

Chaos, Contradiction and Confusion: Ohio's Real Property Tax Exemptions

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Article XII, section 2 of the Ohio Constitution provides: “[G]eneral laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose. . . .”

I. INTRODUCTION

Although much has been written about taxation in the State of Ohio, there has never been published a comprehensive study of Ohio's real property tax exemption law. The large body of case law in this area and the visible absence of commentary is perhaps indicative of the complexity of the subject matter.

Ohio's tax system has been described as “not really a system at all but a hodgepodge of constitutional provisions and statutes resulting from the

demands for revenue and the pressures for exemption."¹ Article XII, section 2 of the Ohio Constitution grants to the legislature permissive authority to enact specific exemptions at its own discretion, within the parameters set by the constitution's language.

The purpose of real property tax exemption statutes is to describe the specific types of property that may be exempted from taxation. Therefore, the exemption statutes are statutes of description. Real property may be described in a number of different ways. For purposes of Ohio's exemption statutes, exemption may be based on one or more of the following descriptive categorizations: (1) *ownership* of the property by a particular type of institution; (2) *use* of the property for an exempt purpose; (3) or some *attribute* of the property itself, such as its historic value,² its location,³ or its significance.⁴

Exemption statutes in Ohio are based on all three of the aforementioned categories. The primary statutes (those which apply to ninety percent of all exemptions granted in Ohio) are based on the use of the property for an exempt purpose. These exemption statutes have historically required the property to be *devoted to* or *used for* an exempt purpose. The fundamental policy decision made by the legislature when enacting an exemption statute is whether the exemption will be based upon the *use* of the property, or upon some other criteria. Does the property, in order to obtain tax exemption, have to be used for a charitable purpose, for an educational purpose, for a public purpose, or for public worship; or may it be exempted on some other requirement? The legislature must consider these issues when enacting exemptions.

Ohio's present statutory scheme of tax exemptions is a patchwork combination of statutes containing sections first enacted in the early 1800s and amended over the years in a haphazard and irregular way. There has not been a recodification or comprehensive review of Ohio's tax exemption provisions since 1852. The statutes in existence today are full of contradictions and inconsistencies. For example, the statutory language granting tax exemption to the property of state university branch campuses appears to be broader in scope than the statute applying to main campus universities.⁵ The apparent

¹ Lloyd E. Fisher, Jr., *Charities and the Ohio Tax Law*, 18 OHIO ST. L.J. 228 (1957).

² OHIO REV. CODE ANN. § 5709.18 (Anderson 1986) (exemption of prehistoric earthworks or historic buildings).

³ OHIO REV. CODE ANN. § 1728.10 (Anderson 1986) (property must be located in "blighted" area).

⁴ OHIO REV. CODE ANN. § 5709.17 (Anderson 1986) (exemption of lands held by memorial organizations).

⁵ Compare OHIO REV. CODE ANN. § 3355.11 (Anderson 1986) (exemptions for university branch districts) with OHIO REV. CODE ANN. § 3345.17 (Anderson 1986) (exemptions for Main Campus Universities). The university branch district exemption applies to "any . . . property acquired, owned, or used by it [the university branch district]"

inconsistency in the wording of these statutes illustrates the confusion created by Ohio's statutory exemption scheme.

Between 1851 and 1965 the Ohio Supreme Court decided over 120 cases dealing with the educational, religious, charitable, and public property exemption statutes. These cases dealt with a wide variety of fact situations and provided a valuable body of case law which was used by state administrative agencies, lower courts, and those entities seeking exemption. This body of case law has been recognized, followed, and cited by many other states since the late 1800s. During this time period, Ohio's tax exemption system was studied by and served as a model for numerous states which were modernizing their exemption statutes. Most substantive exemption questions had been resolved by these cases and Ohio was served well by having a uniform and consistent policy with respect to real property tax exemptions.

Since 1816 the laws of Ohio, and since 1851 the Constitution of Ohio, have been interpreted to require, without exception, that property be used for an exempt purpose in order to be exempt from taxation. That precedent, however, was suddenly reversed in 1965 by the Ohio Supreme Court in a decision that affected the interpretation of many of the existing statutes contained in the Ohio Revised Code at that time.

In 1965 the Ohio Supreme Court overruled part of this extensive body of case law and rewrote one of the state's major exemption statutes⁶ which had been in existence since 1852. In *Denison University v. Board of Tax Appeals*,⁷ the court held that the Ohio Constitution was not, or was no longer, a limitation on the power of the General Assembly to enact exemption statutes.⁸ In essence, the court discarded the five specifically enumerated exemptions contained in article XII, section 2 of the Ohio Constitution, giving the General Assembly plenary power subject only to constitutional provisions, such as the equal protection clause. The court's holding appears to be the result of a 1931 amendment to article XII, section 2 of Ohio's Constitution which removed the restrictions that the 1912 amendment had placed on the General Assembly's power to grant exemptions. Two questions remain unanswered today: First, why did the court wait thirty-four years to come to this conclusion; and second, what facts in *Denison University* were so compelling that the Ohio Supreme Court discarded over 150 years of solid case law.

Even though *Denison University* only involved an exemption for college-owned property under Ohio Revised Code section 5709.07, the problems that arose after the decision pervaded all real property tax exemption statutes. The primary problem involved the interpretation of existing statutes once the court

while the state university exemption applies only to property "used for the support of such institution." There is no such use limitation on the exemption for university branch districts.

⁶ OHIO REV. CODE ANN. § 5709.07 (Anderson 1986).

⁷ 205 N.E.2d 896 (1965).

⁸ *Id.*

held that the constitution was no longer a limitation on the meaning of those statutes. A major portion of Ohio's real property tax exemption statutes were enacted before the 1931 constitutional amendment dealt with in *Denison University*. The question after *Denison University* was how to interpret those statutes once the constitution was removed from the picture altogether.

Between 1974 and 1982 the Ohio Supreme Court abandoned virtually all of its previous decisions rendered from 1837 until 1969. The court expanded the exemptions that may be granted to such an extent that the credibility of Ohio's real property tax exemption system is now in danger. It has now become extremely difficult, if not impossible, for the state to administer its real property tax exemption system since the statutory meaning of much of the exemption language remains unclear.

During tax year 1989 Ohio had \$86.5 billion of real property value that was taxable.⁹ Approximately \$14.5 billion of real property value was exempted from taxation by authority of the Ohio Constitution and the Ohio Revised Code.¹⁰ Tax revenue loss due to these exemptions in 1989 was approximately \$717 million.¹¹

In order to resolve the present ambiguity in Ohio's real property tax exemption statutes, the legislature should clarify individual statutes and consolidate the exemption provisions into one chapter of the Ohio Revised Code. Creation of a more logical structure would diminish ambiguity and lessen confusion.

The purpose of this Note is to provide a comprehensive study of Ohio's real property tax exemption statutes, case law, and constitutional provisions in an attempt to set forth decided points of law and illustrate the confusion which still exists in many areas of real property tax exemptions. In order to present an accurate picture of how Ohio has arrived at its current real property tax exemption system, this Note will examine the historical developments in real property tax exemption law and analyze legislative enactments, judicial decisions, and administrative actions which have changed the previous course of the law.

This Note presents an in-depth analysis of the four major areas of Ohio's real property tax exemptions: educational exemptions, religious exemptions, charitable exemptions, and public purpose exemptions. Real property tax exemptions for educational purposes are discussed in Section II of the Note. Section III examines the various considerations involved in granting exemptions for property used for religious purposes. Section IV explores the most controversial real property tax exemptions—those granted to charitable institutions. Section V examines the exemption of real property used for public

⁹ OHIO DEPARTMENT OF TAXATION, TAX DATA SERIES, PUB. NO. 46, Table PE-2 (Oct. 16, 1990).

¹⁰ *Id.*

¹¹ *Id.*

purposes. It becomes increasingly clear that exemptions in each of these areas are paradoxically dependent on and independent of what is occurring in the other areas of Ohio's real property tax exemption laws.

II. TAX EXEMPTIONS FOR EDUCATIONAL PURPOSES

The history of tax exemptions for educational purposes in Ohio begins with the foundation for the common schools of Ohio as set forth in the Northwest Ordinance of 1787.¹² Members of the 1802 Constitutional Convention incorporated an almost verbatim clause into Ohio's first constitution.¹³ Although the 1802 Constitution did not contain specific exemption provisions, the general principle was that property was exempt if it was not designated as taxable. The first legislative enactment specifically exempting property used for educational purposes was the Act of March 14, 1831.¹⁴

The first challenge to the education exemption occurred in 1837 when Kenyon College challenged the taxing of a college-owned professor's house situated on the institution's property.¹⁵ In denying the exemption, the court said that "[i]t is not enough that the person residing in the house is one of the teachers; it must be shown that the building is occupied for literary purposes."¹⁶

In 1850 the Ohio Supreme Court was asked to construe the 1848 tax law provisions in *Cincinnati College v. State*.¹⁷ Cincinnati College had obtained the property at issue from First Presbyterian Church through a perpetual lease which contained a clause restricting use of the property to educational purposes. Eventually the college purchased the land in fee simple, but the deed retained the earlier lease provision that the property would be used for the support of a college or institution of learning.¹⁸ The original building was

¹² NORTHWEST ORDINANCE of 1787, art. III, 1 Stat. 51 (1787) ("Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.").

¹³ OHIO CONST. of 1802, art. VIII, § 3 ("But religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.").

¹⁴ 1831 Ohio Laws 272-73 ("[A]ll lots of land or ground set apart for school houses, academies or colleges, with the buildings thereon occupied for those purposes; and all lands, the property of any such academy, or other seminary of learning, which now is, or may hereafter be established in this State, including all lands granted by Congress for the use of schools, academies, colleges and for religious purposes; but the buildings, or any of them, not occupied for literary purposes, may be taxed . . .").

¹⁵ *Kendrick v. Farquhar*, 8 Ohio 189 (1837).

¹⁶ *Id.* at 197.

¹⁷ 19 Ohio 110 (1850).

¹⁸ *Id.* at 110-12.

destroyed by fire, but the college obtained private donations to erect a new structure.¹⁹ The first floor was rented to various merchants for retail and business activities. A suite of rooms on the second floor was occupied by a literary and scientific society with the remainder of the rooms being used for lecture rooms and private rooms for students.²⁰ The state auditor denied the college's application for exemption and the college appealed.²¹ Cincinnati College officials argued vigorously that, although the property's immediate use was not for "literary or scientific purposes," the lease income was "appropriated solely to sustaining" the college.²² In upholding the auditor's denial, the court made it clear that property used solely for the production of revenue should be subject to taxation, regardless of ownership.²³

If the court had reversed the auditor's ruling, it would have given the merchants occupying the premises an undue advantage over others similarly situated. Regarding statutory interpretation, the court took the position "that all laws that exempt any of the property of the community from taxation should receive a strict construction. All such laws are in derogation of equal rights."²⁴

In *Cincinnati College*, the court focused on the exclusive use of property for scientific or literary purposes and the statutory prohibition against leasing or otherwise using the exempt property with a view to profit. Nearly 150 years later, the Ohio Supreme Court was faced with a case involving virtually the same facts, but it granted the exemption.²⁵ These diametrically opposed decisions illustrate the many inconsistencies found throughout Ohio's real property tax exemption case law. They also exemplify how far the legislature and the judiciary have moved away from their original stance that the property must be used by the entity seeking exemption and used exclusively for an exempt purpose.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 113.

²³

But when any society, no matter of what kind, whether scientific, literary, or religious, enters the common business of life, and uses property for the purpose of accumulating money, the government should, and we think the statute does, treat it in the same way persons are dealt with, who are using property in a similar manner, and engaged in the same business. Government cannot discriminate between the uses which different societies or individuals will make of the proceeds of their business, and determine that this society or individual will make a more worthy disposition of the proceeds of his business than that, and therefore the one shall be taxed and the other not.

Id. at 114.

²⁴ *Id.* at 115.

²⁵ *State ex rel. Univ. of Cincinnati v. Limbach*, 553 N.E.2d 1056 (1990). See *infra* notes 96-101 and accompanying text.

For fifty years after the court's decision in *Cincinnati College* there were no challenges to the exemption provisions governing educational facilities. It is possible that the state and the nation were preoccupied with the Civil War and Reconstruction activities thus diverting their attention to more urgent matters.

The constitutional provision governing charitable and educational exemptions was amended in 1912 to read "institutions used exclusively for charitable purposes."²⁶ It had formerly read "institutions of purely public charity."²⁷ Under the 1912 amendment to the Ohio Constitution, in order for property to be exempt for educational purposes, it had to belong to a "public institution of learning" and be "used exclusively" for educational purposes.²⁸ This language created problems for privately owned schools because they did not come within the definition of "public institution of learning." It was therefore necessary for any privately owned school seeking exemption to apply under the broader charitable exemption provision.²⁹

The confusion created by this situation required the court in later cases to articulate what fell within the definition of a "public institution of learning."³⁰ Subsequently, the codification of all previously enacted Ohio Laws in 1912 brought exemptions for school houses under section 5349 of the General Code. There were no substantive changes in the language which affected the school exemption provisions.

These provisions were involved in *Boss v. Hess* in which school property leased to a commercial enterprise was found not exempt.³¹ The court's opinion seems to suggest that if any of the commercial enterprise's proceeds (other than the rent paid for the use of the facility) had been used for the endowment and support of the schools for the free education of youth, the exemption would have been granted.³²

In 1931 the Ohio Constitution was once again amended.³³ Over the next thirty-four years, the Ohio Supreme Court struggled with the language change

²⁶ OHIO CONST. of 1851, art. XII, § 2 (1851, amended 1912).

²⁷ OHIO CONST. OF 1851, art. XII, § 2 (1851, amended 1905).

²⁸ OHIO CONST. OF 1851, art. XII, § 2 (1851, amended 1912).

²⁹ *Gerke v. Purcell*, 25 Ohio St. 229 (1874).

³⁰ *Id. But see Way Int. v. Kinney*, 552 N.E.2d 908 (1990) (the sale of religious materials developed by a religious organization specifically for distribution to its own members did not destroy tax exemption).

³¹ 148 N.E. 347 (1925).

³² *Id.* at 348.

³³ Article XII, section 2, which governs real property tax exemptions, was amended as follows:

Land and improvements thereon shall be taxed by uniform rule according to value. [Certain specified public bonds] . . . shall be exempt from taxation and without limiting the general power, subject to the provisions of article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be

and how it affected Ohio's real property tax exemptions. Arguably, the structure of the language is such that the removal of limitations on the legislature's general power only applied to personal property, *i.e.*, the public bonds specifically mentioned. Nonetheless, the Ohio Supreme Court eventually used the 1931 amendment to Ohio's Constitution to remove all restraints on the Ohio Legislature's power to grant exemptions. This change, however, did not occur quickly or without stringent opposition which resulted in a divided court. Examination of the struggle to resolve cases before the Ohio Supreme Court from 1931 to 1965 reveals the conflict and ambiguity resulting from the 1931 constitutional amendment.

In 1942 the Ohio Supreme Court first defined "public institution of learning" in *American Bible Society v. Department of Taxation*.³⁴ In its opinion, the court defined an "institution of learning" for tax exemption purposes as:

[A]n institution composed of a group of learned men and women associated together for the purpose of instructing another group of persons, usually young men and women, in the accumulated knowledge, skill and wisdom of mankind. An institution of learning must at least embrace the idea of someone, possessed of knowledge and skill, capable of and in a position to impart such knowledge and skill to others in position to and capable of learning them.³⁵

This definition did not include an institution whose sole purpose was to publish and distribute books.³⁶

During 1943 the legislature enacted two additional code sections which created specific exemptions for universities, colleges, or other educational institutions owned by municipal corporations and for property vested in any board of education.³⁷ Although there have not been any significant challenges under either of these sections, it is interesting to note that a split Ohio Supreme Court in *In re Applications of University of Cincinnati*³⁸ ruled that property leased for profit by the Cleveland City Board of Education was exempt from taxation under what is now Ohio Revised Code section 3349.17. This decision was one of the first in which the court discarded their previous rule that a grant

passed to exempt burying grounds, public schoolhouses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose

OHIO CONST. OF 1851, art. XII, § 2 (1851, amended 1931).

³⁴ 40 N.E.2d 936 (1942).

³⁵ *Id.* at 939-40.

³⁶ *Id.* at 940.

³⁷ OHIO CODE ANN. § 4003-15 (Throckmorton's 1945); OHIO CODE ANN. § 4834-16 (Throckmorton's 1945).

³⁸ 91 N.E.2d 502 (1950).

of exemption was contingent on both ownership and use for an exempt purpose.

In 1943 the Ohio Supreme Court ruled that, pursuant to sections 5349 or 5553 of the General Code, property belonging to a privately owned college, academy or institution of learning which was open to the general public could be exempt from taxation only if the property were used for a charitable purpose at the time the exemption was sought.³⁹ The land at issue in *Ursuline Academy v. Board of Tax Appeals*⁴⁰ was purchased by a private girl's school and was not yet being used as a school at the time the application was made for exemption.⁴¹ Plans to construct a new high school in the future were not sufficient grounds to grant exemption.

In *Ursuline Academy* the court stated that "[i]n the instant case there is no such present use. Use must be read into any statute enacted prior to the amendment of section 2 of Article XII, effective January 1, 1931."⁴² The "present use" requirement appears to have resulted in substantial abuse of Ohio's real property tax exemptions. After examining such cases, the practitioner need only advise his client, who is applying for tax exemption, to make sure that there is some "present use" of the property in order to meet this test. In the case of a school, it is easy to imagine the placing of temporary baseball fields on a piece of vacant land in order to circumvent this obstacle. Five years after *Ursuline Academy*, the Ohio Supreme Court ruled in *Cincinnati Board of Education v. Board of Tax Appeals*⁴³ that real property held by a board of education for future building construction was exempt even though a school house had not yet been erected thereon.⁴⁴ The only factual difference appeared to be that *Ursuline Academy* was a privately owned school and the property in the *Cincinnati* case was owned by a public school district. If use were actually the test, then ownership should have been irrelevant.

In 1945 another case involving a private girl's school owned by a not-for-profit corporation was before the Ohio Supreme Court.⁴⁵ The property that was the subject of the exemption application was a playground that was made available for public use during after-school hours and on weekends. The issue was whether or not the tuition payment by some students of "substantial sums" destroyed the property's eligibility for exemption. The court's approach was that the private institution applying for exemption under the educational use statute must use the property for "exclusively charitable purposes," even

³⁹ *Ursuline Academy v. B.T.A.*, 49 N.E.2d 674, 680 (1943).

⁴⁰ 49 N.E.2d 674 (1943).

⁴¹ *Id.* at 680.

⁴² *Id.* at 676.

⁴³ 80 N.E.2d 156 (1948).

⁴⁴ *Id.* at 156.

⁴⁵ *College Preparatory School for Girls v. Evatt*, 59 N.E.2d 142 (1945).

though the mission of the institution was the education of children.⁴⁶ The test then became the exclusive use of property for charitable purposes and the availability of the institution's services to the general public.

Application of this standard was apparent in *Bloch v. Board of Tax Appeals*.⁴⁷ In *Bloch*, the school at issue was organized and operated by a religious organization for the sole purpose of training men for ministerial positions. The court held that an essentially private institution that was not providing educational opportunities to the general public could not be exempt as a public college or as a charitable institution.⁴⁸ The court did not retreat from this position until 1951. In *American Committee of Rabbinical Colleges v. Board of Tax Appeals*,⁴⁹ the Ohio Supreme Court held that tax exemptions would no longer be dependant upon whether the institution is open to the general public so long as there was no view to profit and the property was being used exclusively for the lawful advancement of both education and religion.⁵⁰

In *Miami University v. Evatt*,⁵¹ the Ohio Supreme Court held that reservation of a life estate in land granted to a university destroyed exemption for that portion of the property which was used as a private residence.⁵² Exemption was granted for the remainder of the property being used by the university for educational purposes.⁵³

In 1948 the Ohio Supreme Court was faced with the issue of whether a tax exemption should be granted for vacant land owned by a school district. In *Cincinnati Board of Education v. Board of Tax Appeals*,⁵⁴ the school board had purchased land and was actively preparing it for construction of an educational facility.⁵⁵ The Ohio Supreme Court granted the exemption and enunciated the differing treatment of property used for educational purposes depending upon whether it is owned by charitable institutions or by public authorities.

[A] distinction must be made in the exemption of private property which is ultimately used for a charitable purpose and property purchased by public authorities for a public purpose and being prepared to serve the public use. The property in question was purchased by the board of education, a public entity engaged in governmental function for the benefit of the public. . . . The

⁴⁶ *Id.* at 143.

⁴⁷ 59 N.E.2d 145 (1945).

⁴⁸ *Id.* at 147.

⁴⁹ 102 N.E.2d 589 (1951).

⁵⁰ *Id.*

⁵¹ 59 N.E.2d 366 (1945).

⁵² *Id.* at 367.

⁵³ *Id.* at 366.

⁵⁴ 80 N.E.2d 156 (1948).

⁵⁵ *Id.* at 156.

property became subject to exemption from taxation when title vested in the board of education.⁵⁶

The court maintained its approach of strictly construing the exemption statutes when a privately owned school was at issue, while at the same time giving an expansionist reading to those statutes when granting exemptions to a public board of education.

During the late 1940s the court further defined public institutions of learning and public schools. In *Society of Precious Blood v. Board of Tax Appeals*,⁵⁷ the Ohio Supreme Court made it clear that privately owned (including property owned by charitable institutions) educational facilities would not be granted exemption unless there was evidence that the "educational advantages" of the school are "available to the public generally."⁵⁸ An institution of learning may only be eligible for tax exemptions if it makes no attempts to restrict admission based on the applicant's religion.⁵⁹

The issue of land which is owned by a public institution of learning and leased for commercial purposes came before the court again in the 1950s. Twenty-five years earlier, the court had suggested in dicta that an exemption would be granted if the proceeds of the lease were used for the "endowment and support" of education.⁶⁰ The Ohio Supreme Court ruled in *In re University of Cincinnati*⁶¹ that real property owned by the municipal university and rented commercially was exempt as long as the income from such rental property was applied to the "exclusive use, endowment and support of the university."⁶²

This ruling came under section 4003-15 of the General Code governing municipal universities. This section contains significantly different wording than that of the statute governing exemptions for state universities.⁶³ Had the University of Cincinnati been a state university at that point, instead of a municipal university, there is a substantial likelihood that the exemption may have been denied according to the plain language of the statutes. Once again the inconsistencies in exemption provisions governing different educational entities are apparent. It is this type of inconsistent treatment which mandates a complete restructuring of Ohio's real property tax exemption laws. Even though there are no longer any municipal universities in the State of Ohio, the Ohio Revised Code sections regulating this type of educational institution remain intact. One advantage in combining all exemption statutes into one

⁵⁶ *Id.* at 158.

⁵⁷ 77 N.E.2d 459 (1948).

⁵⁸ *Id.* at 460.

⁵⁹ *Cleveland Bible College v. B.T.A.*, 85 N.E.2d 284 (1949).

⁶⁰ *State ex rel. Boss v. Hess*, 148 N.E. 347 (1925).

⁶¹ 91 N.E.2d 502 (1950).

⁶² *Id.*

⁶³ OHIO REV. CODE ANN. § 3345.17 (Anderson 1986).

chapter of the code would be to eliminate the disparate treatment among the various educational statutes.

In 1962 Denison University submitted an exemption application for a college fraternity house.⁶⁴ Exemption was denied because the facility was not used exclusively for charitable purposes.⁶⁵ This appears to be the only case in which a university or college has applied for exemption of a fraternity or sorority house owned by a public or private college. It should be noted that the university, although it was an educational institution, applied for exemption under Ohio Revised Code section 5709.12, the charitable organization exemption statute.

Three years later, another case involving Denison University came before the Ohio Supreme Court.⁶⁶ In *Denison University v. Board of Tax Appeals*,⁶⁷ the university was seeking exemption for three parcels of land.⁶⁸ The 1965 *Denison University* decision dealt with Ohio Revised Code section 5709.07, the educational exemption statute. This section provided exemption for “[p]ublic colleges and academies, and all buildings connected therewith, and all lands connected with public institutions of learning, not used with a view to profit”⁶⁹ From the enactment of this section in 1852 until the *Dennison University* case in 1965, section 5709.07 had consistently been interpreted to require that the property be used for an “educational purpose” in order to be exempt from taxation.⁷⁰ This had also been the requirement under the 1825 and 1846 statutes.⁷¹ The *Denison University* court also held that the Ohio Constitution was not, or was no longer, a limitation on the power of the General Assembly to enact exemption statutes.⁷² This ruling opened a Pandora’s box.

This interpretation has had drastic consequences and has led to some seemingly absurd situations. The court created more ambiguity in ruling that Denison University, a private institution of learning, was exempted from taxation under Ohio Revised Code section 5709.07, rather than being exempted under the charitable exemption statute as had previously been done. First, the standard for exemption became whether or not the property was “connected

⁶⁴ *Dennison Univ. v. B.T.A.*, 183 N.E.2d 773 (1962).

⁶⁵ *Id.* at 781.

⁶⁶ *Denison Univ. v. B.T.A.*, 205 N.E.2d 896 (1965).

⁶⁷ *Id.*

⁶⁸ *Id.* at 898.

⁶⁹ OHIO REV. CODE ANN. § 5709.07 (Anderson 1986).

⁷⁰ *Denison Univ. v. B.T.A.*, 183 N.E.2d 773 (1962); *College Preparatory School for Girls v. Evatt*, 59 N.E.2d 142 (1945); *Miami Univ. v. Evatt*, 59 N.E.2d 366 (1945); *Ursuline Academy v. B.T.A.*, 49 N.E.2d 680 (1943).

⁷¹ *Kendrick v. Farquhar*, 8 Ohio 189 (1837).

⁷² See *infra* text accompanying notes 218–21 for a discussion of the impact of *Dennison University* upon charitable exemptions.

with" the private "institution of learning."⁷³ The court, however, failed to define what constitutes a private institution of learning. In the absence of any guidelines, the Board of Tax Appeals ("B.T.A.") has quite simply ruled that exemption will be based on ownership alone,⁷⁴ and the Ohio Supreme Court has appeared to affirm that holding.⁷⁵

Second, vacant unused land belonging to a private "institution of learning" is now entitled to tax exemption, without limitation. This unusual interpretation has caused charitable institutions to argue that they are "institutions of learning" since the "institutions of learning" exemption is now based on ownership alone, while the charitable statute (up until 1982) required some exempt use of the property.⁷⁶ Litigation over what constitutes an "institution of learning" increased as many not-for-profit entities argued that they were "institutions of learning." Since 1965 the B.T.A. has contributed to the increasing amount of litigation by holding that any institution that engages in the "dissemination of knowledge" is an "institution of learning."⁷⁷ *Denison University* has also had a profound effect on the interpretation of the charitable exemption statutes which are discussed in Section V of this Note.

Two years after *Dennison University* the legislature enacted Ohio Revised Code section 3345.12(n), which significantly broadened exemptions granted to state universities. The addition of this section combined with the existing exemption statute for state universities, Ohio Revised Code section 3345.17, greatly expanded exemptions granted to state universities.

In addition, Ohio Revised Code section 5709.07 provided an exemption for property leased from a private for-profit entity by a state university in *Cleveland State University v. Perk*.⁷⁸ It is unclear why the university chose to apply for exemption under section 5709.07 when Ohio Revised Code sections 3345.17 and 3345.12(n) were the broader provisions covering exemptions for state universities. Nevertheless, the Ohio Supreme Court extended section 5709.07 to exempt buildings leased from a for-profit corporation by the university for a term of years.⁷⁹

In 1980 the Ohio Supreme Court was asked for clarification on what constitutes a public institution of learning in *American Chemical Society v.*

⁷³ *Id.*

⁷⁴ *See, e.g.,* *Edgecliff College v. Kinney*, No. 79-D-263 (Ohio B.T.A. May 29, 1981) (property owned by a private college, which is leased to a not-for-profit organization that conducts childbirth education classes, is entitled to exemption).

⁷⁵ *Univ. of Cincinnati v. Limbach*, 553 N.E.2d 1056 (1990).

⁷⁶ *See American Chem. Soc'y v. Kinney*, 431 N.E.2d 1007 (1982) (no exempt use of vacant land is required in order to qualify for exemption as an "institution of learning").

⁷⁷ *American Chem. Soc'y v. Kinney*, No. 77-B-152, 77-B-153 (Ohio B.T.A. Jan. 26, 1981).

⁷⁸ 268 N.E.2d 577 (1971).

⁷⁹ *Id.* at 581.

Kinney.⁸⁰ The American Chemical Society had applied for exemption of property occupied by one of its divisions, Chemical Abstracts Services. American Chemical Society was a not-for-profit, congressionally chartered organization whose purpose was the advancement of chemistry in all its branches.⁸¹ Chemical Abstracts' mission was to review all chemical data and chemical engineering research published internationally and reduce it to abstracts and indexes which were compiled and published weekly for sale to interested parties. The Ohio Supreme Court denied exemption based on the grounds that "an institution which has as its essential purpose the summarizing of chemical research into abstracts which are then sold to interested parties is not a 'public institution of learning' as that term is used in R.C. 5709.07."⁸² The court remanded the case to the B.T.A. for a determination of unresolved issues under Ohio Revised Code sections 5709.12 and 5709.121. Ultimately, exemption was granted pursuant to Ohio Revised Code section 5709.121, the charitable exemption statute.⁸³ The court concluded, under the charitable exemption provisions, that if the property at issue were used "in furtherance of or incidental to an institution's charter provisions, *i.e.*, charitable, educational, or public purposes and not with a view to profit, it is exempt from taxation under R.C. 5709.121."⁸⁴

The issue of unused land and prospective use of land by a public institution of learning was before the Ohio Supreme Court in *Ohio Operating Engineers v. Kinney*.⁸⁵ The court held that exemption will be granted "if the evidence shows that the needs of the institution make present use of the land impractical and that there is an intent to use the land at some reasonable time in the future for the purposes and objectives of the institution."⁸⁶

During the 1980s numerous cases involving the exemption of residences owned by public schools and colleges came before the B.T.A.⁸⁷ The only case

⁸⁰ 405 N.E.2d 272 (1980).

⁸¹ *Id.* at 273.

⁸² *Id.* at 275. The only other cases defining public institution of learning during the 1980s were Board of Tax Appeals' cases. *Fairmount Center v. Kinney*, No. 81-G-623 (Ohio B.T.A. July 16, 1985) (a not-for-profit company organized to provide "instruction" in the arts is not an educational institution under Ohio Revised Code § 5709.121, therefore, real property owned by the company is not entitled to tax exemption); *AMORC v. Kinney*, No. 79-B-6776 (Ohio B.T.A. Dec. 1, 1981) (informational lectures presented at lodge meetings did not meet the criteria set forth for an institution of learning).

⁸³ *American Chem. Soc'y v. Kinney*, 431 N.E.2d 1007 (1982).

⁸⁴ *Id.* at 1007 (syllabus).

⁸⁵ 402 N.E.2d 511 (1980).

⁸⁶ *Id.* at 514.

⁸⁷ *Univ. School v. Limbach*, No. 83-A-704 (Ohio B.T.A. Feb. 12, 1986) (residences connected with a public institution of learning and not used with a view to profit are exempt); *Hiram College v. Limbach*, No. 83-D-350 (Ohio B.T.A. Sept. 19, 1985) (private residences purchased by a private college currently being rented to persons not affiliated

to come before the Ohio Supreme Court during this period was *Miami Valley School v. Kinney*.⁸⁸ Miami Valley School was a private school for grades kindergarten through twelve, chartered by the State of Ohio as a college preparatory school.⁸⁹ Exemption had been denied by the B.T.A. for the residence of the school's headmaster.⁹⁰ The school, however, did not employ security personnel during the hours the school was closed. Therefore, the headmaster's presence on campus was necessary for security purposes in addition to his being available to open the school on weekends or evenings.⁹¹ In granting exemption, the court cited its earlier decision in *Denison University v. Board of Tax Appeals*⁹² as controlling.

During the 1980s and the 1990s, leasing became one of the most pervasive and controversial areas of exemptions for educational institutions. Although many of the cases were decided by the B.T.A.,⁹³ one case was appealed to the Ohio Supreme Court⁹⁴ and one was appealed to the Tenth District Court of Appeals.⁹⁵

with the college and being held for use in future expansion projects of the college are not exempt); *Hathaway Brown School v. Kinney*, No. 82-B-417 (Ohio B.T.A. June 20, 1985) (headmaster's residence of a non-profit college preparatory school, which was not located on same parcel as school, was granted tax exempt status); *Ohio State Univ. v. Kinney*, No. 81-F-110 (Ohio B.T.A. Aug. 30, 1982) (residence on university's rural veterinary clinic exempted); *Case Western Reserve Univ. v. Kinney*, No. 79-C-668 (Ohio B.T.A. Oct. 2, 1981) (private residences are exempt if not used with a view to profit); *Fairmount Montessori v. Kinney*, Nos. 77-B-152, 77-B-153 (Ohio B.T.A. Jan. 26, 1981) (exemption granted for second floor apartment used by school caretaker who provides security services in addition to his building maintenance duties is exempt).

⁸⁸ 431 N.E.2d 335 (1982).

⁸⁹ *Id.* at 335.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² 205 N.E.2d 896 (1965).

⁹³ *Miami Univ. v. Kinney*, No. 81-D-290 (Ohio B.T.A. Sept. 13, 1983) (property owned by a university and leased for private use and enjoyment of the lessee in exchange for a specified rental qualifies for real property exemption); *Ohio State Univ. v. Kinney*, No. 81-F-164 (Ohio B.T.A. Sept. 9, 1983) (property owned by the university trustees but leased to a private individual is exempt); *Gallipolis City Schools v. Kinney*, No. 81-D-377 (Ohio B.T.A. April 25, 1983) (mere title to property alone, without a concomitant application of such property to a public purpose, in terms of physical use, possession, and application, does not qualify for exemption on the basis that there might be an application of the rents, issues, or profits on income from a non-public use for public purposes); *Edgecliff College v. Kinney*, No. 79-D-260 (Ohio B.T.A. May 29, 1981) (property owned by a private college, which is leased to a non-profit organization that conducts childbirth education classes, was granted exemption).

⁹⁴ *Univ. of Cincinnati v. Limbach*, 553 N.E.2d 1056 (1990).

⁹⁵ *Bexley Village v. Limbach*, Nos. 89AP-872, 89AP-873, slip op. (Ohio Ct. App., Franklin Cty., June 28, 1990).

*University of Cincinnati v. Limbach*⁹⁶ involved two buildings which were leased to separate business entities. The buildings, which comprised twenty-two percent of the property at issue, were being used as a laundromat and a convenience store by the private entities leasing the property from the university. The university's College of Design, Art, Architecture and Planning was using the other eighty-eight percent of the property at issue.⁹⁷ The question before the court was whether real property owned by the state and held for the university's benefit, part of which was leased to private parties, was entitled to exemption under Ohio Revised Code section 3345.17.⁹⁸ Crucial to the outcome of the case was the court's interpretation of language in Ohio Revised Code section 3345.17 which read "used for the support of such institution." In the exemption application at issue, the rent from the property went into the university's general operating fund. The court found that the rental proceeds were "used for the support of the university."⁹⁹ This ruling seems to suggest that any use of state-owned property held for the benefit of a university is acceptable as long as the rental proceeds are deposited into the university's general operating fund.¹⁰⁰ The court appeared to treat the property as a vacant land issue, requiring no proof of architectural plans or of specific plans for future use. The university did, however, suggest that the property would probably be used as a maintenance garage for the main campus or as a residence facility for the medical center.¹⁰¹ By mentioning the university's tentative plans, the court seems to require that there be some future intended use of the property by the university, although this is not a very strict requirement since specific plans regarding such use are not necessary.

Apparently, the only substantial restriction left under Ohio Revised Code section 3345.17 as a result of the court's decision in *University of Cincinnati* is that some portion of the property must be currently used by some division or department of the university. In its opinion, however, the court did not explicitly set forth a percentage of use that would serve as a minimum for granting exemptions. The three part test set forth by the B.T.A. and affirmed by the Ohio Supreme Court in *University of Cincinnati* for property owned by a university and leased to a private, for-profit enterprise is: (1) The rent received must be used for the support of the university; (2) there must be an intent for future development of the property for university use; and (3) part of the property must currently be used directly by the university.

⁹⁶ 553 N.E.2d 1056 (1990).

⁹⁷ *Id.* at 1057.

⁹⁸ *Id.*

⁹⁹ *Id.* at 1058.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 1057.

The Tenth Circuit Court of Appeals also dealt with the lease issue under a different fact situation.¹⁰² Capital University, a private college, leased the property at issue on a month-to-month basis from a private, for-profit developer to use as an auxiliary parking lot for its students. There was no long-term lease involved. Residents of the private adjoining apartment complex also used the property for parking. Under Ohio Revised Code section 5709.07, the court ruled that the unity of ownership and use is not required to satisfy the "connected with" element of the statute.

Bexley Village has extended the boundaries of real property tax exemption under Ohio Revised Code section 5709.07. It now appears that "connected with" under the *Bexley Village* interpretation of the statutory language requires only a minimal, if not merely superficial, relationship between the entity applying for exemption and the use of the property.

As a result of *University of Cincinnati* and *Bexley Village*, it seems that virtually all restrictions on property leased from or to private and public institutions of learning have been removed. After *University of Cincinnati*, practitioners representing educational institutions can advise their clients before entering into a lease arrangement as to the probability of exemption being granted for the property.

In 1988 the legislature restructured Ohio Revised Code section 5709.07 to create distinct subdivisions for each of the following entities whose property is exempt from real property tax: public schoolhouses,¹⁰³ houses used exclusively for public worship,¹⁰⁴ and public colleges and academies.¹⁰⁵ The recodification involved only structural changes to facilitate ease of reference when dealing with the numerous exemptions contained in this one section. None of the existing substantive language of the section was changed or deleted.¹⁰⁶

In spite of the massive body of case law dealing with real property tax exemptions for educational institutions, there remain many unresolved issues. The most pervasive of these issues is whether the Ohio Supreme Court will continue to expand exemptions granted to universities. In essence, it appears that the Ohio Supreme Court's current interpretation of Ohio Revised Code section 3345.17 in *University of Cincinnati* places virtually no limitations on the type of commercial ventures a state university can lease property to and still meet the test for real property tax exemption.

A new phenomenon in the academic world can perhaps serve as a more concrete example of how far the real property tax exemptions have been

¹⁰² *Bexley Village v. Limbach*, Nos. 89AP-872, 89AP-873, slip op. (Ohio Ct. App., Franklin Cty., June 28, 1990).

¹⁰³ OHIO REV. CODE ANN. § 5709.07(A)(1) (Anderson 1989).

¹⁰⁴ OHIO REV. CODE ANN. § 5709.07(A)(2) (Anderson 1989).

¹⁰⁵ OHIO REV. CODE ANN. § 5709.07(A)(4) (Anderson 1989).

¹⁰⁶ There was, however, additional language added to provide an exemption for church camps. OHIO REV. CODE ANN. § 5709.07(A)(3) (Anderson 1989).

expanded. Recently, many universities have become the sites for "business incubators." Under this arrangement, the university enters into a partnership with a private industry to engage in high-technology research. As part of this agreement, the university provides the equipment and facilities virtually rent-free in order to attract the foremost experts in a particular field. This arrangement is advantageous to a new business, in that there are virtually no start-up expenses and access to state-of-the-art research facilities. These so called "business incubators" do provide advantages to the university in that they afford students in highly specialized fields the opportunity to work alongside the nation's most prominent experts. Regardless of the practical advantages, the question remains as to whether exemption should be granted for such a facility. Is it "used for the support" of the university or simply a disguise for what is essentially a for-profit enterprise operating out of university facilities? Under Ohio Revised Code section 3345.17, it appears that the court would simply decide these on a case-by-case basis and apply a standard similar to that in *University of Cincinnati*.

A more complex issue would arise if the facility were "purchased, acquired, constructed or owned by a state university or college, or financed in whole or in part by obligations issued by a state university or college, and used for the purposes of a state university or college."¹⁰⁷ Ohio Revised Code section 3345.12(N) appears to be an unrestrained grant of exemptions to state universities. The statute removes restrictions on income received from such property. Under this section it appears that there would be no limitation on universities becoming involved in "business incubator" deals or any other for-profit enterprise as long as the facility is owned or financed through obligations (i.e., bonds) issued by the university.

These are issues which have not yet been litigated, but which are likely to occur, considering the advantages they contain for universities suffering from state funding cuts. Although it is impossible to predict the outcome with complete accuracy, based on recent court decisions it seems plausible that judicial expansion of real property tax exemptions for educational purposes will continue until the legislature places specific restraints in the current statutory language.

III. PROPERTY USED FOR RELIGIOUS PURPOSES

Article XII, section 2 of the Ohio Constitution grants the legislature authority to enact laws granting tax exempt status to "houses used exclusively for public worship."¹⁰⁸ Ohio Revised Code section 5709.07(A)(2) provides an exemption for "[h]ouses used exclusively for public worship, the books and

¹⁰⁷ OHIO REV. CODE ANN. § 3345.12(N) (Anderson 1990).

¹⁰⁸ OHIO CONST., art. XII, § 2.

furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment.”¹⁰⁹ In *Faith Fellowship Ministries v. Limbach*,¹¹⁰ the Ohio Supreme Court defined public worship as “the open and free celebration or observance of the rites and ordinances of a religious organization.”¹¹¹ The court went on to say that worship was “not the everyday activities of an individual which express devotion to his or her God.”¹¹² In another case, *In re The Bond Hill-Roselawn Hebrew School*,¹¹³ the Ohio Supreme Court held that property used “primarily” for public worship met the “exclusive use” requirement set forth in the constitution and the Ohio Revised Code.¹¹⁴

Recent decisions of the court have shown a resurgence of emphasis placed upon the delineation between property used exclusively for public worship and property used to support public worship.¹¹⁵ This section of this Note will provide an understanding of the modern law of tax exemption of church property by tracing its roots from the Northwest Ordinance of 1787 (“Ordinance”) to present day legislative enactments and Ohio Supreme Court decisions.

Even though the Ordinance contained no express provisions granting property tax exemptions for church-owned property, the language in article iii of the Ordinance indicates the priority given to religion by state and federal government.¹¹⁶ Ohio’s first constitutional convention delegates also placed priority on religion as a means to encourage high moral and ethical standards among the state’s citizens.¹¹⁷ Relief from taxation for property used for religious purposes has been one of the primary methods governments have used to facilitate this objective. Historically, the power to make the exemption is grounded in the power to select the subjects of taxation and to apportion the burden thereof.¹¹⁸

¹⁰⁹ OHIO REV. CODE ANN. § 5709.07(A)(2) (Anderson 1989).

¹¹⁰ 513 N.E.2d 1340 (1987).

¹¹¹ *Id.* at 1343.

¹¹² *Id.*

¹¹³ 84 N.E.2d 270 (1949).

¹¹⁴ *Id.* at 274.

¹¹⁵ *Christian Church of Ohio v. Limbach*, 560 N.E.2d 199 (1990).

¹¹⁶ NORTHWEST ORDINANCE of 1787, art. iii (“Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”).

¹¹⁷ OHIO CONST. of 1802, art. VIII, § 3 (“[A]ll men, have a natural and indefeasible right to worship Almighty God, according to the dictates of conscience. . . . But religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.”).

¹¹⁸ *Exchange Bank v. Hines*, 3 Ohio St. 1, 9 (1853).

The first major challenge in the area of exemptions for church-owned property occurred in 1874 when the archbishop of the Roman Catholic Church for the diocese of Cincinnati sought to have the diocese's parsonages exempted from taxation.¹¹⁹ *Gerke v. Purcell*¹²⁰ provided the court with the opportunity to delineate the boundaries erected by Article XII, section 2 of the constitution and the church exemption statute.¹²¹ The Ohio Supreme Court, in interpreting the constitutional language, ruled that "houses used exclusively for public worship" meant only the church edifice itself and the property necessary for its proper use and enjoyment.¹²² In regard to the specific request for exemption for the parsonage, the court held that:

The express authority given in the constitution to exempt buildings of the description named, carries with it, impliedly, authority to exempt such grounds as may be reasonably necessary for their use. . . . [B]ut the ground so annexed must subserve the same exclusive use to which the building is required to be devoted. . . .

. . . [A] parsonage, although built on ground which might otherwise be exempt as attached to the church edifice, does not come within the exemption. The ground in such case is appropriated for a new and different use. Instead of its being used exclusively for public worship, it becomes a place of private residence. . . .

. . . The exemptions authorized are not of such houses as may be used for the support of public worship, but of houses used exclusively as places of public worship.¹²³

Thirty-three years after the court declared parsonages nonexempt in *Gerke v. Purcell*, the court was again asked to exempt a church-owned residence.¹²⁴ Seeking a way to circumvent the parsonage classification, the church argued

¹¹⁹ *Gerke v. Purcell*, 25 Ohio St. 229 (1874).

¹²⁰ *Id.*

¹²¹ *Id.* at 240.

¹²² *Id.* at 248-49.

¹²³ *Id.* See also *Episcopal Parish v. Kinney*, 389 N.E.2d 847 (1979) (residences of church rector and sexton not exempt); *Apostolic Bethlehem Temple Church v. Limbach*, No. 87-J-1084 (Ohio B.T.A. Oct. 14, 1988) (sleeping rooms for visiting ministers located within church building not exempt); *Miami Presbyterian Fellowship v. Limbach*, No. 85-C-199 (Ohio B.T.A. Dec. 8, 1987) (church's lodge facility not exempt); *Westwood Baptist Church v. Kinney*, No. 82-C-730 (Ohio B.T.A. March 29, 1985) (request for split-listing of church property denied when property is being used primarily as a minister's residence); *St. Gregory Palamas v. Kinney*, No. 81-D-616 (Ohio B.T.A. April 29, 1982) (monasteries not exempt); *St. Francis Cabrini v. Kinney*, No. 78-E-93 (Ohio B.T.A. Dec. 13, 1978) (dormitory for teachers, who are also nuns, exempted); *Maple Valley Wesleyan v. Kinney*, No. 78-F-229 (Ohio B.T.A. Aug. 14, 1978) (parsonage, even when used for church business, is not exempt).

¹²⁴ *Watterson v. Halliday*, 82 N.E. 962 (1907).

that the residences of priests and bishops were used for the discharge of many religious and charitable duties. Emphasizing legislative intent, the court rejected this reasoning based on the exclusivity language in the church exemption statute.¹²⁵ No exemptions were granted unless the property was used in a manner consistent with the language of the exemption statute. Despite the fact that the parish houses were frequently used for church-related activities, they were primarily private residences and therefore, could not be "houses used exclusively for public worship."¹²⁶ The clear emphasis of the court was in drawing a distinction between ownership and actual use: "There is no presumption of exemption from taxation because the institution claiming it is of a religious or charitable nature, for it is perfectly competent for such institutions to own property clearly subject to taxation."¹²⁷

The 1912 Constitution retained the same tax exemption language as the 1851 Constitution as far as church exemptions were concerned. Although constitutional language did not change, the definition of what constitutes "public worship" has created much controversy and litigation in the twentieth century. From 1907 until 1949, the court's strict interpretation of the church exemption statute remained relatively constant. In *Congregational Union v. Zangerle*¹²⁸ the Ohio Supreme Court held that a large, vacant lot used as a parking lot by church members did not qualify for exemption since it was not necessary for the "proper occupancy, use and enjoyment" of the church building.¹²⁹ At this point, the judicial interpretation of the church exemption statute meant that only the church building and the land clearly necessary for its existence would come within the "used exclusively for public worship" language.

In 1949 the Ohio Supreme Court abandoned its former strict construction and application of the "used exclusively" language contained in the church exemption statute. The court in *In re The Bond Hill-Roselawn Hebrew School*,¹³⁰ interpreted "exclusive" to mean "primary."¹³¹ Pursuant to General Code section 5349 exemption was granted for a one and one-half story building, the first floor of which was used exclusively for public worship and the second floor as a residence for the caretaker and his family.¹³² In essence, the Ohio Supreme Court chose to construe literally the statutory words, "houses used exclusively for public worship." Justice Taft attempted to distinguish the *Bond Hill-Roselawn* fact situation from the earlier parsonage

¹²⁵ *Id.* at 965-66.

¹²⁶ *Id.* at 968.

¹²⁷ *Id.* at 965.

¹²⁸ 34 N.E.2d 201 (1941).

¹²⁹ *Id.* at 202.

¹³⁰ 84 N.E.2d 270 (1949).

¹³¹ *Id.* at 274.

¹³² *Id.* at 271.

cases by stating that, “[w]ith regard to a parish house or parsonage, it is clear that the primary use of the premises is for residence and any use for public worship is merely incidental. In the instant case, the primary use of the building is for public worship.”¹³³

The *Bond Hill-Roselawn* primary use test was a signal to the legislature that additional legislation was needed to govern the increasingly complex exemption situations.¹³⁴ Through the use of the *Bond Hill-Roselawn* primary use test, the courts were able to legislate their own standards on a case-by-case basis as to when property would be eligible for exemption.

Within months of the Ohio Supreme Court’s *Bond Hill-Roselawn* decision, the Ohio General Assembly amended General Code section 5560, now Ohio Revised Code section 5713.04, to include a clause known as the split-listing statute.¹³⁵ The split-listing statute provides exemptions for portions of improved or unimproved property if the applicant can demonstrate that the property meets the three-part test enunciated in Ohio Revised Code section 5713.04. First, the entire property must be under a single ownership. Second, the portion to be exempted must qualify as a separate entity. Third, the separate entity must be used exclusively for exempt purposes. In order to meet the

¹³³ *Id.* at 274.

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Such a literal construction [of “exclusive use”] could prevent any exemption being given under these words of the Constitution [Article XII, section 2]. It would not be difficult to show some slight use of any church building for a purpose other than public worship. It would probably be impossible to prevent such use. The building must be open to all members of the public if it is to qualify as one used for *public worship*. If someone comes into the building and misuses it, is the exemption to be denied? Such a literal construction would clearly not be a reasonable construction. The people certainly intended that the words they used in the Constitution should be given a reasonable meaning. . . .

Although constitutional provisions for exemption from taxation should be given a strict construction, that construction should be reasonable and one which will not defeat the intention which the people expressed by the words which they used.

Id. at 272.

¹³⁵ OHIO REV. CODE ANN. § 5713.04 (Anderson 1986). The pertinent part of the split-listing statute reads as follows:

If a separate parcel of improved or unimproved real property has a single ownership and is so used so that part thereof, if a separate entity, would be exempt from taxation, and the balance thereof would not be exempt from taxation, the listing thereof shall be split, and the part thereof used exclusively for an exempt purpose shall be regarded as a separate entity and be listed as exempt, and the balance thereof used for a purpose not exempt shall, with the approaches thereto, be listed at its taxable value and taxed accordingly.

second part of the test, property may be split vertically, horizontally or otherwise, but it may not be divided on a percentage of use basis.¹³⁶

The split-listing statute is a good example of legislative correction in Ohio's real property tax exemption law. Case law had repeatedly indicated a problem when there was use for both exempt and nonexempt purposes. Enactment of this statute indicates that the legislature perceived the problems occurring, remedied them by a statutory enactment, and succeeded in simplifying the exemption process in this type of situation.

*New Haven Church of Missionary Baptist v. Board of Tax Appeals*¹³⁷ is a good example of how the split-listing statute effectively solved a previously perplexing and inequitable situation. Prior to the enactment of Ohio Revised Code section 5713.04, the entire building in *Missionary Baptist* would have been denied exemption. The structure for which exemption was sought had two floors.¹³⁸ The first floor contained an auditorium and classrooms which were used by the church for religious purposes. A four-room apartment comprised the second floor and was occupied by a caretaker and his family.¹³⁹ As a point of interest, this structure was the same structure involved in the 1949 *Bond-Hill Roselawn* case. There the court only had the choice of exempting all of the property from taxation or denying exemption for the entire property. Under the new split-listing statute, the court held that the building could be divided vertically as well as horizontally in order to define the areas entitled to exemption, and excluding those areas from exemption which were properly taxable because of their use for nonexempt purposes.¹⁴⁰ Closer scrutiny and revision of other problematic areas of real property tax exemption statutes by the Ohio legislature could lead to more effective and equitable administration of tax exemption laws as did the split-listing statute.

A. Prospective Use

The next issue faced by the Ohio Supreme Court was whether property owned by a church could be exempted from taxation if there was a planned prospective use for it even though it was not currently being used for a tax exempt purpose. In *Orthodox Hebrew Board of Education v. Tax Commissioner*¹⁴¹ the Ohio Supreme Court held that property purchased for religious school purposes but not being used for a tax exempt purpose on tax

¹³⁶ *Trustees of Church of God v. B.T.A.*, 112 N.E.2d 633 (1953); *Goldman v. L.B. Harrison Club*, 107 N.E.2d 530 (1952) (the separation cannot be based on either time or area-ratio percentages).

¹³⁷ 223 N.E.2d 366 (1967).

¹³⁸ *Id.* at 367.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 369.

¹⁴¹ 98 N.E.2d 834 (1951).

lien day could not be exempted. During the same term the Ohio Supreme Court ruled that when a church is being torn down and rebuilt during a reasonable period of time the church does not forfeit its tax exempt status during that period.¹⁴²

In *Holy Trinity Protestant Episcopal Church v. Bowers*¹⁴³ the Ohio Supreme Court continued to expand the boundaries of what qualified as prospective use for exemption purposes. The religious institution had purchased vacant land in 1956 for purposes of erecting a new house of worship, but actual construction did not begin until 1959.¹⁴⁴ During the interim period, the congregation had conducted fund drives, hired architects and surveyors, and completed all other requisite steps involved in new building construction.¹⁴⁵

Subsequent cases falling under the prospective use test have been granted exemption if they met the two-part test established in *Holy Trinity*: (1) The owner must be actively working toward use of the land for public worship, and (2) the applicant must show that the plans are more than a "mere dream" and will "effectuate actual construction of such houses of public worship within a reasonable time."¹⁴⁶

B. Lease

Another issue which arises is whether an exemption should be granted for church-owned property which is leased to another entity. Under Ohio Revised Code section 5709.07(A)(2), church-owned property leased or otherwise used

¹⁴² *In re* Application of Ohave Scholem Congregation, 101 N.E.2d 767 (1951).

¹⁴³ 173 N.E.2d 682 (1961).

¹⁴⁴ *Id.* at 684.

¹⁴⁵ In exempting the property, the court stated:

[I]ntent to use such property for an exempt purpose must be one of substance and not a mere dream that sometime in the future, if funds can be obtained, the entity would so use such property. In other words, it must be shown that the entity, at the time the application for exemption is made, is actively working toward the actual use for the public benefit. . . .

Thus vacant land purchased by a religious institution for the purpose of erecting a church thereon is entitled to be exempted from taxation if the institution can present evidence that it is actively working toward an actual use of such property for a house of worship.

Id. at 685.

¹⁴⁶ *Columbus Evangel Temple v. Kinney*, No. 80-E-70 (Ohio B.T.A. July 8, 1981) (denying exemption for lack of a specific time table for construction of church facility). *See also* *Southside Church v. Limbach*, No. 85-E-692 (Ohio B.T.A. April 8, 1987); *Tri-County Baptist v. Limbach*, No. 84-G-1126 (Ohio B.T.A. Feb. 4, 1987) (proposed budgets reflecting money currently being deposited in a building fund for anticipated construction of new facilities meets test for prospective use).

with a view to profit fails the "used exclusively for public worship" requirement and cannot be exempted.¹⁴⁷ The Ohio Supreme Court was first faced with this issue in 1982 when a religious institution sought exemption for church-owned property leased to a not-for-profit corporation.¹⁴⁸ Exemption was denied based on the fact that the church was primarily a religious institution and therefore was not entitled to tax exemption under Ohio Revised Code section 5709.12 and 5709.121.¹⁴⁹

Land held by a religious society which is leased for a term of years renewable forever and not subject to revaluation is regarded as the land of the lessee for purposes of taxation under Ohio Revised Code section 5709.06. It is feasible to assume that, under section 5709.06, a church could enter into this specific type of lease with a charitable organization that qualified for tax exemption and therefore the land would be exempt. Arguably, this section of the code provides an exception to what previously appeared to be an absolute bar for purposes of tax exemption when a religious society leased property. It is not clear, however, whether buildings thereon would be granted exemption.¹⁵⁰

Consideration must also be given to the tax exempt status of property leased to religious institutions. Under Ohio Revised Code section 5709.07(A)(2), which grants exemption to property used exclusively for public worship, there is no qualifying language making exemption contingent on property ownership. The plain language of the statute suggests that property which would be exempt if owned by a religious institution should also be exempt if leased to it.¹⁵¹

¹⁴⁷ OHIO REV. CODE ANN. § 5709.07(A)(2) (Anderson 1986); Faith Fellowship Ministries v. Limbach, 513 N.E.2d 1340 (1987).

¹⁴⁸ Summit United Methodist Church v. Kinney, 442 N.E.2d 1298 (1982). The church in this instance was seeking exemption for a building occupied by a not-for-profit Ohio corporation which provided shelter to victims of domestic violence and their children. There was no fixed rental agreement, but the corporation paid the utilities, taxes, and upkeep for the interior of the property. *Id.* at 1299.

¹⁴⁹ *Id.* at 1299.

¹⁵⁰ In these cases, the lease instrument itself would be the pivotal factor. For instance, in Pilarczyk v. Limbach, No. 83-D-276 (Ohio B.T.A. April 23, 1986), property owned by a Catholic church was leased to various departments of the State of Ohio. The Board of Tax Appeals ruled that the property was subject to taxation because the entity seeking exemption was primarily a religious institution within the meaning of Ohio Rev. Code § 5709.121. If, however, the State of Ohio had had a lease for a term of years, renewable forever and not subject to revaluation, the property could have been exempted from taxation.

¹⁵¹ Church of Epiphany v. Rain, 10 Ohio Dec. Reprint 449 (1889) (court ruled that exemption applied to property held by a church as lessee under a perpetual lease); First Baptist Church of Lone Star Texas v. Limbach, No. 85-E-738 (Ohio B.T.A. Aug. 21, 1987) (B.T.A. ruled that where property was owned by a church and leased to another church to be used exclusively for public worship purposes, even though the church was of a different denomination, it is exempt from taxation).

In 1982 Summit United Methodist Church sought exemption for the educational wing of a parish center which was leased to The Ohio State University during the week for use as a day care center for the children of the university's faculty, staff, and students.¹⁵² The educational wing failed to qualify for tax exemption in *Summit United Methodist Church v. Kinney* because it was not used exclusively for public worship.¹⁵³

In 1984 Tax Commissioner Joanne Limbach outlined the Ohio Department of Taxation's policy for granting exemption to property used by a church for a day care center in a letter addressed to Judith Bunge, Legislative Coordinator for the Ohio Association for the Education of Young Children (the "Bunge Letter").¹⁵⁴ The letter addressed those situations in which a church allowed another organization to use church property for the purpose of operating a day care center. It was the Tax Commissioner's position that the *Summit United Methodist Church* case would not be applied "broadly" to deny exemptions for day care centers operating in church facilities because the facts in that case were "unique."¹⁵⁵

In regard to the exemption of child care operations, the Tax Commissioner decided that the provision of such services could qualify for exemption as a charitable use of property. The Bunge Letter then set forth four requirements for exemption of day care centers in church facilities.¹⁵⁶ The letter further

¹⁵² *Summit United Methodist Church v. Kinney*, 455 N.E.2d 669 (1983).

¹⁵³ *Id.* at 699.

¹⁵⁴ Letter from Joanne Limbach, Tax Commissioner to Judith Bunge, Legislative Coordinator for the Ohio Association for the Education of Young Children (June 22, 1984) [hereinafter "Bunge Letter"] (discussing the Ohio Department of Taxation's position following the Ohio Supreme Court's decision in the case of *Summit United Methodist Church v. Kinney*, 455 N.E.2d 669 (1983)).

¹⁵⁵ The Tax Commissioner cited three reasons for not broadly applying the Ohio Supreme Court's decision in *Summit United Methodist Church*: (1) The decision was based in part on the fact that child care services were not available to the general public, but only to students and employees of the university; (2) the church received a rental payment of \$10,000 in addition to reimbursement for utility costs and other actual costs incurred by the child care operation; and (3) the "church" building at issue was no longer "actually used for public worship at any time." Bunge Letter, *supra* note 153.

¹⁵⁶

1. The child care provider is a non-profit corporation organized for the charitable purpose of providing child care services (The employees of such a nonprofit corporation may receive reasonable wages or salaries for services performed by them).

2. The child care center must be open to the public without regard to race, religion, national origin, or place of employment.

3. There must be some evidence that services are provided as a charity to some children, e.g., sliding scale fees or free services to some.

4. If the child care operation is located in a church building, the church must provide its facilities without leasing them with a view to profit.

Bunge Letter, *supra* note 153, at 2.

cautioned that an "actual lease agreement" would "jeopardize" a grant of exemption.¹⁵⁷

This letter appears to be an abuse of the administrative power vested in the Tax Commissioner because nowhere in the Ohio Revised Code is there a statute authorizing the exemption of such a facility. This administrative policy was promulgated in spite of the Ohio Supreme Court's holding in *Summit United Methodist Church*.

The administrative disregard of the Ohio Revised Code did not end with the Bunge Letter. In 1987 the Tax Commissioner issued an additional policy statement in regard to exempting church-run day care centers.¹⁵⁸

The Bunge letter did not specifically address those situations in which a church runs a day care operation in its own building. Where a church runs its own day care operation, we should not inquire as to its charitable nature. Rather, such a use of church property by the church itself is like other incidental uses of church property. Therefore, an exemption should not be denied to a church for property used by the church for a day care center even though no sliding scale of fees is in use.¹⁵⁹

If the legislature holds plenary power to grant exemptions and the Ohio Supreme Court has the authority to interpret those statutes, the question must be asked whether the Tax Commissioner is granted authority to disregard Ohio Supreme Court decisions and promulgate exemptions clearly contradictory to the Ohio Revised Code. Despite the efforts of the legislature to clarify and enact real property tax exemption laws, actions such as this by administrative officials completely undermine the fundamental principles upon which this state's government was founded. This is an example where legislation and case law made no difference in the granting of exemptions. Perhaps part of the remedy is to limit the discretion of high-level officials whose job it is to insure the fair and just administration of Ohio's laws.

C. Fellowship Halls and Church Camps

Often, a religious organization owns property which is used in part for church functions that are not primarily formal religious services. In such instances, exemption has been determined on a case-by-case basis. When a church designates an area as a multi-purpose room or a fellowship hall, the test is one of primary usage. If the activities conducted in that area meet Ohio

¹⁵⁷ *Id.*

¹⁵⁸ Department of Taxation Inter-office Communication from Joanne Limbach, Tax Commissioner to Carol Mahaffey, Tax Equalization Division Administrator (July 6, 1987).

¹⁵⁹ *Id.*

Revised Code section 5709.07's "used exclusively for public worship" language, then exemption will be granted.¹⁶⁰

In *Bishop v. Kinney*,¹⁶¹ the Ohio Supreme Court applied both the primary use test and the split exemption statute when portions of a multi-purpose building had been denied exemption.¹⁶² The Roman Catholic Diocese argued that the portion denied exemption was used primarily for religious purposes.¹⁶³

Under the three-part *Bishop* test, the portion for which exemption is sought must be a "separate entity"¹⁶⁴ under a single ownership, and "used exclusively for exempt purposes."¹⁶⁵ The court's decision in *Bishop* greatly expanded and altered the interpretation of Ohio's church exemption statute as it relates to fellowship halls. As long as the area sought to be exempted is used primarily in a manner that is "religious in nature,"¹⁶⁶ the third prong of the test is met.

Arguably, the *Bishop* decision is not a sound decision. Ohio Revised Code section 5709.07 requires use "exclusively for public worship."¹⁶⁷ Nowhere in the statute is there an exemption for activities that are merely "religious in nature." This interpretation creates room for abuse of the church exemption statute, since virtually anything can be considered "religious in nature." It is this type of language, which the court fails to define, that leads to ambiguity and confusion in Ohio's real property tax exemption laws.

In 1984 the Ohio Supreme Court was faced with the tax exempt status of various buildings and grounds classified as a church camp in *Moraine Heights Baptist Church v. Kinney*.¹⁶⁸ The church-owned 49 acres contained: A chapel, dormitories, cabins, a cafeteria, a swimming pool, a shelter house, a basketball

¹⁶⁰ *First Baptist Church v. Kinney*, No. 78-B-245 (Ohio B.T.A. May 7, 1980) (multi-purpose building, including a gymnasium used for recreational purposes, not exempt); *The Annunciation v. Kinney*, No. F-962 (Ohio B.T.A. Aug. 11, 1978) (property used primarily as a social meeting place for a church's young people not exempt because it fails the "public worship" requirement).

¹⁶¹ 442 N.E.2d 764 (1982).

¹⁶² *Id.* at 765.

¹⁶³

The parish hall is a large room with movable partitions which can be used to create four classrooms. Two days per week, religion classes are held in the hall. Faculty training programs and curriculum workshops for the parish school of religion are also held in the hall. The hall is also used for retreats, summer bible school and engagement encounters. Two Sundays per month, breakfasts are held in the hall after Mass. Church groups, girl scout groups and other civic organizations hold their meetings in the hall. One night per week, bingo games are conducted in the hall.

Id. at 764.

¹⁶⁴ OHIO REV. CODE ANN. § 5713.04 (Anderson 1986).

¹⁶⁵ *Bishop*, 442 N.E.2d at 764.

¹⁶⁶ *Id.* at 765.

¹⁶⁷ OHIO REV. CODE ANN. § 5709.07 (Anderson 1986).

¹⁶⁸ 465 N.E.2d 1281 (1984).

court, and athletic fields. Arguing that all of the property was used primarily for public worship because it was used for entertaining young people in an atmosphere in which worship was the primary goal, the church sought exemption for the entire campground. The court exempted the chapel, but rejected the church's argument, stating that the remainder of the property was used merely in support of public worship, thus failing the constitutional test of "used exclusively for public worship."¹⁶⁹

Ohio Revised Code section 5709.07(A)(3) expresses an emphatic legislative response to the court's ruling in *Moraine Heights*. The amendment to Ohio Revised Code section 5709.07 created a new tax exemption for real property owned and operated by a church that is used primarily for church retreats or church camping and is not used as a permanent residence.¹⁷⁰ Under this provision, church property may be used on a limited basis by charitable and educational institutions if the property is not leased or otherwise made available with a view to profit.

In a 1987 case, *Faith Fellowship Ministries v. Limbach*,¹⁷¹ exemption was requested for a complex of buildings containing a cafeteria, gymnasium and sleeping rooms. The court found that these portions of the building were "merely supportive" of the public worship and were therefore outside of the "used exclusively for public worship" requirement of Ohio Revised Code section 5709.07.¹⁷² It appears that as long as a church can show that the building is used in a "principal, primary, and essential way to facilitate the public worship,"¹⁷³ it will be granted exemption under the *Faith Fellowship* test set forth by the Ohio Supreme Court.

D. Unused Land

In the early 1980s as churches became more affluent and acquired greater amounts of property, the issue of tax exemption for unused lands presented itself with increasing frequency.¹⁷⁴ Legislative changes following the 1851 Ohio Constitution had removed the specific acreage limitations on exemption for church owned land. The church exemption statute provided for exemption

¹⁶⁹ *Id.* at 1283.

¹⁷⁰ OHIO REV. CODE ANN. § 5709.07(A)(3) (Anderson 1989).

¹⁷¹ 513 N.E.2d 1340 (1987).

¹⁷² *Id.* at 1344.

¹⁷³ *Id.* at 1345.

¹⁷⁴ *First Apostolic Church v. Kinney*, No. 79-D-377 (Ohio B.T.A. Jan. 20, 1981) (property purchased for use as an additional access driveway to church building is not exempt); *Trinity United Methodist Church v. Kinney*, No. 79-D-677 (Ohio B.T.A. May 14, 1980) (unusable land purchased by a religious institution in order to obtain desired property is not exempt); *St. Elizabeth Ann Seton Church v. Kinney*, No. 79-D-678 (Ohio B.T.A. April 4, 1980) (vacant church property denied exemption).

of the ground attached to houses of public worship which is necessary for their proper occupancy, use and enjoyment. By 1985 the B.T.A. had ruled in *Brith Emeth Congregation v. Commissioner of Tax Equalization*¹⁷⁵ that the Tax Commissioner did not have the authority to determine the amount of land necessary for public worship. The land in question in *Brith Emeth Congregation* was purchased to enhance the aesthetic qualities of the church facility and to serve as a sound barrier as well as a space for outdoor services and congregational activities.¹⁷⁶ On appeal to the Ohio Supreme Court,¹⁷⁷ the exemption was upheld, but the court took great care to emphasize the Tax Commissioner's authority to decide acreage limitations under Ohio Revised Code section 5713.08. For the first time, the court created a judicial exemption for unused land which "functions as a sound barrier to the noise of traffic travelling by the property."¹⁷⁸

The issue of vacant land surfaced again in *Full Gospel Apostolic Church v. Limbach*.¹⁷⁹ In *Full Gospel* the church was denied exemption for forty-seven acres of land which it claimed should be exempt as a "sound barrier to protect neighbors from the noise of its Pentecostal meetings, which are sometimes conducted outside."¹⁸⁰ The court stated that the church's quantitative data showing sporadic use of the property did not sustain the necessity of a forty-seven-acre sound barrier and was insufficient to grant exemption under an insulation theory.¹⁸¹

Practitioners seeking exemptions for substantial acreage surrounding church facilities used for outdoor revivals and congregational services will need to show that such outdoor use is more than "sporadic" in order to obtain exemption for the property. Under the "insulation theory" suggested by the court in *Full Gospel*, it appears that scientific or empirical data or both, proving the need for a "sound barrier" will be sufficient.

E. Regional Headquarters

The most recent case in real property tax exemptions for religious purposes involved the regional headquarters of a religious organization whose member churches were located throughout the state. In *Christian Church of Ohio v. Limbach*¹⁸² the property at issue was used as the central administrative office of

¹⁷⁵ No. 82-B-1209 (Ohio B.T.A. Dec. 4, 1985).

¹⁷⁶ *Id.* at 2.

¹⁷⁷ *Brith Emeth Congregation v. Limbach*, 514 N.E.2d 874 (1987).

¹⁷⁸ *Id.* at 876.

¹⁷⁹ 546 N.E.2d 403 (1989).

¹⁸⁰ *Id.* at 404.

¹⁸¹ *Id.*

¹⁸² 560 N.E.2d 199 (1990).

member churches.¹⁸³ Activities occurring on the property included the general supervision of member churches and cooperative programs for religious training, counseling, and placing Christian ministry on college campuses.¹⁸⁴ No public worship services were ever conducted on this property.

In determining exemption status, the court applied the *Faith Fellowship* test that property must be used in a "principal, primary, and essential way to facilitate the public worship." The court determined that, since there was no public worship conducted on the property, exemption must be denied.¹⁸⁵ Perhaps the key to resolving issues of this type is to establish a more definitive set of guidelines.

What is the scope of the word "facilitate?" A practitioner reading *Faith Fellowship* would assume that, by "facilitate," the court meant the definition found in dictionaries. This type of ambiguity also creates problems at the administrative level of state government. On the facts of *Christian Church*, it appears that the activities conducted on the property "facilitate" the member churches in the conducting of worship services, yet exemption was denied. As this discussion of real property tax exemptions for religious organizations has shown, numerous factors affect the fair and equitable administration of these laws. There are still many issues which remain unresolved.

An example which illustrates the need for reform of the state's real property tax exemption law is when a church engaging in charitable activities cannot be granted exemption under Ohio Revised Code section 5709.07 because the activity does not constitute "public worship," and the Ohio Supreme Court has ruled that a church cannot be a charity under Ohio Revised Code section 5709.12.¹⁸⁶ Under this type of logic, a church that sets up a soup kitchen to feed the poor but never uses that portion of their facility for a public worship service must pay taxes on that facility.

When situations such as these arise and there is an obvious absence of case law at the B.T.A. level, one can presumptively assume that it is an area in which the Department of Taxation looks the other way while placing a stamp of approval on the exemption application. Is this administrative discretion, or is it simply a method of filling the egregious gaps in the statutory provisions? Again, the recurring instances of administrative inconsistencies, legislative neglect, and judicial ambiguity suggest the need to restructure the Ohio Revised Code provisions for real property tax exemptions.

¹⁸³ *Id.* at 200.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ See *Summit United Methodist Church v. Kinney*, 455 N.E.2d 669 (1983); *Summit United Methodist Church v. Kinney*, 442 N.E.2d 1298 (1982).

IV. CHARITABLE EXEMPTIONS

Tax exemptions for charitable purposes have arguably been the most controversial area in real property tax exemptions. From 1852 until 1965 the charitable statute, Ohio Revised Code section 5709.12 and its predecessors, were interpreted to require two things for a grant of exemption: (1) the owner of the property had to be a "charitable institution"; and (2) the property had to be "used exclusively for charitable purposes."¹⁸⁷

As a result of a 1968 amendment to this section dealing with homes for the aged, the General Assembly repealed the requirement that the owner must in all cases be a "charitable institution."¹⁸⁸ Ohio now has two statutes governing charitable exemptions: one that requires the owner to be a charitable institution¹⁸⁹ and one that does not.¹⁹⁰ This statutory ambiguity has resulted in extensive litigation. Examination of the various issues and elements of charitable exemptions will clarify settled points of law and illustrate areas where ambiguities and confusion remain.

A. *Charity Defined*

What is a charity? An examination of the case law will reveal many types of organizations that come within the definition of charity. More importantly, it defines those organizations whose activities are not charitable and therefore are excluded from exemption. Ohio's first constitutional convention included in article XII, section 2 a real property tax exemption for "institutions of purely public charity."¹⁹¹

*Gerke v. Purcell*¹⁹² first set forth the two-part test that the legislature later codified in Revised Statute section 2732.¹⁹³ The court first examined the nature of the organization's activities and then examined the facts to determine whether the property was used to support a charity which was "purely public."¹⁹⁴ In *Gerke*, the property at issue was a privately owned school.¹⁹⁵

¹⁸⁷ *Humphries v. Little Sisters of the Poor*, 29 Ohio St. 201 (1876).

¹⁸⁸ OHIO REV. CODE ANN. § 5709.12 (Anderson 1986).

¹⁸⁹ *Id.*

¹⁹⁰ OHIO REV. CODE ANN. § 5709.121 (Anderson 1986).

¹⁹¹ OHIO CONST. of 1802, art. XII, § 2.

¹⁹² 25 Ohio St. 229 (1874).

¹⁹³ *Id.* at 243-44. The earliest recording of this statute is found in an early publication compiled by J. Swan & M. Saylor, REVISED STATUTES OF OHIO SUPPLEMENT 1440 (1880). It is now codified as OHIO REV. CODE ANN. § 5709.12 (Anderson 1986).

¹⁹⁴ *Gerke*, 25 Ohio St. at 245.

¹⁹⁵ Under current exemption law, the private school would be exempted under the education exemption statute. In 1874, however, private schools had not yet been included under those statutory provisions and were thus forced to seek exemption as charitable institutions.

The court's definition of charity is still used as a guideline today: "A charity, in a legal sense, includes not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, without any particular reference to the poor."¹⁹⁶ Similarly, in *Cleveland Library Association v. Pelton*,¹⁹⁷ a library association was held to be an institution of purely public charity.¹⁹⁸ In *Cleveland Library*, the court held that an organization whose purpose was the "diffusion of useful knowledge, and the acquirement of the arts and sciences, by the establishment of a library of scientific and miscellaneous books for general circulation" was "an institution of purely public charity."¹⁹⁹

In 1912 article XII, section 2 of the Ohio Constitution was amended. The language controlling charitable exemptions was changed from "institutions of purely public charity" to "institutions used exclusively for charitable purposes."²⁰⁰ *Zangerle v. Gallagher*²⁰¹ was the first Ohio Supreme Court case after the constitutional amendment which required definition of the "used exclusively for charitable purposes" language.²⁰² A majority of the court held that when a charitable institution holds title to, and possession of, property but places a deed in escrow to the grantor, the property belongs to the charitable institution for tax purposes and is entitled to exemption.²⁰³ The split among the justices in this case indicates the controversial nature of exemptions for charitable organizations. Four justices issued three opinions concurring in the judgment but disagreeing upon the grounds for such judgment. Three justices dissented. This split among the justices is seen more frequently in the area of charitable exemptions than in any other area of exemption law. It reflects the ambiguity and conflict found in Ohio's charitable exemption statutes.

The Ohio Supreme Court, in *American Issue Publishing v. Evatt*,²⁰⁴ defined charity as "that which benefits mankind and betters its condition."²⁰⁵ American Issue Publishing Company was a for-profit organization owned solely by a not-for-profit corporation. The company was involved in distributing literature in order to discourage the consumption of alcoholic beverages.²⁰⁶ *American Issue* represents further judicial expansion of the definition of charity. The court held that an organization engaged in

¹⁹⁶ 25 Ohio St. 229 (1874) (syllabus, fourth paragraph).

¹⁹⁷ 36 Ohio St. 253 (1880).

¹⁹⁸ *Id.* (syllabus, first paragraph).

¹⁹⁹ *Id.*

²⁰⁰ OHIO CONST. OF 1851, art. XII, § 2 (1851, amended 1912).

²⁰¹ 165 N.E. 709 (1929).

²⁰² *Id.* at 712.

²⁰³ *Id.*

²⁰⁴ 28 N.E.2d 613 (1940).

²⁰⁵ *Id.* at 614.

²⁰⁶ *Id.*

discouraging the consumption of alcoholic beverages came within the definition of charity because it promoted individual and social welfare.²⁰⁷

Definition of "exclusive use" in relation to charitable activities was also at issue in *Incorporated Trustees of Gospel Worker Society v. Evatt*.²⁰⁸ In this case, exemption was denied to a not-for-profit corporation engaged in printing and selling religious publications with all proceeds going to charity.²⁰⁹ Even though a major portion of the property was used in this activity, portions of the property were being used for non-charitable activities.²¹⁰ The court ruled that use of the property, rather than use of the proceeds, was determinative for tax exemption purposes.²¹¹

It was not until 1949 that the Ohio Supreme Court began to set forth a fairly clear interpretation of the 1912 amendment to article XII, section 2. In *Cleveland Bible College v. Board of Tax Appeals*,²¹² the B.T.A. had denied the exemption when testimony presented by the college's business manager revealed that admission to a portion of the college's courses was contingent upon the student being a member of the Christian religion.²¹³

In a four-to-three vote the court reversed the denial of exemption. While two members of the majority based their decisions upon the fact that the school was in actuality open to the public generally,²¹⁴ the other two members of the majority concluded that the 1912 amendment of article XII, section 2 and the subsequent change in language of Ohio Revised Code section 5709.12 eliminated the requirement that a charitable institution be open to the general public to qualify for exemption.²¹⁵

By a four-to-three vote, the Ohio Supreme Court affirmed its decision in *Cleveland Bible College* when it decided *American Committee of Rabbinical College of Telshe, Inc. v. Board of Tax Appeals*.²¹⁶ The court's continuing

²⁰⁷ *Id.* This ruling has governed exemptions for organizations such as Alcoholics Anonymous. The granting of these exemptions under Ohio Revised Code § 5709.12 has yet to be challenged.

²⁰⁸ 42 N.E.2d 900 (1942).

²⁰⁹ *Id.* at 902.

²¹⁰ *Id.* at 901.

²¹¹ *Id.* at 902.

²¹² 85 N.E.2d 284 (1949).

²¹³ *Id.* at 284.

²¹⁴ *Id.* at 290.

²¹⁵ *Id.* at 285 (Taft, J., concurring).

²¹⁶ 102 N.E.2d 589 (1951). In its opinion, the majority explicitly stated that tax exemption for charitable institutions no longer depends upon the institution being open to the general public as long as there is no view to profit and the property is being used exclusively for the lawful advancement of education or religion. *Id.* at 590.

struggle with the meaning of the amended language of article XII, section 2 and Ohio Revised Code section 5709.12 continued in future cases.²¹⁷

The 1965 *Denison University v. Board of Tax Appeals*²¹⁸ decision created as much confusion in the interpretation of Ohio Revised Code section 5709.12 as it did in the educational exemption statutes. Since 1852, the charitable exemption statute had been interpreted to require that the property (1) belong to a "charitable institution," and (2) be "used exclusively for charitable purposes."²¹⁹

After *Denison University*, a bitter debate took place among the seven members of the Ohio Supreme Court over the interpretation to be given to this statute. The four-to-three split among the justices first occurred in *Philada Home Fund v. Board of Tax Appeals*.²²⁰ Four members of the court were convinced that *Denison University* had no effect whatsoever on the charitable exemption statute, and that, if the General Assembly wished to change the one-hundred-and-fifty-five-year-old interpretation, it would have to do so by legislation. On the other hand, three members of the court appeared just as determined to change the standard interpretation of the statute and to base exemption solely upon ownership of the property by a charitable institution. The three member minority wanted no requirement that the property be "used for charitable purposes." This bitter dispute continued from 1967 through 1969 and into 1969, in a series of five cases, with each side holding its ground.²²¹ There was no change in the membership of the court during these years.

The old rule that the owner had to use the property in order to claim an exemption was last applied by the Ohio Supreme Court in *Lincoln Memorial Hospital v. Warren*.²²² In *Lincoln Memorial* a for-profit corporation leased its

²¹⁷ See *Planned Parenthood Ass'n v. Tax Comm'r*, 214 N.E.2d 222 (1966) (not-for-profit corporation, whose primary purpose was to disseminate birth control information, was found to be a charitable institution under Ohio Revised Code § 5731.09); *American Humanist Ass'n v. B.T.A.*, 190 N.E.2d 685 (1963) (property of not-for-profit corporation, which disseminates literature about human progress and welfare declared exempt, overruling the B.T.A.'s finding that the institution's purpose was not exclusively charitable); *National Headquarters of Disabled American Veterans v. Bowers*, 170 N.E.2d 731 (1960) (property of veteran's organization used by disabled veterans to manufacture Ident-o-Tags to be sold to the public is not entitled to exemption. A charitable institution's ownership of property does not entitle the institution to exemption even though it is organized exclusively for charitable purposes. "The use, not the ownership, is the test." *Id.* at 733).

²¹⁸ 205 N.E.2d 896 (1965). See *supra* text accompanying notes 66-76 (discussing the impact of *Denison University* on real property tax exemptions for educational purposes).

²¹⁹ *Humphries v. Little Sisters of the Poor*, 29 Ohio St. 201 (1876).

²²⁰ 214 N.E.2d 431 (1966).

²²¹ *Carmelite Sisters v. Bureau of Unemployment Compensation*, 247 N.E.2d 477 (1969); *Crestview v. Donahue*, 236 N.E.2d 668 (1968); *In re Luther Senior City*, 224 N.E.2d 352 (1967); *Jewish Hosp. Ass'n v. B.T.A.*, 214 N.E.2d 441 (1966); *Philada Home Fund v. B.T.A.*, 214 N.E.2d 431 (1966).

²²² 235 N.E.2d 129 (1968).

hospital to a not-for-profit corporation that it had created and sought exemption on the leased facility.²²³ The court held that ownership and use had to “coincide”; that is, the owner had to be the user of the property.²²⁴

In the early 1970s the Ohio Revised Code was amended to deal with the ongoing confusion in charitable exemption.²²⁵ Ohio Revised Code section 5709.121(B) contains the problematic language. It grants tax exemption to property used “in furtherance of or incidental to” charitable purposes.²²⁶ The amendment to this section eliminated the requirement that use and ownership must coincide in order for exemption to be granted under the charitable exemption section.

The Ohio Supreme Court ruled in 1973 that section (B) repealed and reversed almost all previous Ohio decisions rendered since 1847 which dealt with charitable exemptions and that most issues decided since then must now be relitigated.²²⁷ The court in *Galvin v. Masonic Toledo Trust*,²²⁸ stated that the legislative enactment of Ohio Revised Code section 5709.121 “established criteria for [the charitable] tax exemption by defining the phrase ‘used exclusively for a charitable purposes,’ therefore, any prior inconsistent decisions of the courts interpreting the phrase must yield.”²²⁹ Legislative inclusion and judicial mention of section (B) illustrates the confusion that existed and still exists due to an unclear definition of charitable use.

Defining “charity” and “charitable activities” remains as elusive a task today as it was in 1872. The two most recent Ohio Supreme Court opinions do little to clarify or give specific guidelines to those seeking exemptions or

²²³ *Id.* at 129-30.

²²⁴ *Id.* at 130.

²²⁵ As amended, § 5709.121 reads:

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 is either:

(A) 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:

(1) 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;

(2) For other charitable, educational, or public purposes;

(B) Otherwise 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.

OHIO REV. CODE ANN. § 5709.121 (Anderson 1986).

²²⁶ OHIO REV. CODE ANN. § 5709.121(B) (Anderson 1986).

²²⁷ *Galvin v. Masonic Toledo Trust*, 296 N.E.2d 542, 544 (1973).

²²⁸ 296 N.E.2d 542 (1973).

²²⁹ *Id.* at 544.

representing entities opposing an exemption. In *Online Computer Library Center v. Kinney*²³⁰ the court ruled that a data base firm specializing in providing to public libraries bibliographic material of member libraries enhances the ability of libraries to serve the public, but is not a charitable institution.²³¹ The strongest argument against granting exemption was that the firm charged for its services and records showed a considerable profit. In another case, a not-for-profit private school operating a used clothing outlet was also denied exemption because of profits generated by the retail operation.²³²

Undoubtedly, the confusion will continue until the legislature clarifies or corrects the ambiguities in Ohio Revised Code section 5709.121. Until then, it is impossible to predict with any certainty the outcome of charitable exemption cases.

B. Commercial Use of Property

The commercial use of property owned by charitable institutions has not been a heavily litigated area. In cases involving commercial use of property by a charitable institution, the practitioner seeking exemption for such an entity needs to look closely at how the court defines commercial activity in each instance. An examination of the cases will help illustrate which types of commercial activity are acceptable for tax exempt purposes.

One of the earliest cases involving commercial activity was *Incorporated Trustees of Gospel Worker Society v. Evatt*.²³³ The not-for-profit corporation seeking exemption was engaged in the printing and selling of religious publications. All of the profits were used for charitable purposes, but the court denied exemption based on the present use of the property test.

In 1954 the Ohio Supreme Court ruled that real property owned and operated by a charitable institution without profit was exempt.²³⁴ Central to the court's decision was the fact that the profit making activities were "incidental" to the institution's main objective.²³⁵ Unfortunately, the word incidental is ambiguous and the court did not delineate exactly what would be considered incidental. It is this type of ambiguous language which has resulted in needless and excessive litigation throughout the years.

Use of a facility to provide support services for recovering alcoholics may be considered a charitable activity given the right facts. In *Akron Arid Club v.*

²³⁰ 464 N.E.2d 572 (1984).

²³¹ *Id.* at 575.

²³² See *Seven Hills Schools v. Kinney*, 503 N.E.2d 163 (1986).

²³³ 42 N.E.2d 900 (1942).

²³⁴ *Goldman v. Friars Club*, 107 N.E.2d 518 (1952).

²³⁵ *Id.* at 524.

*Limbach*²³⁶ such a facility was seeking exemption. The main problem was that the institution operated what appeared to be a profitable, state-licensed bingo operation on the premises as a means of making money to support its alcohol recovery program.²³⁷ The B.T.A. granted exemption because the organization used the proceeds of the bingo games "for charitable purposes."²³⁸

Another B.T.A. case illustrates the inconsistencies in granting and denying real property tax exemptions. In *Goodwill Industries of Southern Ohio v. Limbach*²³⁹ a building used as a retail outlet for used clothing, furniture, and household goods was granted exemption.²⁴⁰ The B.T.A.'s reasoning is somewhat confusing. In the paragraph prior to the grant of exemption for the property, the B.T.A. stated:

The words 'charity' and 'profit' are not compatible. Statutes and case law are clear that if the use of the property is to generate profit, it can not be shown that the use is charitable. But an activity that produces income is not indisputably conducted with a view to profit.²⁴¹

The facts of the case indicate the goods being sold were received at no cost.

A swimming pool association was granted exemption by the B.T.A. in *Fair Park Swimming Pool Association v. Limbach*.²⁴² The association offered both season memberships and daily admission charges.²⁴³ At various times the pool had been used at no charge by community organizations. It appears that the B.T.A. granted exemption because all of the income was used to pay the pool's operating expenses and that the operation of the pool provided a benefit for the community.²⁴⁴

The crucial factor in the cases involving commercial activity of a charitable institution seems to be some nexus between the commercial activity and the charitable purpose. If this nexus exists, exemption will be granted. It also appears that the benefit to the community is an important factor. Another plausible distinction made is between revenue generated to produce profits which are then used for charitable purposes and revenue generated from carrying out the charitable institution's exempt function. An excess of revenues over expenses which are reinvested in charitable purposes is tax exempt, while the generation of profit in an entrepreneurial sense would be denied exempt status.

²³⁶ No. 84-E-724 (Ohio B.T.A. March 24, 1986).

²³⁷ *Id.* at 7.

²³⁸ *Id.* at 11.

²³⁹ No. 84-B-129 (Ohio B.T.A. Feb. 6, 1987).

²⁴⁰ *Id.* at 6.

²⁴¹ *Id.* at 5.

²⁴² No. 84-B-26 (Ohio B.T.A. May 13, 1987).

²⁴³ *Id.* at 2.

²⁴⁴ *Id.* at 4.

C. Residential Use

Charitable institutions, like religious institutions, have generally been unsuccessful in their attempts to have residential property granted tax exempt status. As with the religious exemption statutes, courts have usually held when applying the charitable institution exemption statutes that residential use is private use. The only exception to this general rule is when the residential property is occupied by a person whose presence is crucial to the functioning of the charitable institution such that it could not continue without his or her presence.²⁴⁵

One area in which there appears to be no logical explanation for the routine denial of exemptions is when a charitable institution provides low-rent housing for needy persons. Here, there is seemingly no explanation to justify the routine denials.²⁴⁶ The case of *Cincinnati Nature Center v. Board of Tax Appeals*²⁴⁷ enunciates the current position of the Ohio Supreme Court regarding residences owned by charitable institutions. At issue were two residences located on the Nature Center's property which were occupied by employees of the center at no charge. The court ruled that as long as the use of such residences was "in furtherance of or incidental to its charitable, educational, or public purpose and not with the view to profit" it would be exempt from taxation.²⁴⁸

²⁴⁵ *Jewish Hosp. Ass'n v. B.T.A.*, 214 N.E.2d 441 (1966) (hospital's use of structures to house residents, interns and graduate nurses is a private use of the premises and not a use exclusively for charitable purposes); *Doctors Hosp. v. B.T.A.*, 181 N.E.2d 702 (1962) (residence quarters furnished without charge by charitable hospital to its residents and interns not exempt as property of institution used exclusively for charitable purposes); *St. Barnabas Nurses Guild v. B.T.A.*, 83 N.E.2d 229 (1948) (building operated and maintained by a charitable organization is not exempt when rooms are rented to nurses and the facility is not used exclusively for charitable purposes); *Aultman Hosp. Ass'n v. Evatt*, 42 N.E.2d 646 (1942) (property used by a not-for-profit hospital as a home for student nurses is exempt from taxation because the student nurses' presence was part of the integral function of the hospital).

²⁴⁶ *See, e.g., Cogswell Hall v. Kinney*, 506 N.E.2d 209 (1987) (not-for-profit charitable corporation denied exemption on property used as low-cost housing for needy women); *In re Lutheran Senior City*, 224 N.E.2d 352 (1967) (real property owned by a not-for-profit charitable corporation which is used as low-rent housing for elderly is not exempt although rents are below cost); *Philada Home Fund v. B.T.A.*, 214 N.E.2d 431 (1966) (real property of a not-for-profit, charitable corporation used as residence apartments for needy persons is not exempt even though rents are at or below costs); *Battelle Memorial Inst. v. Kinney*, No. F-1007 (Ohio B.T.A. March 6, 1979) (not-for-profit organization providing residential living facility for paraplegics and quadraplegics is not exempt).

²⁴⁷ 357 N.E.2d 381 (1976).

²⁴⁸ *Id.* at 382.

Even though the legislative drafting of Ohio Revised Code section 5709.121 appears to have rendered that section useless, the Ohio Supreme Court and the administrative agencies must deal with it until the legislature redrafts it. In *Cincinnati Nature Center* the caretaker's residences were made available under the "control of" the charitable institution. Since the caretaker provided security services at all hours,²⁴⁹ this would arguably be a service "in furtherance of" the institution's purpose.

D. *Effect of Leases on Tax Exempt Status*

When a charitable institution owns property which has been exempted from taxation, acquisition of additional property by lease does not render the leased property exempt.²⁵⁰ The general rule in regard to leases is that property leased by a charitable institution can not be exempt even if it is used exclusively for charitable purpose.²⁵¹

Enactment of Ohio Revised Code section 5709.121(A) has created an exception allowing exemption of property leased to a charitable institution by another charitable institution if the use of the property would otherwise qualify for exemption.²⁵² Since no cases challenging a lease under this provision have arisen, it may be inferred that the administrative agencies are granting the exemptions pursuant to this section or charitable institutions simply have not yet become aware of this "loophole."

E. *Social Use of Property*

During the early 1940s the issue arose as to whether property used mainly for social purposes, even though owned by a charitable institution, could be granted exemption under Ohio Revised Code section 5709.12. The first case to reach the Ohio Supreme Court involving use for social purposes involved a canteen owned by a veteran's association that was used for social activities.²⁵³ The canteen was used only by members and was not open to the general public.²⁵⁴ Exemption was denied because the property was not used exclusively for public purposes.²⁵⁵ The court's decision was influenced by the "club

²⁴⁹ *Id.*

²⁵⁰ *Humphries v. Little Sisters of the Poor*, 29 Ohio St. 201 (1876).

²⁵¹ *Id.*

²⁵² *Galvin v. Masonic Toledo Trust*, 296 N.E.2d 542, 543 (1973).

²⁵³ *East Cleveland Post No. 1500, Veterans of Foreign Wars v. B.T.A.*, 41 N.E.2d 242 (1942).

²⁵⁴ *Id.* at 242.

²⁵⁵ *Id.* at 243.

atmosphere" of the canteen and the fact that its main purpose was to encourage "friendship and sociability" among its own members.²⁵⁶

For the most part, the "social use" cases have involved either veteran or fraternal associations. This is an area of real property tax exemption law in which the Ohio Supreme Court has consistently denied exemptions. In 1949 the court considered an exemption for property used for both social and charitable purposes in *In re Application of American Legion*.²⁵⁷ The court set down a rule that still controls today: real property used for both social and charitable purposes is disqualified from tax exempt status by its dual usage.²⁵⁸

One explanation for the court's strict construction in cases involving veteran associations is that the property is generally used primarily for social purposes. In 1969 the court decided another case involving the American Legion,²⁵⁹ that still controls today. The fraternal nature of the organization has been the controlling factor in these cases. When the central purpose of a not-for-profit corporation is the formation of a fraternal association composed of all veterans of the armed forces, the organization's property has been repeatedly denied exemption due to failure to meet the "used exclusively for charitable purpose" test.²⁶⁰ During the last twenty years few cases involving social use have been appealed past the B.T.A. level.²⁶¹

One apparently consistent principle throughout the social use cases is that the courts and administrative agencies are more liberal in granting exemptions when the use of the property benefits children and adolescents. Even though the Boy Scouts of America is a charitable, not-for-profit organization, it would be hard to deny that its primary purpose is to provide social activities for young boys. In *Northeast Ohio Council, Boy Scouts of America v. Limbach*²⁶² the Tax Commissioner denied exemption for property obtained to construct a scout

²⁵⁶ *Id.* See also *Socialer Turnverein v. B.T.A.*, 41 N.E.2d 710 (1942) (property of a social club not exempt as a charitable institution).

²⁵⁷ 86 N.E.2d 467 (1949).

²⁵⁸ *Id.* at 469.

²⁵⁹ *In re Application of American Legion*, 254 N.E.2d 21 (1969).

²⁶⁰ *Id.* See also *Goldman v. Guckenberger*, 107 N.E.2d 526 (1952) (previously exempt property of an American Legion Post which was not used exclusively for charitable purposes was returned to the taxing scheme).

²⁶¹ *Lions Club Found. v. Limbach*, No. 85-G-112 (Ohio B.T.A. Jan. 11, 1988) (Lions Club activities are primarily fraternal, excluding property from exemption under Ohio Revised Code § 5709.12); *Cincinnati Women's Club v. Kinney*, No. 78-A-258 (Ohio B.T.A. June 30, 1980) (property owned by a private women's social club that is used to further the education of its members as well as to conduct its incidental charitable uses, does not qualify for exemption); *Kent Coterie Club v. Kinney*, No. 78-C-557 (Ohio B.T.A. April 4, 1979) (fraternal activities are not charitable within the terms of Ohio Revised Code §§ 5709.12 and 5709.121); *Bavarian Club v. Kinney*, No. 78-F-259 (Ohio B.T.A. Dec. 13, 1978) (not-for-profit corporation whose property is used primarily as a dance and social hall was not entitled to exemption).

²⁶² No. 85-E-807 (Ohio B.T.A. April 11, 1987).

service center. The B.T.A. reversed the Tax Commissioner's decision and granted the exemption.²⁶³

F. *Unused Land*

As in all other areas of real property tax exemptions, the issue of whether unused land qualifies for charitable exemptions has also been controversial. Unlike the social use cases where the rulings have been fairly consistent, the unused land cases are inconsistent except when the land involved was held as a nature preserve.

In *Little Miami v. Kinney*²⁶⁴ a not-for-profit corporation formed to preserve the natural, scenic appearance of the Little Miami River sought exemption for Bass Island.²⁶⁵ Bass Island had been restored from a slum-like residential area to a natural habitat open to the public.²⁶⁶ The Ohio Supreme Court found that the preservation of the land was a charitable purpose.²⁶⁷ *Little Miami* redefined "charity" to include an activity that had never been recognized as charitable up until that time.²⁶⁸ It appears that the societal benefits gained from the preservation of land in its natural state were substantial enough that the court elevated this purpose to the level of charitable activity. The actions of the court in *Little Miami* can be viewed in two very different ways: (1) the court was modernizing the concept of charity to reflect a societal view that conservation and ecology were important concerns to present day society; or (2) the court was creating new law despite the fact that the legislature has never said that preservation of land by private entities is a tax exempt purpose.

One of the most controversial cases involving unused land was *American Chemical Society v. Kinney*.²⁶⁹ *American Chemical* represents the broadest judicial interpretation of the 1969 amendment to Ohio Revised Code section 5709.12, which was the legislative attempt to define "used exclusively for charitable purposes." Prior to this case, it had apparently been established that

²⁶³ *Id.*

²⁶⁴ 428 N.E.2d 859 (1981).

²⁶⁵ *Id.* at 859-60.

²⁶⁶ *Id.*

²⁶⁷ *Id.* at 860.

²⁶⁸ See also *Trust for Public Land v. Kinney*, No. 81-G-115 (Ohio B.T.A. March 11, 1985) (land acquired and preserved in its natural state by a not-for-profit corporation until a suitable government agency can acquire the property for a public purpose is exempt); *Trust for Public Land v. Kinney*, No. 81-E-116 (Ohio B.T.A. Jan. 7, 1982) (tax exemption granted for land, but not buildings thereon, owned by a charitable institution which is preserving the land in its natural state); *Nature Conservancy v. Kinney*, Nos. 80-D-314, 80-D-330 (Ohio B.T.A. Dec. 30, 1981) (charitable institution's nature preserve exempt).

²⁶⁹ 431 N.E.2d 1007 (1982).

American Chemical Society was a charitable institution.²⁷⁰ In this particular case, the issue of whether American Chemical Society was a charitable institution was not litigated regarding the vacant land exemption application. Here, American Chemical Society sought exemption for fifty acres of vacant, landscaped land surrounding their tax-exempt buildings.²⁷¹ The Ohio Supreme Court held that when landscaped and beautified property surrounding a charitable institution's buildings is shown to be instrumental in the recruitment, retention, and productivity of the institution's employees, and such employees play an integral role in the continued success of the institution, the property is exempt from taxation.²⁷² From this ruling, it appears that there are no real boundaries for exemption after the 1969 amendment to Ohio Revised Code section 5709.12.

G. Homes for the Aged

Exemptions for homes for the aged and independent living facilities are a fairly recent development in real property tax exemption law. In 1968 the Ohio Supreme Court denied exemption to a residential apartment complex for the elderly, ruling that it was not used exclusively for charitable purposes.²⁷³ The basis for this ruling is that residential use is inherently private, not charitable. Even though the institution offered a guaranteed life care plan, each resident was charged an admittance fee of \$10,000 or more, plus a monthly fee for food and services.²⁷⁴ The court applied the *Cleveland Osteopathic*²⁷⁵ test for hospitals and found that the main objective of the nursing home was not the care of the "poor, needy and distressed who [were] unable to pay."²⁷⁶

A similar facility was also denied exemption in *In re Lutheran Senior City*.²⁷⁷ Here the court found that the property at issue was essentially a private residential apartment facility.²⁷⁸ Citing *Philada Home*²⁷⁹ and its similar fact pattern, the court refused exemption as it had in the past to any property which

²⁷⁰ *See id.* The Columbus School Board has filed a complaint alleging that the American Chemical Society is not a charitable institution. The case is currently pending before the Board of Tax Appeals. Considering past history involving the American Chemical Society, if the B.T.A. agrees with the school board, the case will likely be appealed to the Ohio Supreme Court. Columbus Bd. of Educ. v. American Chem. Soc'y, No. 86-H-566 (Ohio B.T.A. filed June 6, 1986).

²⁷¹ *American Chemical*, 431 N.E.2d at 1008.

²⁷² *Id.* at 1010.

²⁷³ *Crestview, Inc. v. Donahue*, 236 N.E.2d 668, 669 (1968).

²⁷⁴ *Id.* at 668.

²⁷⁵ *Cleveland Osteopathic Hosp. v. Zangerie*, 91 N.E.2d 261 (1950).

²⁷⁶ *Crestview*, 236 N.E.2d at 669.

²⁷⁷ 224 N.E.2d 352 (1967).

²⁷⁸ *Id.*

²⁷⁹ *Philada Home Fund v. B.T.A.*, 214 N.E.2d 431 (1966).

was partly or "incidentally" used for private residences. Soon after this ruling, the Ohio Legislature enacted Ohio Revised Code section 5701.13 containing exemption guidelines for homes for the aged.²⁸⁰ The pattern that emerged from this line of cases was that independent residential apartment units occupied by elderly residents were denied exemption. Not-for-profit licensed nursing homes were granted exemption under *Carmelite Sisters, St. Rita's Home v. Board of Review*.²⁸¹

The first case to reach the Ohio Supreme Court under the newly enacted statute was *Toledo Business & Professional Women's Retirement Living v. Board of Tax Appeals*.²⁸² At issue was the constitutionality of Ohio Revised Code section 5701.13 and whether the facility met the standards set forth therein. The court ruled that the enactment of section 5701.13 represented the "exercise of the constitutional power" of the legislature to "determine exemptions from taxation."²⁸³ Furthermore, the functions of the executive and judicial branches were limited to applying the criteria set forth by the

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As used in Title LVII of the Revised Code, and for the purpose of other sections of the Revised Code which refer specifically to Chapter 5701 or section 5701.13 of the Revised Code, a 'home for the aged' means a place of residence for aged persons which meets all of the following standards:

(A) It is owned or operated by a corporation, unincorporated association, or trust of a charitable, religious, or fraternal nature, which is organized and operated not for profit, and which is not formed for the pecuniary gain or profit of, and whose net earnings or any part thereof is not distributable to, its members, trustees, officers, or other private persons.

(B) Not more than ninety-five percent of the expenses of caring for the residents of such home comes from the resident, or is paid to the home in behalf of the residents. . . .

(D) The following services are available, as needed by residents of the home, and shall be provided, at or below reasonable cost, for the life of each resident without regard to his ability to continue payment for the full cost thereof:

- (1) Lodging;
- (2) Prepared food;
- (3) Custodial care;
- (4) Medical and nursing care;
- (5) Such additional services as may be required for the full care of the resident.

A service is provided, within the meaning of this division, if the home pays, or guarantees the payment, for all reasonable costs of securing such service on behalf of each resident and it can be secured without unreasonable inconvenience to the residents.

Exemption from taxation shall be accorded, on proper application, only to those homes which meet the standards and provide the services specified in this section.

OHIO REV. CODE ANN. § 5701.13 (Anderson 1986).

²⁸¹ 247 N.E.2d 477 (1969).

²⁸² 272 N.E.2d 359 (1971).

²⁸³ *Id.* at 361-62.

legislature in an exemption statute.²⁸⁴ The court found, however, that the facility did not meet the standards set forth in section 5701.13.²⁸⁵

The court later affirmed this position in *S.E.M. Villa II, Inc. v. Kinney*.²⁸⁶ Denial of exemption was based upon failure of the congregate living facility to provide its residents with the level of care set forth in Ohio Revised Code section 5701.13(D).²⁸⁷ Additionally, the court held that the facility's retention of the right to terminate the residency of individuals who became mentally or physically unable to care for themselves violated Ohio Revised Code section 5701.13(D).²⁸⁸

The Ohio Supreme Court has repeatedly applied a strict construction standard to homes for the aged seeking exemption under Ohio Revised Code section 5701.13. Failure to meet any part of a specified requirement will result in denial of exemption.²⁸⁹

In 1987 the legislature amended Ohio Revised Code section 5701.13. The amendment added a paragraph to define pertinent terms such as "assisted living

²⁸⁴ *Id.* at 361.

²⁸⁵ *Id.* at 362. See also *S.E.M. Villa II, Inc. v. Kinney*, No. 78-B-613 (Ohio B.T.A. Oct. 14, 1980) (congregate living facility for elderly that does not provide all five services enumerated in Ohio Revised Code § 5701.13 does not qualify for exemption).

²⁸⁶ 419 N.E.2d 879 (1981).

²⁸⁷ *Id.* at 380-81.

The custodial care provided by the appellant [nursing home] consists of the maintenance of the grounds and common areas, window washing, and shampooing of rugs. This does not encompass any personal service, such as assisting a resident in dressing, eating, bathing or cleaning. The commissioner and the board found this to be insufficient to qualify as 'custodial care' . . . Appellant employs a single nurse who works a 40-hour week, and dispenses no medicine. Appellant does not employ a doctor, and medical care is provided by three doctors from the community who make visits to the facility. Appellant provides examining rooms, but the expense of the medical care is borne by the residents individually. Both the commissioner and the board found this to be insufficient to qualify as 'medical and nursing care.' We find this conclusion neither unreasonable nor unlawful.

Id.

²⁸⁸ *Id.*

²⁸⁹ See *Ohio Presbyterian Homes v. Kinney*, 459 N.E.2d 500 (1984) (homes for the aged not meeting all requirements of Ohio Revised Code § 5701.13 can not be exempted from taxation); *Church of the Brethren v. Kinney*, No. 81-D-417 (Ohio B.T.A. Sept. 9, 1983) (home for the aged exemption denied when financial information showed that amounts paid by or in behalf of elderly residents exceeded ninety-five percent of home's receipts); *Apostolic Christian Home v. Kinney*, No. 81-E-397 (Ohio B.T.A. Apr. 29, 1983) (life care agreement insufficient to qualify institution's retirement unit as property "used exclusively as a home for the aged").

facility.”²⁹⁰ One of the major problems with the 1987 amendment was that assisted living facilities were not clearly required to be licensed by the health department. An assisted living facility could be exempt, even though it was not licensed by the health department, as long as it was operated in conjunction with a licensed nursing home. From 1987 until 1990, there existed numerous unlicensed assisted living facilities that were on the tax exempt lists.

Section 5701.13 was amended again in 1990 to define “adult care facility,”²⁹¹ and to eliminate the prior definition of “assisted living facility.” The amended language included a cross-reference to the nursing home licensing requirements found in Ohio Revised Code section 3722.04. After the 1990 amendment, in order for a home for the aged to qualify for exemption, it must have either a nursing home, rest home, or adult care facility license in addition to meeting the requirements set forth in Ohio Revised Code sections 5701.13 and 5709.12.²⁹² In addition, the amendment eliminated the ninety-five percent test for income because it had proved virtually impossible to administer when homes for the aged were applying for exemption. This revision more clearly excludes those independent living facilities which are essentially residential apartment buildings for the elderly.²⁹³ Furthermore, it effectively eliminated

²⁹⁰ “Assisted living facilities” are residential housing facilities that are operated in conjunction with a nursing home, provide some routine daily assistance to residents, provide staff that monitors residents’ medical condition and have a twenty-four hour emergency call section. OHIO REV. CODE ANN. § 5701.13(A)(3) (Anderson 1986).

²⁹¹ “‘Adult care facility’ means an adult care facility as defined in section 3722.01 of the Revised Code that is issued a license pursuant to section 3722.04 of the Revised Code.” OHIO REV. CODE ANN. § 5701.13(A)(3) (1990). The definition provided in section 3722.01 provides:

“Adult care facility” means an adult family home or an adult group home. . . . any residence, facility, institution, hotel, assisted living facility, congregate housing project, or similar facility that provides accommodations and supervision to three to sixteen unrelated adults, at least three of whom are provided personal care services, . . . regardless of how the facility holds itself out to the public.

OHIO REV. CODE ANN. § 3722.01(A)(9) (Anderson 1990).

²⁹² OHIO REV. CODE ANN. § 3722.01(A)(9) (Anderson 1990).

²⁹³

“Adult care facility” does not include:

. . . (h) Any residence, institution, hotel, assisted living facility, congregate housing project or similar facility that provides personal care services to fewer than three residents or that provides, for any number of residents, only housing, housekeeping, laundry, meal preparation, social or recreational activities, maintenance, security, transportation, and similar services that are not personal care services or skilled nursing care.

OHIO REV. CODE ANN. § 3722.01(A)(9) (Anderson 1990).

the concept of assisted living as an independent entity not subject to the other requirements of that code section as had been the case under the 1987 version. In essence, "assisted living" under the 1987 version was subsumed into the "rest home/adult care facility" provision of Ohio Revised Code sections 5701.13, 3721.01 and 3721.02.

In *Toledo Jewish Home for the Aged v. Limbach*²⁹⁴ the facility at issue was Pelham Manor, a congregate housing facility for the elderly. In discussing the statutory requirements of section 5701.13, the court stated that the "prefatory qualification for exemption under the statute is that, for the life of each resident, the specified services be provided at or below cost regardless of the resident's ability to continue payment therefor."²⁹⁵ The facility's failure "to commit to providing services for the life of each resident, without regard to his or her ability to pay the full cost thereof" was outcome determinative.²⁹⁶ Exemption was denied because the institution failed to meet the life care requirement of Ohio Revised Code section 5701.13.

The effectiveness of the 1990 amendment to Ohio Revised Code section 5701.13 remains to be seen since it has only been in effect since November 15, 1990. Many of the issues that arose under the previous versions of the statute may still remain. It appears, however, that the licensing requirement will facilitate the handling of applications at the administrative level because the health department officers must certify many of the same requirements under the licensing statute as those set forth in section 5701.13.

This is one instance in which legislative restructuring of a code section appears to be an effective solution to problems that had previously resulted in abuse of real property tax exemptions. If the legislative intent is not undermined by abuse at the administrative level or judicial misinterpretation, then perhaps this type of restructuring throughout the charitable exemption statutes is the solution needed to eliminate the confusion which now exists.

V. PUBLIC PURPOSE EXEMPTIONS

The general standard for exemption from taxation for government and public property is that the property must be used exclusively for a public purpose.²⁹⁷ Legislative authorization to exempt "public property used exclusively for public purposes" comes directly from the Ohio Constitution.²⁹⁸

Although this section attempts to address most of the issues and areas arising under the public purpose exemption statutes, it is beyond the scope of

²⁹⁴ 559 N.E.2d 451 (1990).

²⁹⁵ *Id.* at 453.

²⁹⁶ *Id.*

²⁹⁷ OHIO REV. CODE ANN. § 5709.08 (Anderson 1986); *Carney v. Cleveland*, 180 N.E.2d 14 (1962); *Toledo v. Jenkins*, 54 N.E.2d 656 (1944).

²⁹⁸ OHIO CONST. art. XII, § 2.

this Note to deal with the exemption of state and federally owned property. An extensive body of case law interprets the many statutory provisions in this area and it would be impossible to adequately address this entire area within the confines of this Note.

The following material explores the general and specific exemptions pertaining to public property and the development of case law interpreting those statutory provisions. Most of the litigation occurring in the area of public property exemptions has involved the definition of the "used exclusively for public purposes" requirement, in addition to leases, unused land, and residences.

A. *Used Exclusively for Public Purposes*

The first case concerning tax exemption for a public purpose, *Toledo v. Hosler*,²⁹⁹ came before the Ohio Supreme Court in 1896. In reversing the lower court's denial of exemption, the Ohio Supreme Court held that municipally owned gas wells, pipelines, and pumping stations used by the city for the conveyance of gas to be consumed by the city and its citizens were used exclusively for a public purpose and were therefore exempt from taxation.³⁰⁰

In 1950 the Ohio Supreme Court further defined "public property used exclusively for any public purpose" in *Cleveland v. Board of Tax Appeals*³⁰¹ so as not to include property used "merely for a public benefit."³⁰² The property at issue was a municipal stadium and parking lot for which the city was claiming exemption under General Code sections 5351 and 5356 (now Ohio Revised Code sections 5709.08 and 5709.10). Even though the public benefited from the stadium's operation, that fact alone was not enough to justify exemption. Primarily, the court seemed to be concerned with the proprietary nature of the enterprise and the inequity that would be created if the government-owned facility at issue was granted tax exempt status while an identical privately owned enterprise could not be considered for tax exemption.³⁰³

Six years later, the Ohio Supreme Court distinguished its earlier opinion in *Cleveland v. Board of Tax Appeals* when it ruled in *Columbus v. Delaware*³⁰⁴ that "a public purpose of a proprietary nature is still a public purpose within the meaning of Section 5709.08, Revised Code."³⁰⁵ The effect of the court's decision was to broaden the meaning of the constitutional language of "used

²⁹⁹ 43 N.E. 583 (1896).

³⁰⁰ *Id.* at 584.

³⁰¹ 91 N.E.2d 480 (1950).

³⁰² *Id.* at 481.

³⁰³ *Id.* at 488.

³⁰⁴ 132 N.E.2d 747 (1956).

³⁰⁵ *Id.* at 748.

exclusively for a public purpose.” Essentially, even though the land was located in an adjoining county and the use was proprietary in nature, the court held it came within the “used exclusively for a public purpose” language.³⁰⁶

In 1970 the issue of exemption for municipally owned public parks came before the Ohio Supreme Court.³⁰⁷ The court held, in this case of first impression, that “land which is available to the public generally on the basis of equality and to the extent of its capacity without charge . . . for open-air recreational and educational purposes” was land used exclusively for a public purpose.³⁰⁸

Further judicial expansion of the public property exemption occurred in *Montgomery County Park District v. Kinney*.³⁰⁹ At issue were three residential facilities located on park property which were rented to park district personnel at discount rates in exchange for maintenance and supervisory services related to the surrounding park lands. The court held that Ohio Revised Code section 5709.10 extended tax exemption to all property owned by park districts, regardless of its use.³¹⁰

The Ohio Supreme Court, in its most recent case defining “used exclusively for a public purpose,” held that a parking lot used only by employees of the State Teachers Retirement Board was not property used exclusively for a public purpose.³¹¹ The main arguments for not granting exemption were the nonessential character of the property³¹² and the unavailability of the facility to the general public.³¹³ In dicta, the court suggested that, had there been a “nexus” between the property’s use and the public purpose of the entity, exemption would have been granted. This is a subtle indicator for those who will be seeking exemptions of this type in the future.

In order to provide an example of the confusion and inconsistency in real property tax exemptions, one need only look at a similar case decided under the charitable exemption statute. In *Columbus Neighborhood Housing Service v. Kinney*³¹⁴ the property at issue was a parking lot used exclusively by the

³⁰⁶ The land at issue was a water reservoir owned by the City of Columbus, a municipal corporation. The reservoir was being used to contain and hold water to be sold to residents of the city and its surrounding suburbs. *Id.* at 751.

³⁰⁷ *Muskingum Watershed Conservancy Dist. v. Walton*, 257 N.E.2d 392 (1970).

³⁰⁸ *Id.* at 394.

³⁰⁹ 399 N.E.2d 556 (1980).

³¹⁰ *Id.* at 557.

³¹¹ *State Teachers Retirement Bd. v. Kinney*, 429 N.E.2d 1069 (1981).

³¹² The land was located in a business district with numerous other parking facilities available. *Id.* at 1070.

³¹³ The parking lot was only accessible to employees with key cards to operate the gate. *Id.*

³¹⁴ No. 79-B-671 (Ohio B.T.A. Dec. 14, 1981).

organization's employees and clients.³¹⁵ Exemption was granted by the B.T.A. on the basis that the use of the land was "in furtherance of or incidental to" the organization's charitable purpose.³¹⁶ This grant of exemption when compared to the denial of exemption for the State Teachers Retirement Board's parking lot which was also used by its employees seems incongruous. For the practitioner seeking exemption for a client under Ohio Revised Code section 5709.10, the essential element needed to obtain exemption appears to be the clear establishment of a "nexus" between the property's use and the public purpose of the entity.

B. Leases

The effect of a lease of public property to a private individual was first examined by the Ohio Supreme Court in *Cincinnati v. Lewis*.³¹⁷ The property at issue was originally purchased to construct water-works facilities for the city, but the proposed facility was never actually built. Several years later, the property was leased as farm land with the revenues going to the city water department and being used for maintenance.³¹⁸ In its holding, the court stated that qualification for exemption depended upon ownership coinciding with "exclusive use for a public purpose."³¹⁹ After an examination of the lease arrangement, the court held that leased property could only be exempted when leased by the city for its own use in order to exercise its municipal functions.³²⁰

In 1958 the Ohio Supreme Court issued an opinion which is contrary to all prior decisions concerning leases of state-owned property. At issue in *Carney v. Ohio Turnpike Commission*³²¹ was whether privately operated service plazas located along the Ohio Turnpike on land owned by the Ohio Turnpike Commission were entitled to exemption. Previously, the court had denied exemption to all state-owned property leased to private individuals. The court

³¹⁵ *Id.* at 4.

³¹⁶ *Id.* at 7. The organization's charitable purpose was to prevent deterioration of neighborhoods through home improvement programs.

³¹⁷ 63 N.E. 588 (1902).

³¹⁸ *Id.* at 589.

³¹⁹ *Id.*

³²⁰ *Id.* at 590. See also *Board of Park Comm'rs v. B.T.A.*, 116 N.E.2d 725 (1954) (public property leased to a not-for-profit corporation cannot be classified as public property while under the control of lessee); *Dayton v. Haines*, 102 N.E.2d 590 (1951) (a portion of a municipally owned airport leased to a federal agency for grain storage does not constitute a use for public purposes or one incidental to the owner's use of the airport for airport purposes so as to entitle the owner to exemption from taxation); *Division of Conservation and Natural Resources v. B.T.A.*, 77 N.E.2d 242 (1948) (real property owned by the state, but leased to a private citizen who uses it exclusively for private purposes, is not exempt).

³²¹ 147 N.E.2d 857 (1958).

held that the for-profit nature of the privately owned enterprises did not change “the controlling fact that the project is owned by the public and is devoted essentially to an exclusive public use.”³²² The court had formerly insisted on strict construction of the statutory exemptions, but it now shifted to a more liberal requirement in order to grant the exemption. This expansion appears to be more than merely superficial. It is in fact a substantive change in the court’s position.

Expansion of exemptions in the area of leased public property continued in *Carney v. Cleveland Public Library*.³²³ The court held that a ninety-nine-year lease renewable for two terms was exempt from taxation “to the same extent as property held in fee by such entity.”³²⁴ The court distinguished *Dayton v. Haines*,³²⁵ because in the case at bar there was unity of ownership and use.³²⁶ The court, caught in its own inconsistencies, eventually overruled *Dayton v. Haines* pursuant to Ohio Revised Code section 5709.08, in a case that was also entitled *Dayton v. Haines*.³²⁷ In the latter case, the lessor and lessee were both public bodies.³²⁸ The only option for the court was to grant exemption since there was “nothing but a public ownership of that property,” and therefore it was exempt as public under Ohio Revised Code section 5709.08.³²⁹

The standard applied to lease cases was again changed in 1961 when the Ohio Supreme Court ruled that property used for “the benefit of the public” would be considered as coming within the “used exclusively for any public purpose language.”³³⁰ An auditorium and exhibit hall owned and operated by the City of Cleveland, but used by concessionaires to conduct trade shows and conventions, was exempted because there was a “general benefit” to the community.³³¹

The current trend with regard to tax exemption of leased public property appears to be that the exemption will be granted if there is a benefit to the general public. This area, however, has not been examined by the Ohio Supreme Court for almost twenty years. It is possible that the next case could have a very different outcome depending upon membership changes on the court.

³²² *Id.* at 860.

³²³ 157 N.E.2d 311 (1959).

³²⁴ *Id.* at 311-12.

³²⁵ 102 N.E.2d 590 (1951).

³²⁶ *Carney*, 157 N.E.2d at 312.

³²⁷ 158 N.E.2d 200 (1959).

³²⁸ *Id.* at 201.

³²⁹ *Id.*

³³⁰ *Cleveland v. Carney*, 174 N.E.2d 254 (1961).

³³¹ *Id.* at 259.

C. *Unused Land*

Whether unused land can be exempt from taxation has become a pervasive issue in real property tax exemptions. It first appeared in public purpose exemptions in 1943 when the Akron Public Library sought exemption for property it had purchased for use in future expansion of its library facilities.³³² The Ohio Supreme Court ruled that the B.T.A. had correctly denied the exemption because the property was not being used exclusively for public purposes.³³³

In recent years all of the cases involving unused land have terminated at the B.T.A. level with no appeals to higher courts.³³⁴ As has been seen in other areas of real property tax exemption law, legislative recodification of the statutes governing public purpose exemptions is needed. Language clarification and the compilation of the exemption provisions into a single chapter of the code would help administrative agencies to process exemption applications more efficiently. If the guidelines set forth in the statutory provision are clear, they will not be subject to administrative abuse and judicial misinterpretation, and Ohio's real property tax exemption system would operate more efficiently.

VI. CONCLUSION

The foregoing analysis of Ohio's real property tax exemption laws demonstrates that, as a whole, the statutes governing real property tax exemptions are not highly regarded for their clarity or ease of administration. Many of the provisions are outdated and ambiguous. They do not provide answers to many of the issues that arise in the administration of the real property tax exemption application process. Frustrated, perhaps by the lack of clarity, Ohio's courts have been faced with the formidable task of interpreting language that apparently even the legislature does not understand. Misinterpretation of the law by administrative officials in some areas of real property tax exemptions has resulted in inconsistent interpretations.

Continued chaos and confusion appear to be the result of three interrelated factors: (1) the patchwork nature and structure of the Ohio Revised Code provide no logic or pattern for those dealing with real property tax exemptions;

³³² Pfeiffer v. Jenkins, 46 N.E.2d 767 (1943).

³³³ *Id.* at 768.

³³⁴ Gahanna Jefferson Bd. of Educ. v. Limbach, No. 86-E-316 (Ohio B.T.A. Oct. 14, 1988) (vacant land owned by a municipal corporation which is contiguous to airport land and used as a buffer zone is exempt); Board of Comm'rs of Cuyahoga Co. v. Limbach, No. 86-F-540 (Ohio B.T.A. April 8, 1988) (abandoned hospital property, for which a private buyer is being sought, that is currently owned by a public entity, is not exempt); Brook Park v. Limbach, No. 85-E-22 (Ohio B.T.A. Sept. 9, 1987) (property purchased by a municipality to eventually be used for recreational purposes is exempt).

(2) overlapping statutes create conflicting results; and (3) there are many unexplained gaps in the exemption provisions of the Ohio Revised Code.

From the cases examined, it is easy to see that the fragmented structure of the exemption statutes creates an invitation for abuse of the system by those applying for exemption. If the justification for a tax exemption is that it relieves society from burdens that would otherwise fall on the state government, then perhaps it is time to reexamine the values and motives behind real property tax exemptions.

Unrestrained grants of exemption can not continue indefinitely. At some point, the citizens of Ohio must decide which real property tax exemptions are benefits, which are oppressive burdens, and which are flagrant abuses of the system. Short of a constitutional amendment curbing the plenary power of the legislature to grant exemptions, it is in the hands of the legislature to rectify the present abuse and misinterpretation of the real property tax exemption provisions.

Ultimately, what is needed is specific language clarification of the individual exemption statutes. The legislature needs to examine the areas in which ambiguity is resulting in the misinterpretation of the statutes. Statutes must be drafted to provide the administrative agencies and the courts with clear definitions and appropriate guidelines for resolving existing problems while providing safeguards to prevent misinterpretation. Furthermore, consolidation of all real property tax exemption provisions into one chapter of the Ohio Revised Code would eliminate the gaps and overlapping statutes which are now scattered throughout the code provisions. These two changes could provide the needed coherence in language and requirements that is currently lacking.

This approach would bring some long-needed consistency to Ohio's real property tax exemption laws. The process of creating a more logical and coherent set of statutes would be difficult, but not impossible. If, and only if, this type of restructuring occurs, the ambiguity and confusion which now exists in Ohio's real property tax exemption laws will be eliminated.

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