

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

RIVERVIEW ABBEY MAUSOLEUM CO.,)
a corporation,)
)
Plaintiff,) TC-MD 021230F
)
v.)
)
MULTNOMAH COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

Plaintiff appeals Defendant’s disqualification of the administrative office and chapel portions of a mausoleum from property tax exemption. The entire property is listed as Account R330309 by the Multnomah County Assessor. Representing Plaintiff was Norman Griffith. Representing Defendant was John Thomas, Assistant County Counsel.

I. STATEMENT OF FACTS

Plaintiff’s mausoleum and crematory, including the administrative office and chapel, are housed in a building of about 160,396 square feet in area. (Stip Facts at ¶ 4.) The office and chapel occupy approximately 2,281 square feet of the building, with the office measuring approximately 916 square feet, and the chapel measuring approximately 1,365 square feet. At all times since its construction in 1938, the office has been used to direct operations and maintenance of the mausoleum, including maintaining records of the ownership and location of crypts, niches, interments and cremations. (Stip Facts at ¶ 8.) At all times since its construction in 1938, Plaintiff’s chapel has been used for funerals and other services in connection with interments and other dispositions of bodies. (Stip Facts at ¶ 9.)

Plaintiff’s mausoleum includes 48 corridors of crypts used for the interment of

human remains, built seven high, with each corridor having about 350 crypts for a total of 16,797 crypts. (Stip Facts at ¶ 5.) Plaintiff's mausoleum also contains 4,921 niches for the permanent interment of cremated human remains. (*Id.*) Plaintiff's mausoleum and crematory, including the office and chapel, have been exempt from property tax under ORS 307.150 and its predecessor statute at all times prior to tax year 2002-2003. (Stip Facts at ¶ 2.)

II. ANALYSIS

Plaintiff presents two issues. First, does a consistent past interpretation of ORS 307.150¹ preclude Defendant from disqualifying Plaintiff's office and chapel from property tax exemption? Second, should the office and chapel be exempt from taxation pursuant to ORS 307.150?

Plaintiff implies Defendant should be estopped from disqualifying the office and chapel from exemption because of the long history of those portions of the mausoleum receiving an exemption. (See Ptf's Brief at 4.) The Oregon Supreme Court held in *Johnson v. Tax Commission*, 248 Or 460, 463-64, 435 P2d 302 (1967), that:

"The policy of efficient and effective tax collection makes the doctrine of rare application. It could only be applied when there is proof positive that the collector has misinformed the individual taxpayer and the taxpayer has a particularly valid reason for relying on the misinformation and that it would be inequitable to a high degree to compel the taxpayer to conform to the true requirement."

In order for Plaintiff to successfully prove estoppel, Plaintiff must show that: 1) Defendant mislead Plaintiff by Defendant's conduct; 2) Plaintiff had a good faith reliance on the conduct; and 3) Plaintiff was injured by its reliance on Defendant's conduct. See

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

Christenson v. Multnomah County Assessor, OTC-MD No 021117F, WL 194742 (Jan 23, 2003) citing *Sayles v. Dept. of Rev.*, 13 OTR 324, 328 (1995); *Portland Adventist Hospital v. Dept. of Rev.*, 8 OTR 381, 388 (1980); *Cascade Manor, Inc. et al v. Dept. of Rev.*, 5 OTR 482, 486-87 (1974). Plaintiff failed to prove the elements of estoppel. An interpretation of a statute contrary to its plain language, no matter how long it persists, does not preclude actions in compliance with the plain language of the statute.

To determine if Plaintiff is entitled to a property tax exemption this court's task is to discern the intent of the legislature as expressed in ORS 307.150. See *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). The best evidence of legislative intent is the text of the statute itself. *Id.* Defendant disqualified the office and chapel from exemption pursuant to ORS 307.150. The relevant portion of the statute states:

“(1) Upon compliance with ORS 307.162 [filing requirements], the following property shall be exempt from taxation:

“(a) All burial grounds, tombs and rights of burial, and all lands and the buildings thereon, not exceeding 30 acres, owned and actually occupied by any crematory association incorporated under the laws of this state, used for the sole purpose of a crematory and burial place to incinerate remains.

“(b) All lands used or held exclusively for cemetery purposes, not exceeding 600 acres, owned and actually occupied by any cemetery association incorporated under the laws of this state.

“* * * * *

“(d) Any buildings on land described in paragraph (a) or (b) of this subsection that are used to store machinery or equipment used exclusively for maintenance of burial grounds.”

According to Plaintiff's analysis, ORS 307.150(1)(a) and (1)(b) entitle the entire mausoleum an exemption from property taxation. Such an analysis does not consider the

effect ORS 307.150(1)(d) has on this case.

It is clear from a close reading of ORS 307.150 that the legislature was differentiating between exemptions given to crematories and cemeteries. Exemptions for crematories and burial of cremated remains are provided for in ORS 307.150(1)(a). The property and buildings exempted by ORS 307.150(1)(a) must be “used for the sole purpose of a crematory and burial place to incinerate remains.” The language of ORS 307.150(1)(a) is clear. It does not provide an exemption for areas of land or buildings that are used for purposes other than a crematory or burial of cremated remains. Plaintiff’s chapel is used for funerals and other services in connection with interments. (See Stip Facts at ¶ 9.) Plaintiff’s office is used to direct operation and maintenance of the entire building, to supply information for visitors, and maintain records. (See Stip Facts at ¶ 8.) Those uses of the mausoleum are for purposes other than a crematory or burial of cremated remains. As a consequence, Plaintiff’s chapel and office are not entitled to an exemption under ORS 307.150(1)(a).

Exemptions for cemetery lands are provided for in ORS 307.150(1)(b). No exemption for buildings on cemetery lands is provided for in this section. The legislature has specifically limited which buildings on cemetery grounds are given an exemption in ORS 307.150(1)(d). The only buildings exempt from taxation on cemeteries are those “used to store machinery or equipment used exclusively for the maintenance of burial grounds.” ORS 307.150 (1)(d). The chapel and office do not meet that requirement.

The Department of Revenue has promulgated an administrative rule interpreting ORS 307.150(1)(d) that also offers guidance. OAR 150-307.150(1) (2002). In giving examples of buildings not exempt under ORS 307.150(1)(d) the rule lists a caretaker’s

residence located on cemetery grounds and a funeral parlor located on cemetery grounds. Plaintiff's chapel is used for purposes analogous to a funeral parlor.² (See Stip. Facts at ¶ 9.) Consistent with ORS 307.150(1)(d), the administrative rule has interpreted the intent of the legislature as limiting buildings receiving an exemption on cemetery grounds to only those dedicated to the storage of machinery and equipment used for maintaining burial grounds. Buildings, or portions thereof, dedicated to administration of operations or funerals are not exempt under ORS 307.150.

III. CONCLUSION

For the reasons stated above, the court finds that Plaintiff's office and chapel portions of the mausoleum are not exempt from taxation pursuant to ORS 307.150. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's office and chapel do not qualify for exemption from property taxes under ORS 307.150.

Dated this _____ day of August, 2003.

SALLY L. KIMSEY
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON AUGUST 4, 2003. THE COURT FILED THIS DOCUMENT ON AUGUST 4, 2003.

² Funeral home or Funeral parlor - an establishment with facilities for the preparation of the dead for burial or cremation, for viewing of the body, and for funerals. *Webster's Third New Int'l Dictionary* 922 (unabridged ed 1993).