

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SECOND IMPRESSIONS INC,

Petitioner-Appellant,

v

CITY OF KALAMAZOO,

Respondent-Appellee.

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UNPUBLISHED

July 24, 2012

No. 304608

Tax Tribunal

LC No. 00-322530

Before: OWENS, P.J., and TALBOT and METER, JJ.

PER CURIAM.

Petitioner appeals as of right from the judgment entered by the Michigan Tax Tribunal denying its petition for a charitable-institution exemption under MCL 211.7o. For the reasons stated in this opinion, we vacate the judgment of the Tax Tribunal and remand for entry of judgment in favor of petitioner.

Petitioner is a Michigan nonprofit corporation located in Kalamazoo, Michigan. It owns a commercial property out of which it operates a thrift shop. The thrift shop sells used merchandise that was previously donated to petitioner. The net profits earned from the thrift shop are donated to Kalamazoo Christian School Association (KCSA), petitioner's sole shareholder. KCSA is a Michigan nonprofit corporation that operates Christian schools in Kalamazoo. According to petitioner's articles of incorporation, the net profits from the sale of donated goods are given to KCSA "so that KCSA can reduce the tuition of every student who attends a Kalamazoo Christian School in grades Kindergarten through twelve."

On January 18, 2005, petitioner applied to respondent for a property-tax exemption under MCL 211.7o(1). Respondent denied the request and assessed the commercial property for the 2006 tax year. The denial was affirmed by respondent's board of review, and petitioner appealed the assessment to the Michigan Tax Tribunal. At the tribunal, the parties submitted a set of stipulated facts and agreed to submit the case on briefs. On February 19, 2008, the tribunal issued an order to produce several additional exhibits. The tribunal stated that it was unable to make a decision based on briefs alone. The parties submitted the requested exhibits to the tribunal in a timely fashion. Thereafter, the petition sat dormant in the tribunal for three years.

On March 3, 2011, petitioner submitted a supplemental brief and a motion to set aside the stipulated facts. Petitioner asserted that the following stipulations were made in error:

3. . . . The store's sole purpose is to sell used merchandise, primarily clothes and household items, that was previously donated to petitioner for that purpose.
4. The sole use of the proceeds of sales, after expenses, is to reduce the amount of tuition that students of the Kalamazoo Christian School Association have to pay.

Petitioner stated that stipulation three was erroneous because it also re-donated many donated items to other charities and stipulation four was erroneous because KCSA was a separate legal entity and took petitioner's proceeds free from legal restriction. Petitioner asserted that it could not stipulate that the sole use of its donations was to reduce tuition.

On May 24, 2011, the tribunal entered an opinion and judgment affirming respondent's denial of petitioner's exemption for the 2006 and 2007 tax years.<sup>1</sup> The tribunal determined that petitioner was not a "charitable institution" under MCL 211.7o(1). The tribunal found that petitioner's overriding purpose was "to operate a thrift store with the proceeds being dedicated to KCSA to reduce tuition payments for its students." Thus, the tribunal concluded that petitioner offered its charity on a discriminatory basis.

Petitioner argues that the tribunal's conclusion that it offers its charity on a discriminatory basis is erroneous. Because fraud is not alleged, we review the decision for a misapplication of the law or adoption of a wrong legal principle. *Liberty Hill Housing Corp v Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008). The tribunal's factual findings are deemed conclusive provided they are supported by competent, material, and substantial evidence on the whole record. *Id.* When statutory interpretation is at issue, appellate review of the tribunal's decision is de novo. *Id.*

MCL 211.7o(1) provides: "Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act." The Legislature has not defined "charitable institution" as it

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<sup>1</sup> Although not entirely clear, it appears that the 2007 tax year was automatically added to the petition under MCL 205.737(5)(a), which provides:

A motion to amend a petition to add subsequent years is not necessary in the following circumstances:

If the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition. However, upon leave of the tribunal, the petitioner or respondent may request that any subsequent year be excluded from appeal at the time of the hearing on the petition.

is used in MCL 211.7o. However, in *Wexford Med Group v Cadillac*, 474 Mich 192, 204-215; 713 NW2d 734 (2006), the Michigan Supreme Court discussed what a claimant must show to be granted a tax exemption as a charitable institution. The Supreme Court quoted favorably the definition set forth in *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982):

“[Charity] . . . [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education *or religion*, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.” [*Wexford Med Group*, 474 Mich at 214 (internal quotation marks and citations omitted; emphasis added).]

With this definition in mind, the Supreme Court set forth six factors to consider when determining whether an organization is a “charitable institution:”

- (1) A “charitable institution” must be a nonprofit institution.
- (2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.
- (3) A “charitable institution” does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services.<sup>[2]</sup> Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.
- (4) A “charitable institution” brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
- (5) A “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year. [*Id.* at 215.]

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<sup>2</sup> In our opinion, this statement is less than clear because “the group [an institution] purports to serve” could conceivably be defined quite narrowly, thereby, in theory, allowing the institution to “choos[e] who . . . deserves [its] services.”

The only factor that the parties dispute in this case is factor three. Respondent argues, and the tribunal agreed, that petitioner offers its charity on a discriminatory basis because its proceeds are used to reduce tuition at KCSA schools. Thus, the reasoning runs, petitioner offers its charity only to a select group.

In *Wexford Med Group, id.* at 214, the Supreme Court explained that it is an indispensable principle that, to be deemed a charitable institution, an “organization must offer its charitable deeds to benefit people who need the type of charity being offered. In a general sense, there can be no restrictions on those who are afforded the benefit of the institution’s charitable deeds.” Based on the exhibits submitted, it is clear that petitioner exists, in part, to benefit the students of Christian schools in Kalamazoo in the form of tuition reduction. Any family who wants to send their child to a Christian school in Kalamazoo will benefit from the donations because tuition reduction is available to every student. We recognize that even with tuition reduction, KCSA still must charge tuition, and therefore not every student in Kalamazoo will be financially able to attend a KCSA school. KCSA, however, is legally distinct from petitioner. More importantly, “a non-profit corporation will not be disqualified for a charitable exemption because it charges those who can afford to pay for its services as long as the charges approximate the cost of the services.” *Retirement Homes*, 416 Mich at 350 n 15. Thus, the fact that KCSA charges tuition for its services does not disqualify petitioner from receiving the charitable-institution exemption. A relevant inquiry is whether there is a “gift” for an indefinite number of people. *Id.* at 349-350. The benefits to KCSA fit within this principle.

Respondent argues that the facts of this case are analogous to those in *Asher Student Foundation v East Lansing*, 88 Mich App 568; 278 NW2d 675 (1979). In *Asher*, a panel of this Court held that a building owned by the Asher Student Foundation and housing Michigan State University students did not qualify for a charitable-institution exemption because its purpose, “to provide living quarters for certain Christian Science students,” was not “sufficiently beneficial to the general public.” *Id.* at 575. First, we note that *Asher*, having been issued in 1979, is not binding on this Court under MCR 2.715(J)(1). In addition, we conclude that the services offered in the present case are meaningfully broader than those at issue in *Asher*. See, generally, *Christian Reformed Church in North America v Grand Rapids*, 104 Mich App 10, 16; 303 NW2d 913 (1981) (discussing and distinguishing *Asher* and emphasizing the limited nature of the purported “charity” in that case). *Asher* does not mandate a finding for respondent.

Moreover, petitioner re-donates items to various other charities. Petitioner’s re-donating activity fits within one of its purposes as defined by its articles of incorporation: “To receive donated goods from businesses and the general public and to sell these donated goods to the general public and to donate these goods to needy persons of Kalamazoo County.” There is no evidence that any of petitioner’s re-donations are made on a discriminatory basis.

Given (1) the fairly broad scope of the KCSA assistance and (2) the nondiscriminatory re-donating activities, we conclude that petitioner does not offer its charity on a discriminatory basis and is therefore a “charitable institution.” In light of our decision, we need not address the remaining issues raised on appeal.

The judgment of the Michigan Tax Tribunal is vacated and this case is remanded for entry of judgment in favor of petitioner. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Michael J. Talbot

/s/ Patrick M. Meter