

PT 06-33

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**LIGHTHOUSE APOSTOLIC CHURCH
OF OAK LAWN,
Applicant**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No. 03-PT-0069

Real Estate Exemption

**For 2002 Tax Year
P.I.N. 24-34-100-025, 028**

Cook County Parcels

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Mark Davis and Mr. Kevin Hynes, O’Keefe, Lyons & Hynes, LLC, on behalf of Lighthouse Apostolic Church of Oak Lawn; Mr. Donald T. Rubin, Rubin & Norris, LLC, on behalf of Intervenor, Village of Alsip; Mr. Gary Stutland, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether real estate, identified by Cook County Parcel Index Numbers 24-34-100-025 and 24-34-100-028, qualifies for exemption from 2002 real estate taxes under 35 ILCS 200/15-40, wherein “[a]ll property used exclusively for religious purposes” is exempted from real estate taxation.

The controversy arises as follows: On August 5, 2002, Lighthouse Apostolic Church of Oak Lawn (hereinafter “applicant” or “Lighthouse”) filed an Application for

Property Tax Exemption (County reference no. 88027) for tax year 2002 with the Cook County Board of Review (hereinafter the “Board”). On January 15, 2003, the Board made the following recommendation to the Illinois Department of Revenue (hereinafter the “Department”): “Exempt 65.9% of building and proportionate underlying land and 92.4% of the parking lot. All remaining land and leased improvements taxable.” This recommended exemption of the building, proportionate underlying land and parking lot was to begin March 4, 2002, constituting 83% of the 2002 assessment year. This 83% factor has never been in contention in these proceedings.

On July 31, 2003, the Department issued a “Non-homestead Property Tax Exemption Certificate” (docket no. 02-16-1735) to Lighthouse for P.I.N.S 24-34-100-025 and 24-34-100-028 with the following exemption: “66% of bldg & site is exempt. 34% of bldg and site is taxable. 92% of parking lot is exempt. 8% of parking lot is taxable. (Property not in exempt use).” The Department’s exemption was for 83% of the 2002 assessment year. Dept. Ex. No. 1. It is unclear from the Department’s Certificate whether the Department was accepting the recommendation of the Board. The Board exempted 65.9% of the building and “proportionate underlying land.” The Department exempted 66% of the building and “site.”

On August 25, 2003, the Village of Alsip (hereinafter “Intervenor”) intervened and requested a formal hearing as to the Department’s decision. On January 18, 2005, Lighthouse moved for summary judgment seeking “an exemption for the nine-acre property” excluding an area leased to Martin Oil Marketing, Ltd. (hereinafter “Martin”). The Village and the Department responded to Lighthouse’s Motion. On July 28, 2005, Administrative Law Judge Charles McClellan issued an Order on Lighthouse’s Motion

for Summary Judgment granting it in part and denying it in part. ALJ McClellan determined that Martin leased 3,725 square feet (16%) of the 23,000 square feet building on the subject property. The remaining 84% was used by Lighthouse. ALJ McClellan recommended that “a partial exemption should be granted for 84% of the building for 83% of the 2002 assessment year” and that the 92% exemption of the parking lot for 83% of the assessment year should stand as originally granted. ALJ McClellan denied summary judgment for the “option property” finding that “the question of whether an exemption for the Option Property should be allowed remains at issue.” (Order on Petitioner’s Motion for Summary Judgment (hereinafter “Order”), p. 10.)

The option property is 4.7 acres of the total 9 acres that comprise the subject property at issue. The option property does not include the building and parking lot, discussed above. (Order, Finding of Fact No. 12). “Under the terms of [an] Option Agreement, Martin may repurchase the Option Property upon 21 days notice to Applicant. The Option Agreement expires on February 28, 2022.” (Order, Finding of Fact No. 13). The option property encompasses land on both P.I.N.S at issue in this proceeding and extends from the south line of 127th Street south to a concrete curb. This curb is north of the building used by Lighthouse which is 84% exempt, as discussed above, for 83% of the 2002 assessment year.

On November 9, 2005, a formal evidentiary hearing as to the exemption for the option property was held before ALJ McClellan¹ with Reverend Daniel Willis, Senior Pastor of Lighthouse, presenting oral testimony for the applicant. Following submission

¹ Administrative Law Judge Charles McClellan has since left the Office of Administrative Hearings.

of all evidence and a careful review of the record, it is recommended that the option property should not be exempt from property taxes for the 2002 assessment year.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter. Tr. pp. 7-8; Dept. Ex. No. 1.

CONCLUSIONS OF LAW:

An examination of the record establishes that Lighthouse has not demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption for the option property for the 2002 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may

place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts “[a]ll property used exclusively for religious purposes...” and “not leased or otherwise used with a view to profit.” 35 ILCS 200/15-40 (1996). The Illinois Supreme Court defined the term “religious use” as follows:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911), (hereinafter “McCullough”).

Reverend Willis testified that the option property contains an asphalt driveway, which provides entry and exit to the church campus. This driveway leads into two asphalt circular parking lots and the parking lots each contain a sidewalk. The sidewalks connect outside of the parking lots and this walkway then continues into the church building. Tr. pp. 15-16, 46; App. Ex. No. 4. The parking lots are used on Monday and Tuesday for Alcoholics Anonymous and a teen pregnancy program offered to the community. Tr. pp. 17-18. On Wednesday nights, the parking areas are used for Bible class, on Thursday night for leadership institute, and on Sunday morning for three services. Tr. pp. 17-18. When the two asphalt parking areas are filled, the grassy area of the option property is used for overflow parking. Tr. pp. 20-21, 70-71.

“Parking areas” are exempt under the Property Tax Code when they are owned by a religious institution which meets the qualifications for exemption, are used as a part of a use for which exemption is provided in the Code and are not leased or used for profit. 35 ILCS 200/15-125. An applicant seeking a property tax exemption for its parking area must show three factors: (1) ownership of the parking area by an exempt institution, (2) fact that parking area is not leased or used for profit, and, (3) fact that it is used as part of a use for which exemption is provided by statute. Mount Calvary Baptist Church, Inc. v. Zehnder, 302 Ill. App. 3d 661 (1st Dist. 1998). With regard to factor (3) in Mount Calvary, my research indicates no case in which Alcoholics Anonymous and teen pregnancy programs were found to be a “religious” use of property. Accordingly, while use of the parking areas for participants in these programs may be well intentioned, it is not a use for which exemption is specifically provided in the Property Tax Code.

Prior to the evidentiary hearing in this matter, Counsel for Lighthouse filed a “Motion to Quash Subpoenas and In Limine.” According to this Motion, the only issue left for hearing is the extent of use of what is known as the “Option Property.” “What is not at issue for hearing is the Church’s ownership of the property or the terms of the sale of the property to the Church by the prior owner.” “The Church, therefore, requests that the ALJ issue an order in limine: (A) prohibiting the parties from introducing testimony or other evidence regarding the Church’s ownership of the property; and (B) clarifying that the only issue for hearing is the extent to which the Church used the Option Property primarily for religious purposes.”

In an Order dated November 2, 2005, ALJ McClellan granted Applicant’s Motion and ruled as follows: “The testimony of any witness and any other evidence at

hearing in this matter shall be limited to the issue of the [Applicant's] use of the Option Property for religious purposes. Any testimony or other evidence regarding issues other than use of the Option Property is barred." At the evidentiary hearing, Counsel for the Intervenor attempted to ask questions regarding ownership of the option property. Counsel for Lighthouse consistently objected to these questions. The objections were sustained by ALJ McClellan. Tr. pp. 44-45, 56-57.

35 ILCS 200/15-40 of the Property Tax Code, "Religious Purposes," only requires a consideration of the primary use of the property to determine if the property is exempt. Ownership under the "Religious Purposes" section of the Property Tax Code is not an issue. However, the problem with Lighthouse's motion in limine and the subsequent exclusion of any testimony or evidence regarding ownership of the option property, is that in order for parking areas to be found exempt according to the Property Tax Code and relevant case law, the parking areas must be owned by an exempt institution. Both 35 ILCS 200/15-125, "Parking Areas," and Mount Calvary, *supra*, are clear in requiring that in order for a parking area to be found exempt, the parking area must be owned by an exempt institution. Because of Lighthouse's motion in limine and Counsel's objections to testimony regarding ownership of the option property including the parking areas, there was no testimony or documentary evidence admitted at the hearing and no evidence in the record regarding ownership of the option property. I am unable to conclude from the record of this hearing that Lighthouse had clear incidents of ownership in the parking areas located on the option property and accordingly, as a matter of law, I am unable to conclude that the parking areas on the option property should be exempt from 2002 property taxes.

Reverend Willis described uses of the option property other than for parking. He testified that the northern area of the option property is covered with grass and contains some trees. This area is used for youth programs including Friday night football teams and Saturday baseball teams. According to Reverend Willis, football and baseball are played from April until the first significant snowfall. Tr. pp. 18-19, 52. A children's carnival and youth activities were also held on the option property. The children's carnival was held on "two or three Saturdays" in 2002. Tr. pp. 62-63, 66-68. Lighthouse allowed the Village of Alsip's football team to practice on the grassy area of the option property. Some children in Lighthouse's congregation were on this team. The team practices five months/year, five days/week, Monday through Friday. Tr. pp. 21-23, 65-66. The option property was used for an international festival in 2002 celebrating the diversity of the ethnic groups in the congregation. This festival is a "mini Taste of Chicago" and lasted one Saturday. The option property was used on Saturdays prior to this festival for taste-testing, Bake-off competitions and other events to highlight the festival. Tr. pp. 19, 63-65.

No documentary evidence was admitted to support any of the above testimony. No schedule of activities for Lighthouse was admitted into evidence, although Reverend Willis testified that Lighthouse publishes a calendar of events for members. Tr. p. 71. There was no testimony as to whether the carnival or the "mini taste of Chicago" generates a profit for Lighthouse. There was no testimony that a baseball or football field had been specifically constructed on the property. There was no testimony as to whether anyone living in the area could use the property for baseball or football or whether use is limited to church members in church sponsored leagues. It is unclear where on the option

property these described activities took place other than a general description of the “upper northern green area” that is covered with grass. Tr. p. 18. If I were to conclude that the option property should be exempted for use of the property for sports, the carnival and the “mini Taste of Chicago,” I would not be able to determine exactly what specific area qualified for this exemption. It must also be noted that an “Alta/Acsm Land Title Survey” of the subject property was admitted into evidence which shows “light poles” on the property. App. Ex. No. 4. There are no “light poles” shown on the northern edge of the property. In fact, the only light poles shown on the survey of the option property are in the parking lots. Without lighting on the northern part of the option property, there is an obvious limited use of the property to daylight hours. There was no testimony with regard to lighting on the option property at the evidentiary hearing.

It is unclear from the testimony how baseball, football, the children’s carnival and the mini Taste of Chicago fit into Lighthouse’s ministry. Reverend Willis was asked in cross-examination whether the ball field and football field were for religious or secular purposes. He responded: “Dealing with my church kids, giving them a safe place and off the streets. I take great offense in making a distinction.” This distinction must be made, however, for purposes of exemption under the Property Tax Code. Reverend Willis admitted that there were ball fields and football fields available elsewhere. Tr. p. 53. In redirect, Reverend Willis attempted to clarify his comments by stating that “because we’re a church, part of our mission is mentoring to the youth of our city and giving them a safe refuge and a safe haven.” “So I would be wasting my time if I was not allowing

that to be done for the sole purpose of being a strong positive role model mentor in those kids' lives that are out there practicing.” Tr. pp. 58-59.

The “religious purposes” contemplated by the Property Tax Code involve the use of property for “public worship, Sunday schools, and religious instruction.” McCullough, *supra*. My research does not indicate any case where football, baseball, a children’s carnival or a food fest were found to constitute “public worship, Sunday schools or religious instruction.” Providing a space for football, baseball, a children’s carnival, and a food fest, mentoring the youth of the city, giving youth a safe haven and being a strong role model are obviously beneficial to society. There is just nothing inherently religious about these activities and no exemption for space used for these activities is provided for in the Property Tax Code.

Reverend Willis also testified that the option property was used for a tent revival. Lighthouse constructed a tent in the area that seated 1,000 people and which was used for one week in 2002 for worship services. Lighthouse’s staff also held vesper and prayer service and devotion and meetings on the option property. Tr. pp. 18-19, 50, 52, 56, 62-63, 73. Reverend Willis testified that the property was used for prayer walks on Saturday morning, “where we walk the entire nine acres as a meditative prayer journey,” with five to five hundred participants. Tr. p. 58. In an affidavit submitted with Lighthouse’s original application for exemption, Reverend Willis stated that “the open space and wooded area (346,161 square feet) shall be used as weather permits for religious and ancillary purposes such as outdoor services, church picnics and bake sales, church youth

and senior activities and the relaxation and meditation of ministers and members of the congregation.” Intervenor’s Ex. No. 1.

No documentary evidence was admitted to support any of the above testimony. No schedule of activities for Lighthouse was admitted into evidence, although Reverend Willis testified that Lighthouse publishes a calendar of events for members. Tr. p. 71. It is unclear where on the option property the described activities took place. Reverend Willis testified that the vesper service is held out in the sun, if it’s nice. “Otherwise under the trees if the sun is too hot.” Tr. p. 73. I cannot recommend an exemption for an area “in the sun” or “under the trees.” If I were to conclude that the option property should be exempted for use of the property for the tent service, vespers and prayer walks, I would not be able to determine exactly what specific area of the option property qualified for this exemption.

It must be noted that Lighthouse has an 84% exemption for a building, discussed above, which is used for religious purposes and which is adjacent to the option property on the southern portion of the subject property. Counsel for the Intervenor and for the Department repeatedly asked Reverend Willis during cross-examination what religious activities were conducted inside the exempt building and the frequency of these activities. Counsel for the Intervenor stated in argument pursuant to an objection to these questions that he was asking the questions to determine “how much of the northern parcel is being used on a regular basis as opposed to the southern parcel” and to show whether use of the option property is “necessary to the regular function of the church.” Tr. pp. 42, 43. Lighthouse’s objections to the questions were consistently sustained.

Because of the limited testimony at the evidentiary hearing, I am unable to conclude that Lighthouse acquired the option property for purposes which were reasonably necessary for the accomplishment and fulfillment of the religious objectives of Lighthouse's ministry. DuPage County Board of Review v. Department of Revenue, et al. 339 Ill. App. 3d 230 (2nd Dist. 2003). Because of the limitations on the testimony at the hearing, I am unable to conclude that the activities that take place on the option property accomplish and fulfill any objectives of Lighthouse that could not be accomplished and fulfilled within the adjacent and exempt building. The tent revival lasts one week and presumably could be held in the exempt church building. There is no exemption in the Property Tax Code for property used for the meditation and relaxation of ministers. The Saturday prayer walks which could only take place "as weather permits," are an incidental and occasional use of the option property. I cannot recommend an exemption for property that is only used "when weather permits." Reverend Willis testified that "during the day for my staff when the weather is nice, we love to go out to this [option property] and take tables and chairs and do our morning vespers and prayer services and devotion and staff meetings in that area." Tr. p. 19. Vespers and prayer services may, in fact, be more enjoyable outside when the weather permits. I cannot conclude from the testimony, however, that the option property is necessary for these services or that the services could not be conducted in the exempt church building.

Like all provisions exempting property from taxation, Section 15-40 must be strictly construed against exemption, with all unproven facts and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91

(1968). Therefore, applicant bears the burden of showing, by a standard of clear and convincing evidence, that the property it is seeking to exempt falls within the provisions under which the exemption is sought. *Id.* The applicant in this case failed to show that the option property is necessary for Lighthouse to carry out its ministry.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the religious exemption will cause damage to public treasuries and the overall tax base.

WHEREFORE, for the reasons stated above, it is recommended that a partial exemption be granted for 84% of the building for 83% of the 2002 assessment year and that the 92% exemption of the parking lot for 83% of the 2002 assessment year should stand as originally granted and that the option property should not be exempt from taxes for the 2002 assessment year.

August 14, 2006

Kenneth J. Galvin
Administrative Law Judge