

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

SPECIAL DISTRICTS ASSOCIATION OF OREGON (SDAO),	)	
	)	
Plaintiff,	)	TC-MD 050661D
	)	
v.	)	
	)	
WASHINGTON COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals Defendant’s denial of its application for property tax exemption for the 2004-05 tax year. The issue is before the court on cross motions for summary judgment. The parties waived oral argument.

I. STATEMENT OF FACTS<sup>1</sup>

Plaintiff filed an application on November 19, 2004, seeking a property tax exemption for the subject property referred to as Hampton Street Building Condominium located in Washington County. Plaintiff purchased the subject property in February 2004. (Ptf’s Ex 3 at 1.) There are two organizations, Plaintiff and City County Insurance Services (CCIS), in the building - one on each of the two floors. Each organization uses the facility for the same purpose: office space for administrative personnel. (*Id.*)

Plaintiff’s application for exemption stated that it met the statutory requirements of ORS 307.090 because it “is a public corporation or a municipal corporation, as those terms are

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<sup>1</sup> Plaintiff’s Opening Brief set forth the relevant facts in the above-entitled matter. Defendant’s Response Brief stated that it “generally accepts Plaintiff’s statement of the facts” and offered supplemental information that was not disputed by Plaintiff. In its Reply Brief, Plaintiff disputed the relevance of Defendant’s concern that “there is no evidence in the record that SDAO conducts its affairs consistent with the laws governing public entities generally including the public records and meeting law \* \* \* as well as public budgeting and auditing.” (Ptf’s Reply Br at 5; Def’s Resp Br at 3.) In reaching its conclusion, the court did not need the parties to reconcile their difference of opinion with respect to the concern Defendant raised.

used in ORS 307.090(1).” (Ptf’s Opening Br at 5.) Defendant denied the exemption on March 14, 2005, finding that Plaintiff was “not a public corporation” and “the exemption only applies to those entities listed in” ORS 307.090. (Ptf’s Ex 2 at 1, 2.) The parties agree that Plaintiff timely filed its appeal.

In support of its conclusion that it is a public corporation, Plaintiff states that it “is a nonprofit \* \* \* mutual benefit corporation as defined by ORS 65.001(30).” (Ptf’s Opening Br at 2.) Formed in 1978, Plaintiff states that its “mission is to ‘assist special service districts in providing cost-effective and efficient public services to the people of Oregon’” and to “provide[] information and assistance on matters of mutual concern to special districts, including, but not limited to, insurance, risk financing and risk management.” (*Id.*) (citation omitted).

Plaintiff is governed by a 12-member Board of Directors elected by the membership. (Ptf’s Ex 3 at 54.) Memberships are classified as “regular” or “associate.” (Ptf’s Opening Br at 2.) “[A]ny special district authorized and regulated by ORS 198.010-180 and ORS 334.020” is eligible for a “[r]egular (voting) membership.” (*Id.*) “All member special districts are public corporations formed under ORS 198.010 and ORS 198.190.” (*Id.*) Even though Plaintiff “is exempt from federal income tax under IRC § 501(c)(6) and 26 USC § 115,” not all member special districts are “exempt from taxation.” (Ptf’s Opening Br at 3; Def’s Resp Br at 11.) “Intergovernmental entities created under ORS 190.003 to 190.110 and political subdivisions, municipal, quasi-municipal or public corporations are eligible for associate [nonvoting] membership.” (Ptf’s Opening Br at 2.)

On dissolution of the corporation, “all property acquired by the Corporation \* \* \* ‘shall be distributed to all special districts which are members of the Association within the 12 months preceding the date of termination of the Association.’” (Ptf’s Opening Br at 3 (referencing Ptf’s Ex 3 at 31).)

## II. ANALYSIS

The court recognizes that, “as a matter of general policy, the legislature has provided that all real and personal property within this state is subject to assessment and taxation, ‘except as otherwise provided by law,’ ORS 307.030.” *White City Water System, v. Dept. of Rev.*, 285 Or 255, 259, 590 P2d 724 (1979) [hereinafter *White City*]. There is “provided by law” a statutory exemption from taxation for “all property of the state and its subdivisions.” *Id.*; *Pollin v. Dept. of Rev.*, 326 Or 427, 432, 952 P2d 537 (1998).

In order to be exempt from taxation, the parties agree that the subject property must be “used or intended for corporate purposes of \* \* \* public or municipal corporations in this state.” ORS 307.090(1).<sup>2</sup> The dispute is whether Plaintiff, which holds title to the subject property,<sup>3</sup> is a public or municipal corporation, entitling its property to exemption.

ORS 307.090(1) does not define the term “public” or “municipal” corporation. In construing the statute to exempt certain property owners from taxation, the court follows the

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<sup>2</sup> ORS 307.090(1) provides that:

“[A]ll public or corporate property used or intended for corporate purposes of the several counties cities, towns, school districts, irrigation districts, drainage districts, ports, water districts, housing authorities and all other public or municipal corporations in this state, is exempt from taxation.”

All references to the Oregon Revised Statutes (ORS) are to year 2003.

<sup>3</sup> In *White City*, the Supreme Court held that the “exemption provided by ORS 307.090(1) applies only to property actually owned by the public bodies specified in the statute.” *Id.* at 259. While actual ownership is not at issue in this case, the court notes that the definition of “actual ownership” with respect to housing authorities was expanded. In 1991, when the legislature added housing authorities to the list of public bodies, the City of Eugene testified in support of the bill (HB 3378) stating:

“The Housing Authority will develop and operate this project. \* \* \* However, because of the tax credits, the majority of owners will technically be the purchasers of the tax credits. \* \* \* [T]his bill, when adopted, provides clarification that a low rent project, targeted to housing authority clients, but utilizing tax credits for financing, is exempt from property taxes.”

Testimony Senate Committee on Revenue and School Finance, HB 3378A, June 26, 1991, Exhibit F (April 25, 1991.) See ORS 307.092.

leading case on statutory interpretation, *Portland General Electric Company v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993) (hereinafter *PGE*). *PGE* directs the court to accept the plain meaning of a statute and “that words of common usage typically should be given their plain, natural, and ordinary meaning.” *Id.* at 611. The legislative intent is to be determined first from the text and context of the statute. *Id.* Context includes case law interpreting those statutes. *See State v. Sullens*, 314 Or 436, 443, 839 P2d 708 (1992). ““When this court interprets a statute, that interpretation becomes a part of the statute as if written into it at the time of its enactment.”” *Id.* at 443 (quoting *Walther v. SAIF*, 312 Or 147, 149, 817 P2d 292 (1991)). If, after looking at the text and context of the statute, the meaning is still unclear, the court may consider the legislative history. *See PGE*, 317 Or at 611-12.

In support of its conclusion that it is a public or municipal corporation, Plaintiff states that it “is a nonprofit \* \* \* mutual benefit corporation as defined by ORS 65.001(30).” (Ptf’s Opening Br at 2.) This court, in *Rogue Gem v. Josephine County Assessor*, 17 OTR 446 (2003), discussed ORS 65.001(30) and reviewed the legislative history defining the term mutual benefit corporation. *Id.* at 454-55. The court concluded that “[i]t is clear from comparing the two definitions [mutual benefit corporation and public benefit corporation] and looking at the plain, natural, and ordinary meanings of ‘mutual’ and ‘public’ that a mutual benefit corporation is intended to benefit a select group while a public benefit corporation is intended to benefit the community as a whole.” *Id.* at 454. The facts of this case state that special districts have come together to secure a “broad range of membership services” for a select group, the members. (Ptf’s Ex 3 at 54.) Stated in different words, Plaintiff, in accordance with its chosen form of entity, a mutual benefit corporation, is “benefitting, representing, and serving a group of entities.” *Rogue Gem*, 17 OTR at 455 (citation omitted).

Plaintiff asks this court to look beyond the services provided to its members and conclude that it is “providing cost-effective and efficient public services to the people of Oregon.” (Ptf’s Ex 3 at 54.) Plaintiff alleges that it is a public entity “created by public bodies for a public purpose and funded with public funds and subject to public control.” (Ptf’s Opening Br at 9.) Plaintiff urges the court to “look at the scope of general common law and Oregon law to understand the broad scope of application given to those terms [public and municipal corporation].” (Ptf’s Reply Br at 4.)

“The term ‘public corporation’ is not a term of common usage.” *Shasta View Irrigation Dist. v. Amoco Chemicals*, 329 Or 151, 157, 986 P2d 536 (1999) [hereinafter *Shasta View*]. To aid the court in determining whether Plaintiff is a public corporation, there is an additional rule of statutory construction that “bears directly on how to read the text of the statute.” *Gaston v. Parsons*, 318 OR 247, 253, 864 P2d 1319 (1994). It is “maxim *ejusdem generis*, which provides that where general words follow the enumeration of particular classes of things, the general words are to be construed as applicable to things of the same general nature or class.” *Id.* (citing *State v. Brantley*, 201 Or 637, 645, 271 P2d 668 (1954)). Applying the rule of *ejusdem generis* to ORS 307.090(1), the definition of the term “public corporation” can be determined from the distinguishing characteristics of the specific public bodies, *i.e.*, school districts, irrigation districts, drainage districts, ports, and housing authorities, that precede it. School districts provide education and facilitate learning for members of the public. “An irrigation district is a corporation formed to foster the beneficial use of water by the public.” *Shasta View*, 329 Or at 157 (citation omitted). Drainage districts oversee the systematic drainage of lands for a variety of public purposes, including flood prevention and agricultural or developmental objectives. Ports serve a public purpose

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through their “general benefit to the economy of the community.” *Carruthers v. Port of Astoria*, 249 Or 329, 341, 438 P2d 725 (1968). Housing authorities serve a public purpose in renting or leasing property “to persons of lower income.” ORS 307.092(1). The one common characteristic shared by all of the public bodies listed in the statute is a focus on service to or benefit for the public.

“Public corporation” was generally defined by the Oregon Supreme Court as a “corporation formed for the public’s benefit or for a public purpose.” *Shasta View*, 329 Or at 157 (citing *State ex rel Eckles v. Woolley*, 302 Or 37, 48-49, 726 P2d 918 (1986); *see also Black’s Law Dictionary*, 1228 (6<sup>th</sup> ed 1990) (defining public corporation as a municipality or government corporation “created for the administration of public affairs”). *See also Cook v. The Port of Portland*, 20 Or 580, 583, 27 P 263 (1891) (stating that corporations can be created for a public purpose as “an instrument of the government with certain delegated powers”). The emphasis on public benefit or public purpose is the same common characteristic shared by the public bodies listed in the statute.

In the case before the court, the focus of Plaintiff’s activities as stated in its Bylaws and Declaration of Trust is to provide benefits to its members. For example, Plaintiff’s Declaration of Trust states that “for the *benefit of its members*, [it] desires to establish a program whereby its members’ exposures in the areas of tort liability, property, workers compensation, and ancillary areas may be effectively and economically managed \* \* \* and to provide life, health and disability programs and other personnel benefit *services to members*.” (Ptf’s Ex 3 at 42 (emphasis added).) There is no evidence to show that Plaintiff’s activities and the use of the subject property result in a benefit to the public. Further, if there is any benefit to the public, the evidence supports the conclusion that the benefit is indirect, which contrasts with the direct public benefit provided by each of the public bodies specifically

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referenced in the statute. Because Plaintiff’s activities serve or benefit its members rather than the public, the court concludes that Plaintiff is not a public corporation.

Plaintiff alleges an alternate argument that it is a municipal corporation. “A municipal corporation is simply the agent or instrumentality of the state to administer local government and to exercise certain powers and perform certain duties within defined territorial limits in conformity with the method and to the extent delegated in the legislation creating and applicable to the corporation.” *Twohy Bros. Co. v. Ochoco Irr. Dist.*, 108 Or 1, 46, 216 P 189 (1923) (quoting *Carpenter v. Yeadon Borough*, 208 Pa 396, 399, 57 A 837 (1904)). The term has been generally defined by the Oregon courts in the context of property being “public property” and governing officers “elected by the legal voters.” *Shasta View*, 329 Or at 157 (citation omitted); *see also State ex rel Eckles v. Woolley*, 302 Or 37, 47, 726 P2d 918 (1986) (stating that “the corporation as a form of organizing municipal authority and services, ordinarily with territorially-defined taxing authority.”). Plaintiff has presented no evidence to show that it is a municipal corporation, created by the “state to administer local government” or deliver “general governmental services.” *Twohy Bros. Co.*, 108 Or at 46; *see also Horner’s Market v. Tri-County Trans.*, 256 Or 124, 131, 471 P2d 798 (1970). In contrast, the evidence shows that a group of special districts through a corporation purchased the subject property to house administrative and legislative functions, which benefit the group rather than the public.

Plaintiff asserts that “[i]t is unlikely that the legislature would specifically exempt its member service districts from property taxation and then intend to tax those same districts when they pool their resources in an effort to operate in a more efficient and economic manner.” (Ptf’s Opening Br at 9.) In response to Plaintiff’s assertion, the Oregon Supreme Court held that “exemption from property tax for property owned by intergovernment entities

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is not inherent in the legislative policy of economy and efficiency.” *Western Generation Agency v. Dept. of Rev.*, 327 Or 327, 333-34, 959 P2d 80 (1998). ORS 307.090(1) focuses on the use of the property by the entity seeking exemption and makes no reference to the operational efficiency of the entity.

“In addition Defendant asserts that this court must also determine whether all of SDAO’s members are exempt from property taxation in order [for Plaintiff] to qualify as a ‘public corporation’ under ORS 307.090(1).” (Def’s Response Br at 1.) With respect to tax status, once again, there is no evidence to support Plaintiff’s statement that *all* “its member service districts” are exempt from taxation. Even if Plaintiff’s statement is correct, the tax status of the “members” in and of itself does not dictate that the corporation is a public or municipal corporation. As previously discussed, the corporation must serve or benefit the public.

### III. CONCLUSION

After carefully reviewing Plaintiff’s election to be designated a mutual benefit corporation and considering the rules of statutory construction and case law, the court finds that Plaintiff was not formed to serve or benefit the public and therefore is not a public or municipal corporation. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's property does not meet the statutory requirements for exemption set forth in ORS 307.090(1).

Dated this \_\_\_\_\_ day of January 2006.

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JILL A. TANNER  
PRESIDING 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 Presiding Magistrate Jill A. Tanner on January 11, 2006 . The Court filed this document on January 11, 2006.***