is to “coordinate and direct public and private efforts to achieve economic prosperity and improve the quality of life for all of Ashtabula County.” Appellant’s 2006 annual report contains a message from the executive director, explaining: “[w]e exercised great efforts in developing new industrial and commercial land, as well as the expansion of public utilities to support current and future investment opportunities.” Appellant’s 2006 and 2007 directories contain the following opening: “Growth Partnership for Ashtabula County was created in 1990 and is focused solely on assisting businesses and boosting economic growth within Ashtabula County. The partnership is a collaboration of business, civic leaders, and public sector representatives, which teamed up to form and fund this private organization.” A publication by appellant contains a message from the executive director: “[w]e feel the pride in knowing our services were used this year by a variety of customers in different manufacturing sectors ***.”

{¶29} These exhibits, along with many others, specifically considered by the Board of Tax Appeals, provided support for its conclusion that appellant’s primary

purpose is to facilitate the development of the business community while focusing on attracting new, and expanding existing, business in the county. With this private economic purpose and focus, appellant is not a charitable institution. Thus, the Board of Tax Appeal's determination that appellant is not a charitable institution was both reasonable based on the evidence presented and lawful in accordance with the case law defining and interpreting "charity."

{¶30} There seems to be no dispute that the community is benefited by appellant's efforts to bring jobs and economic prosperity into the area. However, the record does not reflect specific examples of the type of charitable activity the common law and the Commissioner determined are necessary to qualify for charitable status. Any such activity or benefit is clearly incidental to appellant's central goal and purpose. If charitable status was measured by tangential effect, there would hardly be a limit to the entities which would then qualify.

{¶31} The second assignment of error assumes that if the property is "used" for charitable purposes, appellant should qualify for the real property exemption. Appellant and the dissent cite to *Case Western Univ. v. Tracy* (1999), 84 Ohio St.3d 316, in support of this assignment. However, that case is inapposite to this. In that matter, Case Western University was the property owner and, thus, clearly entitled to the exemption as an educational institution. The only reason the use of the property was at issue was because the *use* was by program participants who included for-profit corporations. In fact, the Supreme Court of Ohio reversed the portion of the exemption as it related to these "for-profit" entities, even though the "incubator program," a program whose purpose is remarkably similar to the purpose of appellant's herein, was

to promote the commercial and economic benefit of the area by providing a “range of services, counsel, and direction” to companies to help them achieve success. Further, while appellant and the dissent attempt to juxtapose the “charitable institution” finding of one tenant of the subject parcel in *Tracy* with the case sub judice, an entity’s purpose must be examined on a case-by-case basis, relying on the evidence in the record upon which the Board of Tax Appeals based its findings. In this case, since appellant, the owner of the subject property, is not a charitable institution, and therefore not entitled to the exemption, there is no need to consider the additional requirements set forth in R.C. 5709.121(A)(1) or (A)(2).

{¶32} Appellant’s first and second assignments of error are without merit.

{¶33} The decision of the Board of Tax Appeals is affirmed.

THOMAS R. WRIGHT, J., concurs,

DIANE V. GRENDALL, J., dissents with a Dissenting Opinion.

DIANE V. GRENDALL, J., dissents with a Dissenting Opinion.

{¶34} I respectfully dissent from the majority’s decision that Growth Partnership for Ashtabula County (GPAC) is not a charitable institution and the Board of Tax Appeals (BTA) properly denied GPAC’s request for tax exempt status. The evidence present in the record supports a finding that GPAC conducted economic and intellectually-based charitable activities and should be granted tax exempt status.

{¶35} There are two distinct issues in this case, both of which sustain a finding that GPAC is a charitable institution. First, regarding the scope of GPAC’s activities, the

BTA improperly found that GPAC's primary purpose was to "facilitate the development of the business community within Ashtabula County." This finding was not reasonably supported by the evidence present in the record. *Highlights for Children, Inc. v. Collins* (1977), 50 Ohio St.2d 186, 187-188 (the appellate court's inquiry is whether "there is evidence which reasonably supports" the board's conclusion).

{¶36} The evidence presented instead supports a finding that GPAC conducted both economic and intellectually beneficial educational activities within the community, such that its primary purpose went beyond simply benefiting individual businesses. GPAC helped develop various infrastructure projects throughout Ashtabula County, including expanding access to sewer and water systems. Testimony also indicated that GPAC helped work on several environmental projects, such as cleaning the Ashtabula River. While some of these activities may have benefitted businesses, they provided an overall benefit to the community as a whole.

{¶37} Regarding GPAC's focus on education, one of the listed purposes in its Articles of Incorporation is to "conduct conferences and public forums to educate the community on labor-management cooperation." GPAC's annual reports also state that a "key component" of its efforts is to "support education, college access, mentorship, [and] scholarships." Working toward this purpose, GPAC has collaborated with various agencies and groups to help develop educational programs, including working with Kent State University on developing a skills training center. GPAC also sponsors a mentorship program and a college access program, both of which help high school students prepare for college and make choices related to entering the workforce. The

foregoing activities are just a sample of those conducted by GPAC, supporting the conclusion that GPAC's purpose extends beyond that stated by the BTA.

{¶38} The majority correctly notes that, in order to find an institution charitable for the purposes of granting a tax exemption, the "primary use" of the property must be charitable. See *True Christianity Evangelism v. Zaino*, 91 Ohio St.3d 117, 120, 2001-Ohio-295; *Dialysis Clinic, Inc. v. Levin*, 127 Ohio St.3d 215, 2010-Ohio-5071, at ¶26 ("[a]n institution is 'charitable' under R.C. 5709.121 only if its core activities qualify as charity"). However, while the majority finds that GPAC's primary purpose was to benefit individual businesses, GPAC's primary purpose is much broader: to benefit the entire community through activities that involve the development of businesses and the education of the public as a whole, as outlined above.

{¶39} Although the BTA and the majority assert that GPAC's initial Articles of Incorporation and annual reports from several years ago support a finding that GPAC's purpose is to benefit private businesses, this court's focus must not be solely on past documents discussing GPAC's purpose but also on its present activities. See *Community Improvement Corp. of Baltimore Area v. Tracy*, BTA No. 94-R-314, 1995 Ohio Tax LEXIS 864, at *13 (when reviewing the "nature of the projects the appellant has embarked upon since its inception," the BTA found that the record showed that the appellant's "recent and current activities have all been charitable in nature," and, therefore, the appellant was a charitable institution). As discussed above, GPAC's activities have focused on various purposes, including the intellectual and economic development of the community.

{¶40} The second issue before this court is whether, in light of the foregoing activities, GPAC is a charitable institution for the purposes of granting a tax exemption.

{¶41} Since there is no clear statutory definition of “charitable institution,” the applicable standard for determining whether an institution is charitable is found in the case law, specifically in *Planned Parenthood Assn. of Columbus, Ohio, Inc. v. Tax Commr. of Ohio* (1966), 5 Ohio St.2d 117. In *Planned Parenthood*, the court held that “‘charity,’ in the legal sense, 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 benefit in particular ***.” *Id.* at paragraph one of the syllabus (emphasis added). The definition is very broad and includes both economic and intellectual benefits, which are the primary focuses of GPAC. In the present case, neither party disputes that there is an economic benefit to the public through the creation of jobs and bringing businesses to Ashtabula. This would presumably fit under the “economic” portion of the definition in *Planned Parenthood*.

{¶42} In addition, in *Case W. Reserve Univ. v. Tracy*, 84 Ohio St.3d 316, 320, 1999-Ohio-355, the Ohio Supreme Court found an institution to be charitable when the purpose of the organization was “to promote and develop emerging technologies and emerging companies in order to provide jobs for people and to strengthen the economy of the state.” Similarly, in the present case, GPAC, at the very least, attempts to promote emerging companies to create jobs and a stronger economy. While the majority asserts otherwise, this case is directly applicable, as the *Tracy* court found that the aforementioned economic services constituted a charitable use, supporting the proposition that organizations with an economic purpose can be considered charitable.

The fact that one of GPAC's benefits or purposes is to strengthen the economy does not foreclose it from being a charitable institution, especially in light of GPAC providing the additional charitable service of intellectually beneficial classes and programs to the community.

{¶43} The majority finds that any economic prosperity to the community is "incidental" to GPAC's goal. However, the record indicates that a main goal of GPAC is to achieve economic benefits for the community, as its Articles of Incorporation state that its goal is to both create jobs and provide education to the entire community. Although the benefits to the businesses and the community may be intertwined, it cannot be said that the benefits to the community are purely incidental, as all of the evidence in the record shows that GPAC has conducted various activities that benefit the entire community, not only individual or private businesses.

{¶44} In addition to the economic benefit to the community, GPAC also provides an educational or intellectual benefit to the public, through education for individuals starting a business, "educat[ing] the community on labor-management cooperation", and by providing various educational support for high school and college students. Courts have found that such "dissemination of knowledge for the edification and improvement of mankind is regarded as a charitable object[ive]." *OCLC Online Computer Library Ctr., Inc. v. Kinney* (1984), 11 Ohio St.3d 198, 200, quoting *Battelle Memorial Institute v. Dunn* (1947), 148 Ohio St. 53, 60.

{¶45} Since the evidence shows that GPAC's primary purpose is to provide economic and intellectually-based services to the community as a whole, and since

such a purpose supports a finding that GPAC is a charitable institution, I would reverse the decision of the BTA and grant GPAC a tax exemption.