GEORGIA DEPARTMENT OF REVENUE

LOCAL GOVERNMENT SERVICES DIVISION

Exempt Properties

Case Studies

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LEVERETT et al. v. JASPER COUNTY BOARD OF TAX ASSESSORS.
COURT OF APPEALS OF GEORGIA
July 16, 1998, Decided

Opinion

The trial court in this bench trial committed legal error in entering a judgment for the Jasper County Board of Tax Assessors ("Assessors") for two reasons that caused the assessments to lack uniformity: (1) in failing to follow the mandate of O.C.G.A. 48-5-2 (3) (B) (ii) and (iv) "existing use of [the] property" and "any other factors {233 Ga. App. 471} deemed pertinent in arriving at fair market value"; and (2) in failing to exempt from taxation standing timber under the uniformity mandate of O.C.G.A. 48-5-7.1 (a) (1) and 48-5-7.5 as set forth in Art. VII, Sec. I, Par. III (e) (2), Ga. Const. of 1983 (Ga. L. 1990, pp. 2437, 2438, 2), "standing timber shall be assessed only once, and such assessment shall be made following its harvest or sale and on the basis of its fair market value at the time of harvest or sale." These errors resulted from following the erroneous appraisal methods used by the Assessors in which growing, but not yet marketable, timber is treated as adding no value to the land and in which stump land and scrub timberland are treated as having substantially the same value as cleared cultivatable land, pasture land, or growing timberland.

1. The Assessors failed to follow the mandate of O.C.G.A. 48-5-2 (3) (B) (ii) and (iv) when they refused to consider "existing use of the property" both as to the comparables and as to the subject property. This made their method of arriving at evidence of comparable value an error of law. Inland Container Corp. v. Paulding County Bd. of Tax Assessors, 220 Ga. App. 878 (470 S.E.2d 702) (1996). "Under that statute, the tax assessor must consider, inter alia, the existing use of property and 'any other factors deemed pertinent in arriving at fair market value.' O.C.G.A. 48-5-2 (3) (B) (ii) and (iv)." Id. at 879 (1). Thus, the trial court, in relying upon a valuation conducted in violation of O.C.G.A. 48-5-2 (3) (B) (ii) and (iv), committed a plain legal error in thus ruling for the Assessors and against the taxpayers, Cason and Leverett.

Further, such failure to follow statutory mandate is reviewed by "the customary 'plain error' standard of appellate review." Harper v. Landers, 180 Ga. App. 154, 157 (348 S.E.2d 698) (1986). This is not an analysis under the "any evidence" standard, which deals with errors of law based upon the factual predicate. Hawkins v. Grady County Bd. of Tax Assessors, 180 Ga. App. 834, 835 (3) (350 S.E.2d 790) (1986). 1 The recitation of the evidence in the record is only to show {233 Ga. App. 472} how the refusal to obey the statutory mandate led the Assessors and the trial court into reversible legal error.

(a) The General Assembly in 1991 exempted standing timber, both growing and marketable, from ad valorem taxation until the standing timber is sold unharvested or after harvest, whichever first occurs. See Ga. L. 1991, pp. 1903, 1907, 1919-1924, 2, 6; O.C.G.A. 48-5-7 (b); 48-5-7.1 (a) (1); 48-5-7.5 (unamended). Such Act was passed under the uniformity requirement of Art. VII, {504 S.E.2d 561} Sec. I, Par. III (e) (2), Ga. Const. of 1983 that permits only one assessment of standing timber, either on sale or harvest.

This annual tax exemption caused a major problem for Jasper County because $ 20,000,000 of standing timber, representing 51,000 acres of timberland, suddenly was removed from the county tax digest. The Jasper County Board of Tax Assessors ("Assessors") was in the middle of a reappraisal of the timberland and suddenly had to change the method of their appraisals of timberland. Both appellants' tracts were timberland.

Under the statute, the Assessors could no longer value timber on the land as part of the fair market value of the land for assessment purposes. Therefore, they made the decision to ignore and treat growing timber of less than six inches in diameter under the assumption that it had zero value as nonmerchantable. They assumed that merchantable timber is "timber that you can sell on the market if there's a market for it." They assumed that the minimum size pine tree to qualify as pulpwood would be a tree with a six-inch diameter or greater. They made another assumption that all rural land, i.e., cleared land, stump land, and non-merchantable timberland, was of comparable value except where there is "merchantable timberland." Stump land is land where the trees have been harvested, and the stumps, brush, and debris remain on the land.

However, the Chief Assessor admitted in judicio that cleared land and stump land had a substantial difference in value, because it cost approximately $ 400 per acre to clear the land, i.e., grub out the stumps, clear the land, and burn the debris. Therefore, stump land versus cleared land, i.e., pasture, agriculture fields, and even cleared and replanted pine land, have a substantially different value based upon cost to improve alone; thus, improved land has a higher acreage fair market value which reflects the cost of clearing and replanting pines or of fencing.

Thus, under the Assessors' methodology, previously harvested timberland that had been replanted and contained replanted standing timber less than six inches in diameter was treated as having no value added to the land price because the timber is non-merchantable in that tax year, although the timber would have value upon maturity. The record contained expert witness testimony which {233 Ga. App. 473} demonstrated that clearing and replanting pines can cost up to $ 400 per acre. If the land reassessed had standing timber, then the Assessors sought to determine the stump value of the land under the standing timber without calculating the value of the timber.

The Assessors decided that the way to determine the value of timberland, without determining the value of the standing timber and subtracting such value from the overall value of the timberland, was to determine the value of rural land alone without regard to timber. This would save them labor, even though the pre-1992 reappraisal provided the data for such calculations as part of the Assessors' records. Further, in the individual property reappraisals they made no adjustment for timber on the land to prevent taxing the timber. In fact, the Assessors ignored the value of standing timber on the land. However, using such comparable sales, the Assessors also made no adjustment to fair market value for the comparable sales or tracts reassessed for standing timber, i.e., growing or merchantable. On all of the comparable sales the tax records indicate that there was some timber on the land, but the timber was treated as having no value. Therefore, the timber value was reflected in the price of the land, because the value of the timber alone was not removed.

Had the Assessors calculated the value of the growing timber, i.e., seedling to pre-marketable timber, for each comparable tract sold, subtracted out such growing timber value, and then calculated the sales ratio from the remaining values, such method could then be used as a comparable for stump land to determine the fair market value of the land with timber being reassessed without calculating the value of the timber. In short, had the Assessors, in arriving at their 19 comparables for the sales ratio, accounted for the value that growing timber added to the land and subtracted out such value to arrive at the fair market value for the stump land alone, then those 19 calculations of growing timber value subtracted out of the comparables {504 S.E.2d 562} would allow them to have a sales ratio for stump land that would allow them to ignore the standing timber on each reassessment, because the fair market value of the comparables thus determined would reflect only the value of stump land and not have land and growing timber mixed together to form the fair market value.

(b) In the initial nineteen large acreage tracts the Assessors had as part of the sales ratio and as having no merchantable timber to form the comparables the following: seventeen had been partially cut over to form stump land or had some scrub timber; eight had significant natural regeneration of pines; eight had well-stocked, natural regeneration of pines; one had pine trees less than twenty feet tall and four inches in diameter; two had pines taller than twenty feet and more than four inches in diameter; and the two Greer tracts, upon belated visual inspection, had merchantable standing timber. {233 Ga. App. 474} Of the comparables, eleven were sales of less than fifty acres, and only seven were sales of one hundred acres or more. All of the comparables were classified as primarily woodland with no merchantable standing timber, although two were later determined to have significant merchantable timber. While none was classified as being cultivated open land, seven had some pasture land between three and 25.82 acres, with the remaining acreage primarily woodland; however, one hundred six-acre parcel had sixty-eight acres of pasture. Two had ponds: one was an eight-acre pond, and the other was a one-acre pond.

The flaw in the methodology used by the Assessors in relation to the property described above is that the Assessors ignored the mandate of O.C.G.A. 48-5-2 (3) (B) (ii) and (iv) requiring the consideration of the "existing use of property" and "any other factors deemed pertinent in arriving at fair market value," i.e., O.C.G.A. 48-5-7.4 (a) (1) and (2). They ignored the existing use of the comparable sales of woodland, as well as the appellants' timberland, by ascribing no value to the growing trees. They recognized that the value of mature trees influenced the value of the land; however, they refused to recognize that stump land had a different value from pasture with fencing or fields, because of land preparation and clearing costs.

In their tax records, the Assessors already had set up subcategories of woodland with less than merchantable timber for valuation: (1) stump land or scrub woods; (2) significant natural regeneration of pines; (3) well-stocked, natural pine regeneration; (4) planted pines with trees less than six feet in height; (5) planted pines with trees less than twenty feet in height and diameter less than four inches; and (6) planted pines with trees over twenty feet in height and over four inches in diameter. Each such category would have a different per-acre value effect on the fair market value of the land. However, the Assessors did nothing to factor such different values out of the fair market value per acre of each comparable, so that such value of the growing timber would not be part of the assessed value and taxed. Instead, the Assessors engaged in the fiction that such different values for growing timber had no effect on the fair market value of the land used as comparables to obtain the value of land alone. Treating the six categories of woodland and cleared land as having substantially the same values violated uniformity of treatment of Art. VII, Sec. I, Par. III (e) (2), Ga. Const. of 1983, because the values per acre differed between the woodland and the preparation costs of cleared and improved land. While defining merchantable timber as pines with a diameter of less than six inches, they removed the two Greer tracts from the sales ratio study as comparables after the tax reassessments had been made and mailed, because the trees were greater than four inches but less than six inches in diameter and had {233 Ga. App. 475} a merchantable value. The Assessors determined that the error of inclusion of the Greer tracts, in their opinion, would not distort the sales ratio and invalidate the reassessments already made before their error was discovered, although the tracts did contain marketable timber that was exempt; they had not inspected the Greer tracts and assumed that this was stump land, because that was the only land the grantor normally sold. {504 S.E.2d 563} (c) "Taxation of all kinds of property of the same class must be uniform and by the same standard of valuation, equally with other taxable property of the same class." Champion Papers v. Williams, 221 Ga. 345, 346 (144 S.E.2d 514) (1965); see Art. VII, Sec. I, Par. III (e) (2), Ga. Const. of 1983. "The [trial] court erred, however, in approving a valuation which tilted market value in favor of an assumed 'highest and best use' to appear from future speculation and development, rather than first determining the criteria for zoning, existing use, and deed restrictions, if any, at which time

other pertinent factors may be considered. Chilivis v. Backus, 236 Ga. 88 [(222 S.E.2d 371) (1976)], was written before the Legislature substituted 'fair market value' for 'cash price' in [O.C.G.A. 48-5-2 (3)]; the specific criteria were, however, a part of the statute at that time and the court held that 'highest and best use' is a factor only if it would reflect the amount that would be realized from a cash sale of the property; that valuation will not be confined to actual use alone, and that all criteria added by the General Assembly (see Ga. L. 1975, p. 96) are to be considered." Dotson v. Henry County Bd. of Tax Assessors, 155 Ga. App. 557, 559 (271 S.E.2d 691) (1980); see also Cobb County Bd. of Tax Assessors v. Sibley, 244 Ga. 404 (260 S.E.2d 313) (1979); Sibley v. Cobb County Bd. of Tax Assessors, 171 Ga. App. 65 (318 S.E.2d 643) (1984); Stoddard v. Bd. of Tax Assessors of Grady County, 163 Ga. App. 499, 501 (3) (295 S.E.2d 170) (1982). "Under [O.C.G.A. 48-5-2], the tax assessor must consider, inter alia, the existing use of property and 'any other factors deemed pertinent in arriving at fair market value.' O.C.G.A. 48-5-2 (3) (B) (ii) and (iv)." Inland Container Corp. v. Paulding County Bd. of Tax Assessors, supra at 879 (1); see also Brian Realty Corp. v. DeKalb County, 229 Ga. App. 185 (493 S.E.2d 595) (1997). While comparable land sales used to determine fair market value do not have to be identical to the subject property, such sales must be sufficiently similar to the subject property to be fairly said to have some rational and probative comparability other than mere geographic location. See Hawkins v. Grady County Bd. of Tax Assessors, supra; see also Inland Container Corp. v. Paulding County Bd. of Tax Assessors, supra at 881.

"'Existing use' must be employed as a 'yardstick' with which to measure fair market value." Inland Container Corp. v. Paulding County Bd. of Tax Assessors, supra at 879 (1). Accord Dotson v. Henry {233 Ga. App. 476} County Bd. of Tax Assessors, supra at 559. The Assessors rejected consideration of "existing use" not only in the sales ratio studies to develop comparables, but also in the assessment of the subject tracts, by ascribing no value to growing timber in different stages of maturity of agricultural/forestry use. The "evidence [demanded] a finding that the assessors 'did not consider use of the property in question or the property of all others similarly situated.' Ayers v. Douglas County Bd. of Tax Assessors, 162 Ga. App. 224, 225 (2), 226 (291 S.E.2d 84) (1982)." Inland Container Corp. v. Paulding County Bd. of Tax Assessors, supra at 881.

Further, in this case, the Assessors did not consider present use, either in developing the comparables or in reassessing the tracts, because standing timber or timberland was either removed or treated as non-merchantable, which is to disregard present use for forest agricultural purposes. Thus, the method and the comparables lack uniformity. Art. VII, Sec. I, Par. III (e) (2), Ga. Const. of 1983; Inland Container Corp. v. Paulding County Bd. of Tax Assessors, supra at 879-880; Hawkins v. Grady County Bd. of Tax Assessors, supra at 835; Stoddard v. Bd. of Tax Assessors of Grady County, supra at 501; Dotson v. Henry County Bd. of Tax Assessors, supra at 559; Sibley v. Cobb County Bd. of Tax Assessors, supra at 69.

Hilton, the Chief Tax Appraiser, when asked why timber sales were not utilized to develop the sales ratio for comparables, testified: "we did not use tracts with substantial timber. Because of the timber market being so volatile where you -- where I have seen where tracts of land have sold for, say, $ 100,000 and they cut the trees and they sale [sic] the timber for $ 110,000 giving a negative value. It just does not give a true bare dirt {504 S.E.2d 564} price in the market." "We don't have the knowledge to back the timber out." He also testified that "not all pieces of property fit a schedule. It's not a perfect, as you say, world. Therefore other underlying factors must be considered and therefore you could flat value a piece of property based on characteristics, location or neighborhood. . . . Small and large." However, such cannot be done in disregard of the statutory mandates. There were 7,700 tax parcels in the county, and 1,100 were considered large parcels. Of the 1,100 large parcels, approximately 600 have no improvements on them, i.e., houses, barns, or other structures. However, from the Assessors' own records and appraisal

methods used by other tax assessors elsewhere, it is practical and possible for standing timber to be appraised separately from the land. See generally Hancock County Bd. of Tax Assessors v. Dickens, 208 Ga. App. 742, 743 (1) (431 S.E.2d 735) (1993) (1991 tax year when Ga. L. 1990, p. 1901 applied prohibiting separate treatment). See Art. VII, Sec. I, Par. III (e) (2), Ga. Const. of 1983.

2. The Georgia Constitution prohibits standing timber being {233 Ga. App. 477} assessed more than once and requires such assessment be made after sale or harvest. Art. VII, Sec. I, Par. III (e) (2), Ga. Const. of 1983. The General Assembly deferred ad valorem taxation on growing trees so that growing forestry products were exempt from annual ad valorem taxation until sold or harvested, because the Assessors were taxing annually all stages of timber growth prior to 1992, which caused multiple taxation of the same standing timber at different stages of growth. See Art. VII, Sec. I, Par. III (e) (2). Ga. Const. of 1983; O.C.G.A. 48-5-7.5. This meant that the growing but not yet merchantable timber had value that required deferral and exemption from taxation so that standing timber would not be annually taxed prior to harvest or sale. Deferral prevented multiple taxation of the single forestry product prior to harvest, thereby causing taxation to occur at harvest or sale of the unharvested timber. Art. VII, Sec. I, Par. III (e) (2), Ga. Const. of 1983. To the extent that growing standing timber is reflected in the land value at reassessment of the land and the value for growing timber is not removed from the fair market value, such growing standing timber is being assessed over and over at each annual reassessment in violation of the constitutional prohibition against more than one assessment of standing timber; further, such assessment is being done at a time other than sale or harvest. Art. VII, Sec. I, Par. III, Ga. Const. of 1983.

The General Assembly did not define "standing timber" for purposes of O.C.G.A. 48- 5-7.5 as "trees less than six inches in diameter" as did the Assessors, because all stages of timber growth were to receive tax deferral. Tax deferral has a rational basis only when timber is considered as an agricultural cash crop that takes considerable time to grow to full maturity, and when it can be harvested, returns cash to pay the deferred taxes. O.C.G.A. 48- 5-7.1 (a) (1) provides deferral from ad valorem taxation to bona fide agricultural uses, including "forestry." The statute makes no distinction between "merchantability" and maturing forests. In fact, if trees that had not reached maturity, i.e., "merchantable" within the Assessors' definition, had no economic value, then the General Assembly performed a futile act in deferring taxation on "standing timber"; clearly, the General Assembly intended to exclude from ad valorem taxation all growing forestry products, i.e., pine seedlings to harvestable timber or pulpwood, until either sold or harvested. Thus, growing timber has economic value that must be exempted from annual taxation, even though the growing timber could not be sold. Ga. L. 1991, pp. 1903, 1907, 1919-1924, 2, 6 (O.C.G.A. 48-5-7.5 unamended).

In point of fact, in Jasper County in 1991, there were 51,000 acres of timberland with $ 20,000,000 worth of growing "standing timber," and there were 1,100 tracts of land larger than 26 acres and 6,600 parcels of less than 26 acres. A substantial portion of the {233 Ga. App. 478} 51,000 acres of timberland, worth $ 20,000,000, was in the 1,100 large tracts, which included the 17 comparable sales that the Assessors defined as having no "merchantable" timber because the timber was not mature. The Assessors' assumption that growing, but not mature, timber had no value was not supported by the Assessors' own records. {504 S.E.2d 565} Thus, the Assessors, in not subtracting the value of growing timber from the fair market value of the land used in the sales ratio as comparables, refused to treat growing timber as tax-exempt and caused what is exempt from taxation until sold or harvested to be part of the assessed value of the land. See Art. VII, Sec. I, Par. III (e) (2), Ga. Const. of 1983; O.C.G.A. 48-5-7.1 (a) (1); 48-5-7.5. Had the Assessors calculated the value of the growing timber for each of the comparables and

subtracted out such value of the sales price for each comparable before calculating the sales ratio, so as to reflect only the value of the land alone, then current use for growing trees and tax deferral would have complied with the statutory mandate, and the sales ratio for the comparables would reflect only the value of the underlying land for timberland, excluding the standing timber.

Judgment reversed. Johnson, P. J., Beasley, Smith, JJ., and Senior Appellate Judge Harold R. Banke concur. Andrews, C. J., and McMurray, P. J., dissent.

Dissent

The superior court denied the appeal of these two appellants after determining that they "failed to prove by a preponderance of the evidence that there was a lack of uniformity or that the values and the methods used were improper or incorrect." On appeal, this Court considers the sufficiency of evidence and not its weight. The evidence presented at trial was sufficient to authorize the judgment of the trial court, which should be affirmed. Hawkins v. Grady County Bd. of Tax Assessors, 180 Ga. App. 834, 835 (350 S.E.2d 790). My view of the evidence supporting the trial court's findings differs from the majority's views, especially concerning the market value of immature timber. Therefore, I respectfully dissent.

The 1994 appraisal of appellants' land was increased over the appraisal for the preceding year because of an increase in a location zone multiplier assigned to the northern portion of the county where the property in question was located. The location zone multiplier for appellants' land was increased from 1.08 to 1.6 resulting in a 48 percent increase in the appraisals. This Court has previously approved of dividing a county into zones so as to realistically include location as a factor of value, so long as the zones are not arbitrarily fixed but drawn from analysis of property sales in the county. Bethea v. Joint City-County Bd. of Tax Assessors, 219 Ga. App. 111 (1), 112 (464 {233 Ga. App. 479} S.E.2d 37); Thomas County Bd. of Tax Assessors v. Balfour Land Co., 214 Ga. App. 181, 182 (446 S.E.2d 745).

In the case sub judice, the change in the location zone multiplier, accompanied by a reduction in the number of zones into which the county was divided and a consequent redrawing of the zones, was based upon sales ratio studies which appellants maintain were flawed. Appellants maintain that the large tract study (pertaining to tracts of 26 or more acres) was flawed because the tax assessors excluded sales of timberland from the study and also because some of the tracts of land included in the study did contain significant quantities of timber for which no adjustment in sales price was made, resulting in a taxing of timber value prior to harvesting in violation of the uniformity requirement and the provision of the Georgia Constitution that standing timber be assessed only once following harvest. Art. VII, Sec. I, Par. III (e) (2).

As to the exclusion of timberland sales from the study, there is no requirement in Georgia law that comparable sales be identical, so that the valuation of timberland may be properly accomplished without the benefit of timberland sales. Inland Container Corp. v. Paulding County Bd. of Tax Assessors, 220 Ga. App. 878, 879 (1), 881 (470 S.E.2d 702). Therefore, the trial court was authorized to consider evidence that the valuation of the underlying land from timberland sales was not practical due to the volatile nature of timber prices. The conflicting evidence presented by appellants, that timber value could and should be backed out of timberland sales to obtain a realistic value for the underlying land, presented a factual question for resolution by the trial court as trier of fact and which was determined adversely to appellants. {504 S.E.2d 566} Appellants' contention, that the land sales used in the large tract study contained tracts with timber for which no adjustments in sales prices were made, presents another factual dispute which the trial court resolved against defendants. The original list of sales considered did include two timberland tracts which were later removed from the study without affecting the conclusions

of the study. As to the tracts left in the study, the tax assessors testified as to examining each tract and finding no merchantable timber. There was no evidence that growing but not yet merchantable timber might contribute to the value of a tract of land. Therefore, no error was apparent in the failure to adjust the sales prices for such tracts.

Finally, I fail to find any lack of uniformity inherent in the subclassification of the county by tract size, the division here being into large tracts of 26 acres or more, and small tracts of less than 26 acres. Tract size was acknowledged as a consideration in determining fair market value by the experts who testified in this case and has been noted in our prior decisions. See Thomas County Bd. of Tax {233 Ga. App. 480} Assessors v. Balfour Land Co., 214 Ga. App. 181-182, supra, and Monroe County Bd. of Tax Assessors v. Remick, 165 Ga. App. 616, 619 (300 S.E.2d 203). Furthermore, within each subclassification there were further adjustments for tract size. In the case sub judice, appellants have attempted to demonstrate a lack of uniformity by showing a divergence in the values assigned to similar properties near the boundary of these two subclassifications. However, once more, the evidence on this point is conflicting and within the domain of the trial court as trier of fact.

I am authorized to state that Chief Judge Andrews joins in this dissent.

GOLD KIST, INC. v. JONES et al.
Supreme Court of Georgia
March 7, 1974, Decided

Opinion:

The controlling factor in this appeal is whether farm products held by a nonprofit marketing cooperative under contracts with the farmers, either as inventory or processed into other products, can be considered to be "remaining in the hands of the producer" as contemplated by the Georgia Constitution, and therefore exempt from taxation.

The question arose when Gold Kist, Inc. filed a suit in the Superior Court of Peach County against Julian F. Jones, Ordinary, {204 S.E.2d 585} Walter B. Tharpe, Tax Commissioner, J. R. (Reg) Mullis, Sheriff and other officials of that county, seeking to enjoin the assessment and levy of ad valorem taxes upon the inventory of a certain amount of soy beans held by it for sale.

Upon a rule nisi hearing a temporary restraining order was issued against the levy or collection of such taxes.

Subsequently, a motion of the State Revenue Commissioner to intervene as a party defendant was granted.

It was agreed that the case be tried before a judge without a jury upon a stipulation of facts and other evidence consisting of affidavits and depositions.

These showed in material part as follows: that Gold Kist operates a storage facility in Peach County for grain, normally consisting of corn, soy beans, oats, barley and wheat; that there is also a store operation there; that it deals directly with the farmers who bring the grain to the storage facilities; that when a farmer brings his grain in it is weighed and graded; that if a farmer asks for advance payment for such grain it is made according to the market price as of the date of delivery; and that the grain goes into storage and is held for processing at a later date, depending upon when it is needed to go to market.

The evidence also showed that soy beans are stored in grain facilities along with other soy beans in the possession of Gold Kist in a common container, such as a silo or grain elevator; that when {231 Ga. 883} they are processed they are taken to its processing plant in Valdosta, Georgia, where they are ground and made into other products; that during the last year prior to this litigation Gold Kist stored and processed approximately 300,000 bushels of soy beans; that soy beans are normally brought in October, November and December of a given year, immediately after harvest; that Gold Kist's year closes on June 30 of the following year, so that there must be an accounting and settlement with the farmer or producer no later than May 15 in order to complete its records; and that upon final accounting any net margin goes back to the farmer, regardless of who brought the grain in.

It was also undisputed that once the grain or soy beans were stored in Gold Kist's grain elevator or silo it was impossible to return the same grain to the farmer if he wanted it, although he could receive something comparable, because the grain that the member brought in may have been sent to the processing plant or intermingled with other grain.

The evidence further revealed that the only requirement a person has to meet in order to become a member of the co-operative is to sign a membership agreement and do business with Gold Kist; that there are other such co-operatives in Peach County; that any person who brings his grain to Gold Kist can sign an agreement and become a member; and that none of the members has anything to do with the determination of policy of Gold Kist, which is set by a board of directors in Atlanta.

Based upon the facts and the written contract entered into by the producer and Gold Kist, the trial court found in essence as follows: that the producer farmer, upon delivering his grain to Gold Kist, transferred title and received the market price in payment therefor as of the date of delivery; that he had no further control over the grain after delivery and "what happens thereafter is completely out of his hands"; that he had no voice in the final disposition of the products or control over the policies or operations of the business; that "under the terms of the contract between Gold Kist and the producer, Gold Kist obtains title and absolute control over the products," subject only to an accounting at the end of their fiscal year as to whether he receives more or less money; and that "Gold Kist is completely independent of the producer except as to this accounting or settlement as required by the contract."

{204 S.E.2d 586} The trial court found as a matter of law that "it was the intent of the legislation [Ga. Const., Art. VII, Sec. I, Par. IV, Code Ann. 2-5404; Ga. L. 1913, p. 122, as amended; Code Ann. 92-201] not {231 Ga. 884} to extend the benefits of the exemption of farm products beyond the producer himself, and to him only for a limited time and only while the products remained in his hands."

Thereupon it dissolved the temporary restraining order, denied the permanent injunction sought by Gold Kist against the collection of ad valorem taxes on inventory held by it, and ordered the check tendered by it into court returned as due for such taxes.

Gold Kist appeals from this order, also urging as erroneous the findings of fact and conclusions of law made therein.

The constitutional provision in question here authorizes the General Assembly to exempt from ad valorem taxation certain property. Among those specified are "farm products, including baled cotton, grown in this State and remaining in the hands of the producer, but not longer than for the year next after their production . . ." Const. Art. VII, Sec. I, Par. IV (Code Ann. 2-5404). Such an exemption was enacted by the legislature in the language of the constitutional provision (Code Ann. 92-201, supra).

Although the point was not raised here, for purposes of accuracy it should be noted that the constitutional amendment approved by the people of this state on August 6, 1912 (Ga. L. 1912, p. 36), is as above shown, but that the punctuation was incorrectly quoted and the word "next" omitted in subsequent codifications of this constitutional provision. See Code Ann. 2-5404. The Act putting into effect the constitutional amendment, its later amendments and the codal annotations of the statutory provisions are also incorrectly punctuated. See Ga. L. 1913, p. 122; 1919, p. 82; 1943, p. 348; 1946, p. 12; 1947, p. 1183; 1955, pp. 262, 263; 1965, pp. 182, 183; 1973, p. 934 (Code Ann. 92-201).

In our view, the obvious intent of this exemption is to relieve the farmer by giving him a year after harvest in which to sell his products. Therefore, during that period until he sells his products, he is exempt from ad valorem taxation thereupon.

Gold Kist strenuously argues that the exemption should also be applied to farm products which are delivered to it by the farmers because it is the agent of the producer rather than the purchaser of title to the products. It takes the position that nonprofit marketing cooperatives such as it simply stand in the place of the individual farmers, and are thus entitled to whatever exemptions they might receive.

We do not agree.

As we construe the language of these provisions, it does not contemplate an exemption for such products either after an {231 Ga. 885} outright sale, or when placed in the hands of another for future sale or processing with advance payment to the producer. In either case, the underlying reason for the temporary exemption would no longer exist. Therefore it is immaterial whether the contract between the cooperative and its members creates the relationship of buyer-seller or of agency, since only the farmers themselves are intended to receive the benefit of the tax exemption thereunder.

It is well established that "The exemption from taxation must be strictly construed, 'and the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention of the legislature.'" Cherokee Brick & Tile Co. v. Redwine, 209 Ga. 691, 693 (75 S.E.2d 550) (one Justice not participating).

As held by this court in Athens City Water-works Co. v. City of Athens, 74 Ga. 413 (1), "Taxation is the rule and exemption the exception; and, under the constitution of this state, no property except that specifically mentioned can be exempted from taxation." We find it significant {204 S.E.2d 587} that the Cooperative Marketing Act (Ga. L. 1921, p. 139 et seq.; Code Ann. Ch. 65-2), under which Gold Kist was created, includes a provision for the exemption of such co-operatives from license or franchise taxes (Code 65-225), but that it does not include a provision exempting cooperatives from taxes on their inventory.

Furthermore, a tax exemption cannot be created by implication. City of Columbus v. Muscogee Mfg. Co., 165 Ga. 259, 261 (140 S.E. 860). Thus this court has stated that "In interpreting such a constitutional exemption, it is to be presumed that the words therein used were employed in their natural and ordinary meaning [Cit.]; and where a constitutional provision or statute is plain and susceptible of but one natural and reasonable construction, the court has no authority to place a different construction upon it, but must construe it according to its terms." Rayle Electric Membership Corp. v. Cook, 195 Ga. 734, 735 (25 S.E.2d 574).

Nor do we find anything said in Ga. Milk Producers Confederation v. City of Atlanta, 185 Ga. 192 (194 S.E. 181), (two Justices absent), or the cases cited therein, which are relied upon by Gold Kist in support of its position, to be controlling here. That case turned upon the city's attempt to tax the accounts receivable of the co-operative, not its inventory, and this court held that it amounted to a tax on the gross sales of the products in violation of Code 5-603.

The two cases cited by this court in the Milk Producers case, {231 Ga. 886} Yakima Fruit Growers Assn. v. Henneford, 182 Wash. 437 (47 P2d 831, 100 ALR 435), and City of Owensboro v. Dark Tobacco Growers Assn., 222 Ky. 164 (300 SW 350), are likewise distinguishable.

The Washington case involved an attempt to levy an occupational tax on a cooperative association, which, as previously noted, is expressly prohibited by statute in Georgia. Code 65-225, supra.

The Kentucky case was concerned with the constitutionality of a statute of that state exempting from local taxation unmanufactured agricultural products "in the hands of the producer or in the hands of any agent or agency of the producer," and whether the tobacco co-operative met the definition of an agent.

It is indicative of the point we make here that the Kentucky legislature found it necessary to include the words "any agent or agency" in its exemption statute. Here, even if an agency relationship is created by the contract between Gold Kist and its members, neither our Constitution nor our statutes authorize an exemption from ad valorem taxes for the agent of a producer of farm products.

In our view, the trial court correctly found that the clear intent of the Georgia legislation was to grant the benefit of the exemption only to the farmer himself and then only for a limited time. To allow this statute to be extended to include farm products in the hands of Gold Kist, which are irretrievably co-mingled with others, or even converted into different products before their ultimate sale, would make it impossible to determine which products have been stored beyond the period for the exemption and thus be in violation of the constitutional mandate.

Therefore, for the reasons stated above, the judgment of the trial court is affirmed.

Judgment affirmed.

COMMITTEE FOR BETTER GOVERNMENT v. BLACK et al.
COURT OF APPEALS OF GEORGIA
January 30, 1995, Decided

Opinion

A proceeding was instituted under O.C.G.A. 48-5-296 to remove from office the chairman and certain members of the Cherokee County Board of Tax Assessors.

1. O.C.G.A. 48-5-296 provides that "whenever by petition to the judge of the superior court any 100 or more freeholders of the county allege that any member of the county board of tax assessors is disqualified or is not properly and impartially discharging his duties or is discriminating in favor of certain citizens or classes of citizens and against others, the judge shall cite the member to appear before him. . . ." Pursuant to this Code section, the judge then "shall hear and determine the matter without a jury and shall render such judgment and order as may be right and proper, either dismissing the petition or removing the offending member . . . from office and declaring a vacancy in the office."

The initial question is whether this suit must be dismissed, despite the absence of a motion to dismiss, in that it is not being prosecuted in the name of a legal entity and is therefore null and void. See Embassy Row Assoc. v. Rawlins, 162 Ga. App. 669 (292 S.E.2d 541) (1982); Cook v. Computer Listings, 137 Ga. App. 526, 527 (224 S.E.2d 501) (1976); Orange County Trust Co. v. Estate of Abe Takowsky, 119 Ga. App. 366, 367 (3,4) (166 S.E.2d 913) (1969).

O.C.G.A. 48-5-296 authorizes 100 or more freeholders of the county to petition the superior court judge for the removals sought here. Although the Committee for Better Government, which is not a legal entity, is designated as the plaintiff in the style of the complaint, over 100 freeholders are stated as the plaintiffs in the body, and the petitions of the freeholders were presented to the court through the complaint as exhibits. Each petition alleges that the named board {216 Ga. App. 174} members, without lawful authority, granted inventory freeport exemptions to select business taxpayers after the mandatory deadline and thereby caused the county to lose tax revenue. In each petition, the petitioner authorized the Committee to present the petition on his or her behalf to the superior court.

This method of presentation meets the pleading and procedural requirements of the statute, which implicitly contemplated the formation of a like-minded group of freeholders who act in concert to obtain the remedy provided. Otherwise, there would be no orderly process for the redress the law provides. The requisite number of individuals who had the capacity to sue constituted the plaintiffs, who in pursuing their common interest are known by their committee name. Because of their number and their freeholder status, they qualified to invoke the statutory cause of action.

The proper style of the case would be the names of the petitioner freeholders. See, e.g., Thompson v. Queen, 198 Ga. App. 627 (402 S.E.2d 361) (1991); Allen v. Norris, 151 Ga. App. 305 (259 S.E.2d 701) (1979). Nevertheless, their composite designation is not fatal because substance prevails over form. Bytell v. Paul, 173 Ga. App. 83, 84 (325 S.E.2d 451) (1984). In these circumstances, the suit is not subject to dismissal. Cf. Block v. Voyager Life Ins. Co., 251 Ga. 162 (1) (303 S.E.2d 742) (1983).

2. Plaintiffs contend that the court erred in not removing defendants from office because of their unauthorized and discriminatory action in allowing untimely applications for freeport exemptions in 1993.

O.C.G.A. 48-5-48.2 authorizes the governing authority of any county or municipality to enact the freeport exemption, subject to the approval of the electors Cherokee County electors gave such approval in 1978. O.C.G.A. {453 S.E.2d 774} 48-5-48.1 (a) states that when any person, firm, or corporation seeks a freeport exemption, the application "shall be filed in the year in which exemption from taxation is sought no later than the date on which the tax receiver or tax commissioner of the county in which the property is located closes his books for the return of taxes." O.C.G.A. 48-5-48.1 (c) states that the failure to "properly" file the application "shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to make the application for such exemption for that year." There is no express authority to grant an extension of time or to ignore the statutory waiver of exemption for failing to make a timely application.

The evidence introduced at the hearing below showed that the Cherokee County tax books are closed on April 1 of each year. The Board was informed in May 1993 that the statutory deadline for filing applications for freeport exemptions is April 1. The chairman of the Board, who was the defendants' sole witness, testified that he voted to {216 Ga. App. 175} allow untimely applications for 1993 because the past practice of the Cherokee County Tax Office's Personal Property Department had misled applicants into believing they could apply for the exemption at any time. The Personal Property Department in fact had not informed applicants of the April 1 deadline, and applications filed after April 1 had been allowed in previous years. As a result, the Board decided to allow untimely applications in 1993 but not in any subsequent years, and the Board instructed the Chief Appraiser to publicize the time for filing such applications. There were also applications for freeport exemptions which had not been "properly" filed, in that they contained mistakes such as wrong information and lack of a signature. These, too, were allowed, as were untimely applications for homestead exemptions in 1993.

The court held that although O.C.G.A. 48-5-48.1 (c) states that the taxpayer has waived the exemption by failing to file a timely application, this does not prohibit the Board from extending the period of time for accepting applications. Noting that the Board had a history of accepting any untimely application for freeport exemptions and had permitted the late filing of other types of exemptions including homestead exemptions, the court found that the Board members had properly and impartially discharged their duties so that removal is not warranted.

We must disagree with the court's holding that the Board was authorized to extend the period of time for accepting applications beyond the date on which the books for the return of taxes in the county were closed. State law establishes such date as a mandatory deadline and gives a local board of tax assessors no authority to extend it. Under the law, we thus hold that the defendants acted improperly in allowing untimely applications for freeport exemptions for 1993.

In DeKalb County Board of Tax Assessors v. Lanier Worldwide, 208 Ga. App. 435 (1) (430 S.E.2d 595) (1993), as here, a business made an application for a freeport exemption beyond the April 1 deadline. The DeKalb County Board of Tax Assessors denied the application as untimely. In subsequent litigation between the applicant and the Board, this court held that the superior court erred in denying the Board's motion for new trial. Although we were not called upon to decide whether a board of tax assessors has the authority to accept an untimely application for a freeport exemption, a reading of Lanier shows that the DeKalb County Board of Tax Assessors acknowledged that there is no legal basis for granting an extension. 208 Ga. App. at 436.

In Lanier, the county taxpayers were informed of the mandatory deadline in documentation mailed to them. The evidence in this case shows that until 1993 the Cherokee County taxpayers were misled {216 Ga. App. 176} into believing that they could apply for the exemption at any time; and that in 1993 the defendants ordered the mandatory deadline to be enforced, although only in future years, after taxpayers were informed of it. Under the law, the defendants are subject to removal from office if the court finds that they did not properly and impartially discharge their duties or that they discriminated in favor of certain citizens or classes of citizen and against others. The evidence does not demand such a finding.

{453 S.E.2d 775} Allen v. Norris, supra, holds that the breach of a duty imposed by law does not ipso facto mandate removal of members of the board of tax assessors from office and that it is within the court's discretion to remove the members from office upon a showing of cause. As in Allen, supra, as well as Thompson v. Queen, supra, the court did not abuse its discretion in refusing to find cause here.

Judgment affirmed. Andrews and Johnson, JJ., concur.

MUSCOGEE COUNTY BOARD OF TAX ASSESSORS v. PACE INDUSTRIES INC

No. A10A1856.
COURT OF APPEALS OF GEORGIA
January 05, 2011

Counsel: Travis Carlisle Hargrove, Kirsten Colleen Stevenson, for Muscogee County Board of Tax Assessors.
Mary Terry Benton, Timothy James Peaden, for Pace Industries, Inc.

OPINION: Judge Mikell

The Muscogee County Board of Tax Assessors (the "Board") appeals from the trial court's grant of summary judgment to Pace Industries, Inc. ("Pace"), in an ad valorem tax dispute concerning the availability of the freeport exemption[1] for inventory held by Pace in Georgia. Pace applied for the freeport exemption for the tax year 2006 for its inventory of barbecue grill bodies stored in the Columbus warehouse that it leased. The Board ruled that the inventory in question was not exempt from ad valorem taxes under OCGA § 48-5-48.2(b) and denied the freeport exemption. After that ruling was affirmed by the board of equalization, Pace appealed to the Superior Court of Muscogee County. The parties filed cross-motions for summary judgment, and the court granted summary judgment in favor of Pace and against the Board. The trial court concluded that Pace's inventory of grill bodies qualified for the freeport exemption found in OCGA § 48-5-48.2(b)(3) (a "Category 3" exemption), because the grill bodies are destined for shipment to "a final destination outside this state."[2] The Board appeals from this order. We conclude that the freeport exemption does not apply to the grill bodies at issue here, and we reverse.

On appellate review of the grant or denial of a motion for summary judgment, we conduct a de novo review of the law and the evidence,[3] and we view the evidence in the light most favorable to the nonmovant.[4] "When a question of law is at issue, as here, we owe no deference to the trial court's ruling and apply the 'plain legal error' standard of review."[5] We further note that "[t]he burden of proof in a tax appeal to the superior court is on the party who initiated the appeal. Therefore, in this case the burden was on [Pace]."[6]

The facts in this case are undisputed. Pace, a wholly-owned subsidiary of Leggett & Platt, Inc., operates a manufacturing facility in Arkansas. There Pace manufactures barbecue grill bodies, which are die-cast aluminum bodies for gas and charcoal barbeque grills. Pace ships the grill bodies from its Arkansas plant to a warehouse it leases in Columbus, where they are stored until they are needed by Char-Broil, a producer and distributor of barbeque grills located in Columbus. Char-Broil is one of Pace's major customers for the grill bodies, and Pace manufactures the grill bodies to Char-Broil's specifications. Pace sells and delivers the grill bodies to Char-Broil at Char-Broil's Columbus plant. Char-Broil incorporates the grill bodies into finished barbecue grills, which Char-Broil then ships to its customers, mainly large retail stores. The record reflects that during calendar year 2003, Char-Broil shipped 94.4 percent of its completed grills to customers outside the state of Georgia.[7]

Pace argues that the grill bodies qualify for the freeport exemption because they are sold to Char-Broil, which then ships them out of state once they are incorporated into finished barbecue grills. The trial court accepted this argument, ruling that the grill bodies are "destined for shipment to a final destination outside this state," as contemplated by OCGA § 48-5-48.2. We disagree, because as far as Pace is concerned, the final destination of the grill bodies is Char-Broil's Columbus plant. Thus, we conclude that the grill bodies do not qualify for the freeport exemption.

The Category 3 freeport exemption, at issue here, applies generally to "inventory of finished goods held for shipment outside the state."[8] Category 3 inventory is described at OCGA § 48-5-48.2(b)(3), and includes:

> *Inventory of finished goods which, on January 1, are stored in a warehouse, dock, or wharf, whether public or private, and which are destined for shipment to a final destination outside this state and inventory of finished goods which are shipped into this state from outside this state and stored for transshipment to a final destination outside this state. The exemption provided for in this paragraph shall be for a period not exceeding 12 months from the date such property is stored in this state.*[9]

Thus, to qualify for a Category 3 freeport exemption, the inventory in question must be (1) "finished goods"; (2) in Georgia for less than 12 months; and (3) "destined for shipment to a final destination outside this state." Pace records the grill bodies as "finished goods" for inventory accounting purposes on its books and records, and the Board concedes that Pace's inventory of grill bodies constitute "finished goods," as defined in OCGA § 48-5-48.2(a)(2).[10] The Board also concedes that Pace stores the grill bodies in Georgia for less than the 12-month statutory maximum, based on an average inventory turnover rate of 47.1 days for tax year 2004. The Board contends, however, that the grill bodies do not meet the third test necessary to qualify for the Category 3 freeport exemption. Thus, the issue presented here is whether the grill bodies are "destined for shipment to a final destination outside this state."[11]

OCGA § 48-5-48.2(a)(1) provides that inventory "[d]estined for shipment to a final destination outside this state" includes "that portion or percentage of an inventory of finished goods which . is reasonably anticipated to be shipped to a final destination outside this state."[12] That goods are "reasonably anticipated" to be shipped out of state must be established by the taxpayer "through a historical sales or shipment analysis, either of which utilizes information from the preceding calendar year, or other reasonable, documented method."[13]

We note that this is a case of first impression, and disposition of this appeal requires construing the statutes authorizing the freeport exemption.[14] "[L]aws granting an exemption from taxation must be construed strictly in favor of the taxing authority, and all doubts must be resolved against the taxpayer. Consequently, no exemption will be allowed unless the exemption is clearly and distinctly intended by the legislature."[15] At the same time, "[i]n construing a legislative act, a court must first look to the literal meaning of the act. If the language is plain and does not lead to any absurd consequences, the court simply construes it according to its terms and conducts no further inquiry."[16] Our interpretation of the statute "must square with common sense and sound reasoning. In this sense, a statute should be read according to its natural and most obvious import of the language without resorting to subtle and forced constructions for the purpose of either limiting or extending its operation."[17]

Pace contends that the grill bodies are "destined for shipment to a final destination outside this state" because they are sold by Pace to Char-Broil and then sold by Char-Broil to customers outside Georgia. Pace concludes that "nothing in the statute makes it relevant that the grill bodies are first sent to Char-Broil before being shipped outside the state." However, this argument does not take into account the facts of this case. Pace does not merely send the grill bodies to Char-Broil; Pace sells them to Char-Broil. Pace argues that the change in title does not make any difference, but in light of the statutory scheme, this argument cannot stand. "Statutes are not to be construed in a vacuum, but in relation to other statutes of which they are a part, and all statutes

relating to the same subject-matter are to be construed together, and harmonized wherever possible."18

Unless exempted, Georgia law imposes ad valorem tax on all personal property.19 The tax is charged against the owner of the property.20 The taxpayer is obligated to make tax returns of the property;21 and the return covers "property held and subject to taxation on January 1 next preceding each return."22 The tangible personal property exemption known as the freeport exemption is available for certain business inventory described in OCGA § 48-5-48.2(b). Under OCGA § 48-5-48.1(a), the entity seeking the freeport exemption is required to file a written application and schedule of the property for which the exemption is sought.23 Thus, the statutory scheme looks to the property, that is, the inventory, held by the taxpayer;24 what becomes of the inventory in the hands of a purchaser from the taxpayer is not relevant to the determination of the availability of the freeport exemption. As far as Pace is concerned, the "final destination" of the grill bodies constituting the inventory here at issue is the Columbus plant of Char-Broil.

Our decision in Aircraft Spruce25 is instructive. There, we held that the freeport exemption did not apply to the inventory of a retailer engaged in the business of selling aircraft parts to customers outside Georgia over the internet, because the sales occurred in Georgia.26 We noted that "in determining whether a retail sale is made in this [s]tate, we must look to the location and conduct of the seller, rather than the location of the buyer."27 Similarly, here we look to the conduct of Pace, the seller. Pace's involvement with the grill bodies ends when Pace sells them to Char-Broil, and therefore the "final destination" of the grill bodies is the Char-Broil plant located in Columbus. It follows that the grill bodies sold to Char-Broil do not fall within the Category 3 freeport exemption found in OCGA § 48-5-48.2(b)(3). Char-Broil incorporates the grill bodies into finished barbecue grills, and it is these completed barbecue grills that Char-Broil eventually ships out of state.

For the reasons stated above, we reverse the decision of the trial court.
Judgment reversed.
SMITH, P.J., and ADAMS, J., concur.

FOOTNOTES
1. See OCGA §§ 48-5-48.1, 48-5-48.2.
2. See OCGA §§ 48-5-48.2(a)(1), (b)(3).
3. Clayton County Bd. of Tax Assessors v. City of Atlanta, 286 Ga.App. 193, 194 (648 S.E.2d 701) (2007).
4. Delta Air Lines v. Clayton County Bd. of Tax Assessors, 246 Ga.App. 225, 226 (539 S.E.2d 905) (2000).
5. (Citation and punctuation omitted.) City of Atlanta, supra. Accord Delta Air Lines, supra.
6. Aircraft Spruce & Specialty Co. v. Fayette County Bd. of Tax Assessors, 294 Ga.App. 241, 243 (669 S.E.2d 417) (2008).
7. The instant case concerns tax year 2006. By agreement, the parties submitted cross-motions for summary judgment and related briefing which had been filed in a companion case pending before the superior court, relating to tax year 2004. The sole difference between the two cases was the amount of exemption claimed.
8. (Footnote omitted.) Delta, supra at 227.
9. OCGA § 48-5-48.2(b)(3).
10. Under OCGA § 48-5-48.2(a)(2), "[f]inished goods" includes "goods, wares, and merchandise of every character and kind but shall not include unrecovered, unextracted, or unsevered natural resources or raw materials or goods in the process of manufacture or production or the stock in trade of a retailer."
11. OCGA §§ 48-5-48.2(a)(1), (b)(3).
12. OCGA § 48-5-48.2(a)(1).
13. Id.
14. See Delta, supra at 226.
15. (Citation omitted.) Aircraft Spruce, supra.

16. (Citation and punctuation omitted.) Apollo Travel Svcs. v. Gwinnett County Bd. of Tax Assessors, 230 Ga.App. 790, 791-792(3) (498 S.E.2d 297) (1998).
17. (Citations and punctuation omitted.) Id. at 792(3). Accord Aircraft Spruce, supra.
18. (Citations and punctuation omitted.) Fulton County Tax Commr. v. Gen. Motors Corp., 234 Ga.App. 459, 464(1) (507 S.E.2d 772) (1998).
19. OCGA § 48-5-3 ("all personal property shall be liable to taxation and shall be taxed, except as otherwise provided by law").
20. OCGA § 48-5-9 ("Taxes shall be charged against the owner of property if the owner is known").
21. OCGA § 48-5-10 ("All property shall be returned by the taxpayers for taxation to the tax commissioner or tax receiver as provided by law").
22. Id.
23. See OCGA § 48-5-48.1(a).
24. Cf. Aircraft Spruce, supra at 242 ("Under Georgia law, a retailer may be assessed ad valorem taxes based on the value of its inventory as of January 1") (emphasis supplied).
25. Id.
26. Id. at 244.
27. Id. at 243 (retail sales occurred at taxpayer's warehouse in Georgia, where orders were received, processed and filled) (id. at 243-244).

CITY OF ATLANTA et al. v. CREST LAWN MEMORIAL PARK CORPORATION
Supreme Court of Georgia
December 3, 1962, Decided

Opinion:

The Crest Lawn Memorial Park Corporation brought a petition for declaratory judgment and injunctive relief against the City of Atlanta and Riley F. Elder, as the Municipal Revenue Collector of the city. It was alleged: The petitioner is a nonprofit cemetery corporation, owning six described tracts of land. Property owned by the petitioner described as Tract No. 1 has been developed for burial sites, and numerous burials have been made throughout various portions of this tract. There is situated on this tract an administration building which is used exclusively in connection with the operation {218 Ga. 498} of the cemetery and for the sole purpose of carrying out its corporate function as a cemetery in selling burial sites and mausoleum crypts, opening graves, and burying human remains. Also located on this tract is a maintenance building or tool house in which {128 S.E.2d 724} is housed described equipment used in maintaining and operating the cemetery. The other tracts of land owned by the petitioner have not yet been developed by it, but this property is held for future development for cemetery purposes. The City of Atlanta has assessed all of the petitioner's property for ad valorem taxes for the year 1956. The defendant Elder has levied the tax fi. fa. issued by the city on that portion of the petitioner's property described as Tract No. 1 for the purpose of satisfying the fi. fa. for ad valorem taxes contended to be due for the year 1956. The city has assessed all of the petitioner's property for ad valorem taxes for the year 1957 and has caused a fi. fa. to be issued against it. The defendant Elder has notified the petitioner that unless the taxes claimed by the city are paid, he will levy upon the petitioner's property and sell it for the purpose of satisfying this fi. fa. The petitioner contends that it is not indebted to the city in any amount for taxes since all of its property is owned solely for burial purposes and is specifically exempt from all property taxes under the laws of Georgia.

It was prayed that the court make a declaratory judgment adjudicating that the following property is exempt from the property taxes sought to be imposed by the city: the real property described as Tract No. 1; the real property described as Tracts Nos. 2, 3, 4, 5, and 6; the buildings and other improvements situated on the real property; and the furniture, fixtures, machinery, and equipment used by the petitioner. It was also prayed that the defendants be temporarily restrained and permanently enjoined from levying upon any of the property of the petitioner or proceeding with the sale of any of its property to satisfy any fi. fa. issued for taxes claimed to be due by the city.

The defendants filed a demurrer, which was overruled. The case was tried by the trial judge without the intervention of a jury, and he found that the land described as Tract No. 1, including all buildings located thereon, was exempt from ad valorem {218 Ga. 499} taxes for the years 1956 and 1957; and that all other property of the petitioner, both real and personal, was subject to ad valorem taxes for those years. The defendants were permanently enjoined from collecting ad valorem taxes for the years 1956 and 1957 on the property described as Tract No. 1.

The City of Atlanta and Charles L. Mathews filed their motion for new trial on the usual general grounds, which was amended by the addition of several special grounds. The first special ground amended the motion for new trial to show that the defendants were dissatisfied with the verdict and judgment, except that part which held that certain property of the petitioner was subject to taxation. The other special grounds were elaborations of the general grounds.

1. It is suggested by the defendant in error that the jurisdiction of this case may be in the Court of Appeals under the decision in Suttles v. Hill Crest Cemetery, 209 Ga. 160 (71 S.E.2d 217). That case involved a money rule, and no question of equitable jurisdiction was involved. In the present case the petitioner prayed for a permanent injunction, and a permanent injunction was granted by the trial judge. It is therefore a case in equity within the jurisdiction of this court.

2. Under the authority of the Constitution, Art. VII, Sec. I, Par. IV (Code Ann. Supp. 2-5404), the legislature has exempted from taxation "places of . . . burial; . . . provided the property so exempted be not used for the purpose of private or corporate profit and income, . . ." Code 92-201, as amended. Under the allegations of the petition, the petitioner was entitled to an injunction against a levy on that portion of its property used as a place of burial, such property being exempt from taxation. Tharpe v. Central Ga. Council of Boy Scouts of America, 185 Ga. 810 (196 S.E. 762, 116 ALR 373); Church of God of the Union {128 S.E.2d 725} Assembly v. City of Dalton, 213 Ga. 76 (97 S.E.2d 132); Alford v. Emory University, 216 Ga. 391 (116 S.E.2d 596). The trial judge properly refused to dismiss the petition on the demurrer which asserted only that the petition did not state a proper basis for declaratory judgment.

3. The two real issues in the present case are whether the tax exemption of "places of . . . burial" includes undeveloped {218 Ga. 500} areas in the property of the petitioner described as Tract No. 1, and whether this exemption includes administrative and maintenance buildings located on this tract. The trial judge held that parcels of land acquired by the petitioner for future cemetery purposes, but not yet used for any purpose directly connected with the cemetery, were subject to taxation, and no exception to this judgment is under review.

The property described as Tract No. 1 is all in one tract. It was acquired by the petitioner from a predecessor cemetery corporation, Crest Lawn Memorial Park, Inc., and at the time of its acquisition numerous burials had been made on the tract. One of the petitioner's exhibits appearing in the record is a copy of a trust agreement dated August 2, 1940, between Crest Lawn Memorial Park, Inc., and the Fulton National Bank of Atlanta, providing for perpetual care and maintenance of the lots and graves in the Crest Lawn Memorial Park Cemetery.

Mr. Gilbert O. Johnson, who was manager of the petitioner in 1956 and 1957, testified that there had been burials in the cemetery prior to 1900. This witness testified that all of the property identified as Tract No. 1 was held for cemetery use, but that some parts of the tract contained ravines and steep hills which were not suitable for burials, and could never be used for any purpose except for the beautification of the cemetery. This witness pointed out on a map a hill with an estimated area of from two to four acres which was believed to have historical value since it was the site of one of the last points of defense under General Joe Johnson in the Battle of Atlanta, and retains evidences of the battle, such as shells, trenches, and fortifications; and he stated that the petitioner had hoped to save the area as a historical spot.

It is contended in the special grounds of the motion for new trial, and in the brief of the plaintiffs in error, that the undeveloped areas of Tract No. 1 are subject to taxation, and it is particularly urged that the undeveloped area of historical interest is not to be used for burial purposes and should not be exempt from taxation.

In his "Elegy Written in a Country Church-Yard" Thomas {218 Ga. 501} Gray wrote movingly of man's ultimate destination in this world:

"The boast of heraldry, the pomp of power,
And all that beauty, all that wealth e'er gave,
Await alike the inevitable hour:
The paths of glory lead but to the grave."

Our civilization has respect for the burying-places of its dead, and one way that this respect is shown is by the exemption of burial places from taxation. "One reason perhaps why cemeteries are exempt from taxation is the difficulty of collecting a tax thereon and the obvious impropriety of selling the graves of the dead in order to pay the expenses of carrying on the government of the living."

In Mountain View Cemetery Co. v. Massey, 109 W. Va. 473, 476 (155 S.E. 547), it was said:

"Recurring now to the suggestion that only the portions of a cemetery property which have been actually sold should be exempt from taxation, it will be observed that such construction of the statute might easily result in gross hardship in its operation. Portions assessed for taxation for a given year might very well be sold within a short time after assessment and actually put in use for burial purposes. If the tax were not paid, these {128 S.E.2d 726} very lots with dead bodies therein would be subject to sale to satisfy the tax . . . It is not the policy of a great commonwealth to be parsimonious in its dealings with its people, and least of all where the tender sentiments attending the place of sepulcher of their dead is involved. The State should eschew and scorn a policy that will even carry the possibility of harassment of bereaved survivors with reference to the last resting place of departed loved ones, or that might disturb the repose of the dead."

In Haslerig v. Watson, 205 Ga. 668, 680 (54 S.E.2d 413), this court quoted with approval the following excerpts from 6 Words and Phrases (Perm. ed.), pages 407, 408, dealing with the word "cemetery": "A 'cemetery' is defined as a place where human bodies are buried; a graveyard. Actual interment and enclosure of land for use as cemetery constituted dedication as cemetery of all land so set apart, whether occupied by graves or not. Smallwood v. Midfield Oil Co., Tex. Civ. App., 89 S. W. 2d 1086, 1090. " {218 Ga. 502} "A cemetery includes not only lots for depositing the bodies of the dead, but also avenues, walks, and grounds for shrubbery and ornamental purposes. All must be regarded as consecrated to a public and sacred use. Evergreen Cemetery Assn. v. City of New Haven, 43 Conn. 234, 243, 21 Am. Rep. 643. " In Haslerig v. Watson, supra, this court also quoted with approval from 10 Am. Jur. 491, 8, as follows: "When a tract of land has been dedicated as a cemetery, it is perpetually devoted to the burial of the dead and may not be appropriated to any other purpose." See also Arlington Cemetery Corp. v. Bindig, 212 Ga. 698, 704 (95 S.E.2d 378); Greenwood Cemetery, Inc. v. MacNeill, 213 Ga. 141 (97 S.E.2d 121); Arlington Cemetery Corp. v. Hoffman, 216 Ga. 735 (119 S.E.2d 696).

The trial judge was authorized to find from the evidence that the petitioner is a nonprofit cemetery corporation, and that the property designated as Tract No. 1 had been dedicated to burial purposes by the numerous burials therein. The evidence indicated that the number of burials was increasing each year, and that the undeveloped area of this tract was not disproportionate to the future needs of the area from which the burials are made (mainly Fulton, DeKalb, and Cobb Counties). Since the tract is dedicated to burial purposes, it may not thereafter be appropriated to other purposes. There is nothing in the present record to show that any use has been made of this tract inconsistent with the dedication to burial purposes. The preservation of a historical site in a tract of land dedicated to burial purposes would not change its character as a place of burial. The trial judge did not err in holding that the undeveloped portion of Tract No. 1 is exempt from taxation.

4. It appears from the evidence that a new administration building was being built on Tract No. 1 during the years 1956 and 1957, and that a tool shed and house where the custodian lived were on the property. Mr. Johnson, the manager of the petitioner at that time, testified that the administration building was necessary to the operation of the cemetery, that it was used to house

the sales department, and for the keeping of {218 Ga. 503} records of the owners of grave lots, interments, transfers, markers, and memorials; and that the tool house was necessary to house the tools and equipment needed for the maintenance of the cemetery.

In 84 CJS 601, Taxation, 292 (3-d), it is stated: "The exemption accorded to cemetery lands may extend to all property used or held exclusively for the burial of the dead or for the care, maintenance, or upkeep of such property, and ordinarily applies to a columbarium, a crematory, a mausoleum, or unsold lots, crypts, or niches, and covers permanent improvements placed on the land and necessary to its use as a burying ground."

{128 S.E.2d 727} In cases where an injunction was sought against the construction of a mortuary and a crematory on property dedicated as a cemetery, our court has held that such structures are not for the purpose of the burial of the dead. Greenwood Cemetery, Inc. v. MacNeill, 213 Ga. 141, supra; Arlington Cemetery Corp. v. Hoffman, 216 Ga. 735, supra. However, there is a distinction between these structures, in which bodies are prepared for burial, and buildings necessary for the administration of the cemetery and the maintenance of the burying grounds. The trial judge did not err in holding that the buildings on Tract No. 1 are exempt from taxation.

Judgment affirmed.

ROBERTS et al. v. RAVENWOOD CHURCH OF WICCA; and vice versa
Supreme Court of Georgia
April 30, 1982

Opinion

On Motion for Rehearing.
The taxing authorities have filed a motion for rehearing in this case.
1. In the motion for rehearing, they argue, among other things, that Ravenwood's receipt of rental income on some of the rooms in the Moreland Avenue dwelling destroys its character as a place of religious worship.

As authority, they cite two decisions which have not been heretofore cited: Atlanta Masonic Temple Co. v. City of Atlanta, 162 Ga. 244 (7) (133 S.E. 864) (1926) and Trustees Academy of Richmond County v. Bohler, 80 Ga. 159 (7 S.E. 633) (1887). However, our reading of Masonic Temple and Bohler actually bolsters our conclusion that the tax exemption is not lost where, as here, the trial court has found that a building is used primarily as a place of religious worship with some rooms in the building being rented out to students of the religion and with the rent being used to defray such expenses as the mortgage on the property. Under these circumstances, there is no "element of profit" in the receipt of rent, and the element of income is "altogether secondary and incidental." Trustees Academy of Richmond County v. Bohler, 80 Ga., supra, at p. 163. Nor are the rooms being rented out for a "business purpose." Atlanta Masonic Temple Co. v. City of Atlanta, 162 Ga., supra, at p. 245. As held in Peachtree on Peachtree Inn v. Camp, 120 Ga. App. 403 (170 S.E.2d 709) (1969), see n. 1, supra, the fact that residents are charged a rental toward expenses of operating a charitable institution does not destroy the charitable nature of the institution. Nor should it destroy {249 Ga. 354} the religious nature of an otherwise religious institution.

In addition, both Peachtree on Peachtree Inn v. Camp, supra, and Massenburg v. Grand Lodge F. & A. M. of State of Ga., 81 Ga. 212 (7 S.E. 636) (1888), recognize that where only a portion of a building is used for a tax-exempt purpose, the comparative value of the portion used for the tax-exempt purpose should be distinguished from the remainder, with only that part used for the tax-exempt purpose being spared taxation.

2. The taxing authorities also argue that our decision exposes the subject tax exemption to the possibility of practically unlimited abuse.

In responding to this argument, it is first necessary to dispel the dissent's suggestion that under the majority opinion, places of religious worship are practically unlimited and would include places in which Satanic cults worship a supernatural evil force.

Under the majority opinion, demonology and stereotypical witchcraft most emphatically do not constitute religion. As we stated in the majority opinion, the minimum requirements of religion are (1) a sincere and meaningful belief in God occupying in the life of its possessors a place parallel to that occupied by God in traditional religions, and (2) a dedication to the practice of that belief. Thus, in order to constitute a religion, there is the requirement that there be a belief in a deity occupying a place parallel to that occupied by God in traditional religions. However, this is not to say that under the legal definition of religion, only traditional religions qualify. In determining that the legal definition of religion should not be circumscribed in this manner, one need look no further than the guarantee of freedom of religion contained in the First Amendment to the United States Constitution.
Motion for rehearing denied.

CHURCH OF GOD OF THE UNION ASSEMBLY, INC. v. CITY OF DALTON et al.
Supreme Court of Georgia
March 9, 1961, Decided

Opinion:

The decision by this court on the former appearance of this case in Church of God of the Union Assembly v. City of Dalton, 213 Ga. 76 (97 S. E. 2d 132), states at page 80 upon what allegations of the petition our decision that a cause of action was alleged was based, as follows: "It is alleged . . . that the property upon which the execution has been levied is a place of religious worship, is used in maintaining and operating a church, that the income derived therefrom is used exclusively for religious purposes, and that the primary purpose of such real estate is not that of securing an income thereon, but the primary purpose is that of providing a meeting place and quarters for members of affiliates of the church." We held that, because of such allegations, the petition was not subject to demurrer. From the volume of evidence in this record we fear counsel on both sides misconstrued our decision. In harmony with that decision, we shall now undertake to define clearly the exact property belonging to religious institutions that {216 Ga. 661} the statute (Code Ann. 92-201; Ga. L. 1946, p. 12; 1947, p. 1183; 1955, pp. 262, 263), which was enacted in virtue of authority conferred {119 S.E.2d 13} by the Constitution, art. 7, sec. 1, par. 4 (Constitution of 1945, Code 2-5404; as amended by Ga. L. 1953, Nov.-Dec. Sess., p. 70, ratified in 1954), exempts from taxation, the statute being an almost verbatim copy of the exemption clause of the Constitution.

The property belonging to a religious institution which is exempt from taxation is described therein as follows: "Places of religious worship or burial, and all property owned by religious groups used only for single family residences and from which no income is derived . . . all intangible personal property owned by or irrevocably held in trust for the exclusive benefit of religious . . . institutions, no part of the net profit from the operation of which can enure to the benefit of any private person." The foregoing enumerates, defines, and clearly identifies the property, and the only property belonging to a religious institution that is exempted from taxation. This identification should not be allowed to become uncertain because of subsequent provisions in the law concerning income. All such later provisions must relate back to the enumerated exempted property and in no event be construed as introducing into the law additional property for exemption. We have in mind the following clause in both the statute and the Constitution: "provided the property so exempt be not used for the purpose of private or corporate profit and income, distributable to shareholders in corporations owning such property . . . and any income from such property is used exclusively for religious . . . purposes . . . and for the purpose of maintaining and operating such institutions; this exemption shall not apply to real estate or buildings other than those used for the operation of such institution and which is rented, leased or otherwise used for the primary purpose of securing an income thereon."

We think that the excerpts quoted from the statute should reveal that only the properties enumerated are exempt from taxes, and that all references to income relate solely to such exempted property. This fact is spelled out in a portion of the last above quoted excerpt, such portion being: "this exemption shall not apply to real estate or buildings other than those used for the {216 Ga. 662} operation of such institution and which is rented, leased or otherwise used for the primary purpose of securing an income thereon."

This unambiguous language means that, if the property is used primarily for either profit or purposes other than the operation of the institution, it is not exempt from taxes. The fact that the property is used to make profit which will in turn be given or used by the church for church purposes in no degree confers tax exemption thereupon. This would subject to ad valorem taxation, since not coming under the exemption, the following items of property belonging to the church and involved in this case, to wit: (1) apartment buildings on Central Avenue; (2) property formerly used as a dining hall but now as an apartment rented to a widow who sometimes pays rent; (3) lot and dwelling house on Francis Street, rented sometimes to a widow who sometimes pays rent when and if she can. But the restaurant, located in the main church building on Central Avenue, being a part of the church and used primarily for church purposes, though secondarily to feed some people for pay, if able, and without charge if unable to pay, comes within the exemption conferred by law, and the verdict as to this tract is contrary to the evidence. Consequently, the first three items above listed are subject to taxes, and the evidence demanded the verdict to that effect. The fourth item is exempt and the evidence demanded a verdict so exempting it. In this situation, where the evidence demanded certain verdicts, alleged errors in the charge or failure to charge are immaterial, and no rulings on the special grounds raising such questions will be made, as the result could not be changed by such rulings. Therefore, the judgment denying the amended motion for a new trial is affirmed with direction that the verdict {119 S.E.2d 14} be modified to provide that the restaurant in the main church building be not subject to taxation, and final judgment be entered subjecting the first three items listed above to taxation, and exempting the fourth from taxation. Code 70-102, 110-112; Scott v. Winship, 30 Ga. 879; Summerville Macadamized &c. Road Co. v. Baker, 70 Ga. 513 (3); Love v. National Liberty Ins. Co., 157 Ga. 259 (121 S. E. 648); Reserve Life Ins. Co. v. Gay, 214 Ga. 2 (102 S. E. 2d 492); New York Life Ins. Co. v. Watson, 48 Ga. App. 211 (172 S. E. 602).

Judgment affirmed with direction.

PICKENS COUNTY BOARD OF TAX ASSESSORS et al. v. ATLANTA BAPTIST ASSOCIATION, INC.
Court of Appeals of Georgia
April 5, 1989, Decided

Opinion

The Pickens County Board of Tax Assessors assessed ad valorem property taxes on {381 S.E.2d 420} 640 acres of land in Pickens County owned by the Atlanta Baptist Association, Inc. The Association appealed to superior court, contending that the property is exempt from such taxation pursuant to O.C.G.A. 48-5-41 (a) (2) because it is used as a "place of religious worship." The trial court granted summary judgment to the Association, and the Board of Tax Assessors filed the present appeal to this court, contending that there was evidence that the property, particularly the undeveloped portion, is maintained and operated primarily as an income generating recreational facility.

The property is known as the Burnt Mountain Baptist Assembly. In support of its motion for summary judgment, the Association introduced the deposition of the director of the Assembly, who described the various improvements located on the property, including worship facilities, a dining hall, cabins, indoor and outdoor meeting spaces, a swimming pool and ball fields. He stated that approximately one-third of the total acreage is unimproved and is used for nature walks, outdoor Bible study and meditation. The improvements were constructed by the Association with contributions from its associate churches. While user fees are charged for the use of the facility, they are insufficient to cover all of the operating expenses, and the deficiency is made up by subsidies provided by the Association. The facility is used exclusively by adult and youth church groups of various denominations. The Association requires that each group conduct a religious program during its stay, and the director previews each program to ensure that the scheduled events include "worship and knowledge of God, Bible study and prayer." He also monitors the activities of the visiting groups to ensure that the religious aspect of their programs is followed. There is no question, however, that secular {191 Ga. App. 261} activities, such as softball and swimming, normally are also incorporated into the programs. Held:

As a general rule, statutes exempting property from taxation are to be strictly construed in favor of taxation, "but this rule must not be pushed to unreasonableness." Church of God &c. Assembly v. City of Dalton, 213 Ga. 76, 78 (97 S.E.2d 132) (1957). In Leggett v. Macon Baptist Assn., 232 Ga. 27, 30 (205 S.E.2d 197) (1974), our Supreme Court, in determining whether property qualified for an exemption under the predecessor to O.C.G.A. 48-5-41 (a) (2) , stated that "the words 'religious worship' import a concept of a congregation assembling in a place open to the public to honor the Deity through reverence and homage." Subsequently, in Roberts v. Ravenwood Church of WICCA, 249 Ga. 348, 351 (292 S.E.2d 657) (1982), the Court held that a determination as to whether property qualifies for tax exemption as a place of religious worship is to be made on the basis of the primary use of the property.

In Roberts v. Atlanta Baptist Assn., 240 Ga. 503 (241 S.E.2d 224) (1978), the Court addressed the issue of whether property used as a facility for religious retreats qualified for an exemption under the statute. There, the taxing authority had not sought to tax the improved portion of the property but only the contiguous, undeveloped land. After examining the evidence concerning the purpose of the facility and the activities conducted on the premises, the Court concluded that all of the essential elements of "religious worship" had been shown to exist with reference to the undeveloped land as well as the developed land, stating: "[I]f the presence of the omnipotent and

omnipresent God cannot be restricted to a mere man made edifice, surely it was not intended to limit the worship of such a God to a building." Id. at 508.

In the case before us, as in Roberts, the evidence establishes without dispute that religious activities are an integral part of every aspect of the use of the property. Although the recreational facilities which are provided to visitors are secular in nature, their use was shown to be intimately connected and intertwined with the religious activities to which the property is primarily dedicated. The fact that visitors are charged fees which are applied towards {381 S.E.2d 421} the operating expenses of the facility does not alter its fundamentally religious character. Accord Roberts v. Ravenwood Church of WICCA, supra, 249 Ga at 353. In light of the foregoing authorities, and on the basis of the uncontroverted evidence in the present case, we hold that the trial court did not err in concluding as a matter of law that the property was exempt from taxation as a place of religious worship.

Judgment affirmed.

LEGGETT et al. v. MACON BAPTIST ASSOCIATION, INC.
Supreme Court of Georgia
April 4, 1974, Decided

Opinion:

The controlling issue to be decided in this case is whether the real property owned and used by the Macon Baptist Association, Inc., is a "place of religious worship," as that term is used in the Georgia Constitution and implementing statute, so as to exempt the Association from the payment of ad valorem taxes. The trial court determined, on motion for summary judgment, that the Association is exempt, and the taxing authorities have now brought that judgment here for review.

I.
Article VII, Sec. I, Par. IV of the 1945 Constitution of Georgia (Code Ann. 2-5404) authorizes the General Assembly to exempt from taxation "Places of religious worship or burial, and all property owned by religious groups used only for residential purposes and from which no income is derived . . . all intangible personal property owned or irrevocably held in trust for the exclusive benefit of religious . . . institutions, no part of the net profit from the operation of which can inure to the benefit of any private person." (Emphasis supplied.) The {232 Ga. 28} implementing statute found in Code Ann. 92-201 uses the same language to exempt property of a religious institution from ad valorem taxation although neither specifically defines "places of religious worship," the provision under which the tax exemption is claimed in the present case. These broad provisions have been interpreted generally to mean, however, that, "if the property is used primarily for either profit or purposes other than the operation of the institution, it is not exempt from taxes." Church of God v. City of Dalton, 216 Ga. 659, 662 (119 S.E.2d 11). We, therefore, draw from the Dalton decision the general rule that, in applying the exemption authorized by basic Georgia law to the facts in the individual case, we must look to the use of the property, not merely its ownership, and we must also look to the primary use of the property to determine whether it is exempt from taxation. In addition, we are mindful, in applying these principles, that all tax exemptions are to be strictly construed since taxation is the rule and exemption is the exception. Brandywine Townhouses, Inc. v. Joint City-County Bd. of Tax Assessors, 231 Ga. 585 (203 S.E.2d 222).

It is from this background that we proceed to the specific issue presented. Is the primary use of this property shown to be as a place of religious worship? The facts are not disputed and the trial court's clear and well-stated findings show the following:

"The Macon Baptist Association is served by an ordained Missionary Baptist Minister who is called to his position as Associational Missionary like other Baptist Pastors. He is furnished a pastorium like any other Baptist Pastor. No commercial activities of any kind are carried on by the Association, and none are conducted in its building. The Macon Baptist Association {205 S.E.2d 199} is supported by its 47 associated Baptist Churches with their 34,000 members, by voluntary contributions, and its facilities are available to all of its associated churches for group meetings, for committee and departmental work of the association, and to any interested group for religious and worship purposes. Other than the administrative work of the association, there is a pastor's conference held once and occasionally twice a quarter on a Monday afternoon, {232 Ga. 29} which is a religious service primarily for the fellowship and inspiration of the pastors of the associated churches, although laymen also attend, and the format includes prayer, the singing of hymns, the giving of testimonies, and the sermon. No business is transacted at the services. No religious service is conducted on Sunday mornings, but on Sunday afternoons various groups

meet in the building and engage in worship, though this does not occur on every Sunday afternoon. Also, there are held in the buildings seminars promoting the work of the churches; meeting of heads of Women's Missionary Unions, Royal Ambassadors and Brotherhoods; conferences concerning day care nurseries, kindergartens, and senior citizen's clubs; and seminars for the American Baptist Theological Seminary for Negro ministers and laymen.

"The basic function of the Associational Missionary is coordination, training and promotion. He exercises these functions for the Association just as a pastor executes and carries out similar responsibilities as a minister in a local church. He also does personal counseling with individuals and has worship meetings with representatives of the Association.

"The Association has three employees. These include the Associational Missionary, his Secretary, and a week-day minister's consultant. In the performance of his administrative duties, the Associational Missionary visits churches, meets with various committees, counsels with pastors and other individuals with regard to church work, visits hospitals, especially with the ministers and their families and other people who may be within the leadership of the Associational structure, gets out communications and promotes all the missionary work of the Association. Records of the work performed are kept on file in the building.

"The building was formerly a 6-room residence purchased in 1969 and occupied by the Association in 1970. A partition was knocked out between two rooms and new lighting was installed, to form the chapel. This chapel occupies about 25 percent of the space in the building and is furnished with metal chairs, arranged in aisle form, hymn books, a Bible, a podium and a piano. {232 Ga. 30} In addition to the chapel, there is a kitchen, restrooms, closets, a study for the Associational Missionary, an office for his secretary, and an office for the week-day minister's consultant. The exterior has the outside appearance of a residence, with a carport and a parking area. It does not have a cross on it. Prior to moving into this building, the Association worked out from the Ingleside Baptist Church. The sign outside the building says, 'Macon Baptist Association office.' Sunday-School and Church services, in the common every-day language of Protestants attending religious services, are not held in this building."

II.

We have said we have no authoritative definition of the words "places of religious worship" under the law of Georgia. The phrase itself appeared in the Georgia Constitution of 1877, but the debates of the constitutional convention thereon shed no light upon the framers' intended meaning of these words, and the subsequent inclusion of the same provision in later Constitutions similarly added no illumination to their meaning. Prior decisions of the two appellate courts of our state are helpful but also do not provide a specific definition of "places of religious worship." In Amorous v. State, 1 Ga. App. 313, 316 (57 S.E. 999), the Court of Appeals said {205 S.E.2d 200} (with reference to a criminal statute making it a misdemeanor to carry a weapon to a place of public worship) that a place of public worship was not necessarily a church, but included "the gathering of individuals for public worship, at whatever place they may be." The case of Trustees of First M. E. Church v. City of Atlanta, 76 Ga. 181, 195, which was later overruled on its holding that churches were exempt from paving assessment, spoke of the purpose of the exemption as being the prevention of "impositions . . . too onerous to be borne by worshiping congregations." (Emphasis supplied.) Wardens of St. Mark's Church v. Mayor of Brunswick, 78 Ga. 541 (3 S.E. 561), equated "religious worship" with "public worship." At best, these cases express a "feeling" that the words "religious worship" import a concept of a congregation assembling in a place open to the public to honor the Deity through reverence and homage. The word {232 Ga. 31} "worship" alone is defined by Webster as an "act of paying divine honors to a deity; religious reverence and homage." In Black's Law Dictionary, it is defined in terms of "religious service"

and "religious exercises." These definitions express, we believe, the generally accepted public notion of thinking of worship in terms of congregational worship services intended to express adoration and homage for the Deity. For the Christian Church Universal, this would include saying prayers, singing hymns, reading scriptures, and the giving of testimonies and sermons in a congregational setting. It would also include the traditional sacraments and rites of baptism, marriage, communion and funeral services.

The Macon Baptist Association capably argues that the activities carried on in this building constitute an essential part of their worship because service through good works is among the highest forms of love, homage and reverence to God. This argument is cogent and is undoubtedly correct. But its truth does not mean this particular property is used primarily as a "place of religious worship" under the findings of the trial court. While some religious exercises and services are held on the property, it is nonetheless a fact that the primary use of the property is for coordination, training and promotional work in furtherance of the administrative duties of the Association. This is conceded in the brief of the Association and was so found by the trial court. This use, though a vital aspect of the exercise of Baptist and other Christian faiths, clearly does not include congregational worship services and administration of traditional sacraments. It is this difference which requires the Association to be taxed in contradistinction to the Baptist churches themselves that are served by the Association.

Decisions of other jurisdictions do not authorize a different result in this case. There are language differences in our law and the law of other jurisdictions. Nevertheless, the decision we reach here is consistent with the view held generally in a number of other jurisdictions that exemptions from taxation of places of religious worship, unless stated otherwise, are intended primarily to apply to buildings where congregations come {232 Ga. 32} together in a public forum for religious services. See, e.g., In re Walker, 200 Ill. 566 (66 NE 144); Masonic Building Assn. v. Town of Stamford, 119 Conn. 53 (174 A 301); Town of Woodstock v. The Retreat, 125 Conn. 52, 3 A2d 232 (1938); Evangelical Baptist &c. Society v. City of Boston, 204 Mass. 28 (90 NE 572); People v. Collison, 6 N.Y.S. 711; City of Philadelphia v. Overbrook Park Congregation, 171 Pa. Super. 581 (91 A2d 310); Laymen's Week-End Retreat League v. Butler, 83 Pa. Super. 1; Whelon v. United States, 191 F. Supp. 945 (Cust. Ct. 1961).

We conclude that the property of the Macon Baptist Association, Inc., here involved is not being used primarily as a place of religious worship within the meaning of the Georgia Constitution and statute {205 S.E.2d 201} authorizing the exemption of the property from ad valorem taxation. In summary, this conclusion is based primarily upon the finding that the property is not open as a public place of worship where a congregation gathers to practice the rites and ceremonies of its doctrinal theology, and to receive the sacraments of the church.

III.

The appellee also argues in this case that if taxation of the Association's building is required this will work a favoritism by the state toward those religious groups whose theologies do not require the kind of activity carried on by the Association as an essential part of the Baptist faith. The appellee asserts that this would violate the constitutional requirement that the state must remain neutral in its attitude toward religion under the First Amendment to the United States Constitution. See Engel v. Vitale, 370 U.S. 421 (82 S. Ct. 1261, 8 L. Ed. 2d 601, 86 ALR2d 1285); Abington School District v. Schempp, 374 U.S. 203 (83 S. Ct. 1560, 10 L. Ed. 2d 844); and Sherbert v. Verner, 374 U.S. 398 (83 S. Ct. 1790, 10 L. Ed. 2d 965).

Religious groups do not enjoy a general immunity from the imposition of property taxes under the First Amendment to the United States Constitution. See Watchtower &c. Soc. v. Los Angeles County, 30 Cal. 2d 426 (182 P2d 178), cert. den. 332 U.S. 811. Cf. Walz v. Tax Comm. of New York, 397 U.S. 664 (90 S. Ct. 1409, 25 L. Ed. 2d 697). Appellee's argument is essentially one which focuses on whether the denial of a religious tax {232 Ga. 33} exemption to it would be discriminatory. It is sufficient to note in answer to this contention that there is no evidence in the record before us that the taxing authorities are discriminating against the appellee Association as opposed to other members of the class of religious associations similarly situated and subject to ad valorem taxation. The missionary work and the administration and coordination of those activities essential to appellee's religious beliefs and practices are not uncommon to other religious groups. The property of other religious groups, when used primarily for purposes similar to the use made by the appellee of its property here involved, would also be subject to ad valorem taxation. Thus, we cannot agree that the tax sought to be imposed on appellee in this case is discriminatory or otherwise violative of the First Amendment to the Constitution of the United States.

The trial court erred in granting summary judgment in favor of the appellee and in denying summary judgment in favor of the appellants.

Judgment reversed; remanded with direction.

THARPE, tax-collector, et al. v. CENTRAL GEORGIA COUNCIL OF BOY SCOUTS OF AMERICA
Supreme Court of Georgia
March 9, 1938, Decided

Opinion

The Central Georgia Council of the Boy Scouts of America, a corporation, brought an action against the tax-collector and sheriff of Peach County, to enjoin a sale for taxes of real estate belonging to the plaintiff, and for cancellation of tax executions, on the ground that the property is exempt from taxation under the Code, 92-201. The material portion of the Code provision is as follows: "The following described property shall be exempt from taxation, to wit: . . . all institutions of purely public charity; all buildings erected for and used as a college, incorporated academy or other seminary of learning . . .: provided, . . . the above-described property so exempted is not used for purposes of private or corporate profit or income." A general demurrer to the petition was overruled, and the defendants excepted {185 Ga. 811} pendente lite. The case was tried on an agreed statement of facts, upon which the court directed a verdict in favor of the plaintiff. The defendants' motion for new trial was overruled, and they excepted. The bill of exceptions assigns error upon the overruling of the demurrer, the direction of the verdict, and the overruling of the motion for a new trial.

The facts shown in the agreed statement were substantially as follows: The plaintiff is a corporation, having obtained its charter from the superior court of Bibb County in 1928. The charter includes the following provisions: "The corporation shall have no capital stock, its object and purpose being solely of a benevolent character, and not for individual pecuniary gain or profits to its members. The object of the corporation is to assist in carrying out the purpose of the Boy Scouts of America, as declared in the charter granted by Congress to that corporation, to promote, through organization, and co-operation with other agencies, the ability of boys to do things for themselves and others, to train them in Scout-craft, and to teach them patriotism, courage, self-reliance, and kindred virtues, using the methods which are now in common use by Boy Scouts. The purpose of this corporation is to promote the Boy Scout program for character development, citizenship training, physical fitness, and Americanization within the territory designated for its activities by the National Council of the Boy Scouts of America, and in accordance with the constitution and by-laws of the National Council and the policies and regulations thereof, as set forth in its official publications; and further, to share with the National Council responsibility for furnishing adequate leadership, maintaining standards of the Boy Scout Movement, protecting its badges and official insignia against use by those not duly registered as Scouts and Scout officials, and in extending the benefits of the movement to all the boys in America." Twenty-eight counties in central Georgia are assigned to the plaintiff corporation for the development and training of Boy Scouts. As soon as a boy reaches the age of twelve years he is eligible for membership in the Scout organization. The membership in the plaintiff's district now numbers more than one thousand boys, and efforts are being made to increase the enrollment. The plaintiff owns approximately 400 acres of land in Peach County, on which is located an artificial lake covering about seventy-five acres. The {185 Ga. 812} buildings on the property consist of a mess-hall or assembly-room, a workshop, about fifteen small cabins, and a caretaker's house. An annual summer camp is maintained for Boy Scouts on this property, during which time four or five hundred boys attend. The only expense charged against the boys coming to the camp at this time is a sufficient amount to pay for their food, all other expenses being borne by the plaintiff. During the balance of the year the camp is open at all times to the boys, but when they use the camp during such time they carry their food with them. The Scout oath is as follows: "On my honor I will do my best to do my duty to God and to my country, and to obey the Scout

law; to help other people at all times; to keep myself physically strong, {196 S.E. 764} mentally awake, and morally straight." Under the Scout law the boys are taught that a Scout is trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent. Special courses are taught at the summer camp, in order to instill in the boys the Boy Scout principles as embodied in the Scout oath and law. A few of the courses taught are archery, bird study, botany, camping, civics, conservation, first-aid, forestry, life-saving, personal health, public health, surveying, swimming, and zoology. Instructors are provided for the teaching of these subjects without cost to the boys. Frequently Boy Scouts are unable to find sufficient money to defray the expense of attending summer camp, and in such cases the plaintiff obtains funds by solicitation and undertakes to see that every worthy boy is given an opportunity to attend camp and study the various subjects.

The sheriff has levied on twenty-five acres of the land, to satisfy a tax execution issued by the tax-collector for ad valorem taxes against the property for the year 1931, and executions for other years have been turned over to the sheriff for collection. The petition described the property, alleged the facts touching its use, and claimed that under the facts alleged it was exempt from taxation. The plaintiffs in error have treated the case as embracing the question whether the property is exempt under the statute relating to "institutions of purely public charity" (Code, 92-201), and contend only that under the facts shown there is no exemption on this ground; while in the brief filed for the defendant in error the only question argued is whether the property is exempt {185 Ga. 813} as "buildings erected for and used as a college, incorporated academy, or other seminary of learning." In other words, so far as the briefs are concerned, neither side combats the contentions of the other; and therefore this court is in the awkward position of having to decide the case without any friction of minds between counsel, no matter on what ground we may base our conclusion. In the circumstances we shall endeavor to follow the safest course. In the view which we take of the case, we may assume with the plaintiffs in error that the record does embrace the question whether the property is exempt as a charitable institution under the law. Since the statute contains fewer qualifying words and phrases in regard to such an institution than in reference to property used for educational purposes, exemption on the ground of charity appears to be the less doubtful of the two questions mentioned. Accordingly, in pursuance of the policy just indicated, we have examined both questions, but having concluded that the property is exempt as a charitable institution, and being less certain that it is exempt upon the ground relating to education, although perhaps it may be exempt for that reason also, we will discuss only the question as to charity, laying aside the other question.

Under the statute, "the following described property shall be exempt from taxation, to wit: . . . all institutions of purely public charity." Code, 92-201. The test is whether the property itself is "dedicated to charity and used exclusively" as an institution of purely public charity, not whether the plaintiff is an organization of purely public charity. "The exemption from taxation of institutions of public charity, provided for by the constitution, is of such institutions as property not as persons, -- the physical things, not the ideal institutions." Trustees of the Academy of Richmond County v. Bohler, 80 Ga. 159 (7 S. E. 633). The character of the plaintiff corporation, as disclosed by its charter provisions and the other evidence, will be considered, of course, in determining whether the use of the property is such as to exempt it from taxation. Cf. Elder v. Atlanta-Southern Dental College, 183 Ga. 634 (189 S. E. 254). A familiar meaning of the word "charity" is almsgiving, but as used in the law it may include "substantially any scheme or effort to better the condition of society or any considerable part of it." Wilson v. Independence First {185 Ga. 814} National Bank, 164 Iowa, 402, 412 (145 N. W. 948, Ann. Cas. 1916D, 481). "'Charity,' as used in tax exemption statutes, is not restricted to the relief of the sick or indigent, but extends to other forms of philanthropy or public beneficence, such as practical enterprises for the good of humanity, operated at moderate cost to the beneficiaries, or enterprises operated for

the general improvement and happiness of mankind." 61 C. J. 455, 505. This court has said: "The property of a Young Men's Christian Association, used solely for purposes of public charity, using the term 'charity' in its broad sense, is not taxable, provided its income is not used, nor intended to be used, as dividends or profits." (Italics {196 S.E. 765} ours.) City of Waycross v. Waycross Savings & Trust Co., 146 Ga. 68 (4) (90 S. E. 382). The plaintiff derives no income from the property sought to be taxed, and therefore it is necessary to determine only whether the property is used solely for purposes of public charity, "using the term 'charity' in its broad sense." It appears that the plaintiff uses the property as a camp or recreation center, open to all of the Boy Scouts in 28 counties in central Georgia. The boys are allowed to use the camp without charge, except that during the annual summer convention they are required to pay for their food. The plaintiff bears all other expenses. During the summer encampment, special courses are provided through instructors furnished by the plaintiff, for the purpose of instilling in the boys the principles of the Scout organization.

As shown above, the purpose of the organization is the physical, mental, and moral development of boys who have reached a stated age. No one can deny that such an institution is a benefit to society, and that it improves and promotes the happiness of man. In our opinion, the word "charity," as used in the statute, and in the provision of the constitution authorizing its enactment (Code, 2-5002), is broad enough to include the use which, according to the record, the plaintiff makes of the property here involved. We have been able to find only two cases dealing with the question whether property used by the Boy Scout organization may be treated as a charitable institution, within the meaning of exempting statutes. In both cases its charitable nature was recognized. In Camden County Council Boy Scouts of America v. Bucks County, 13 Pa. Dist. & Co. R. 213, it appeared that the use of the property was substantially identical with that shown in the {185 Ga. 815} instant case. While the main question for decision was whether the property of the plaintiff, a New Jersey corporation, should be denied exemption as an "institution of purely public charity" because it was a non-resident corporation, the other question was involved, and in regard to it the court said: "It is not seriously disputed that the petitioner is an institution of purely public charity, within the meaning of section 1, article ix, of the constitution of Pennsylvania, and the act of April 29, 1874, P. L. 73, and the supplements thereto, as interpreted by the superior court in Lancaster County v. Y. W. C. A. of Lancaster, 92 Pa. Superior Ct. 514, and cases therein cited." In Charter Oak Council Inc. Boy Scouts of America v. New Hartford, 121 Conn. 466 (185 Atl. 575), the case turned on a different point, but in the course of the opinion the court said: "The conclusions that the plaintiff corporation is organized exclusively for educational and charitable purposes, and that the real property in question is used exclusively for carrying out those purposes, are amply supported by the finding, which is not susceptible of material correction. They are not invalidated or impaired by any of the facts found concerning the activities and operation of the camp, including the payment, by each Boy Scout attending, of a regular charge toward the expenses, the operation of a camp store, open about twenty minutes a day, the small profits from which go into the camp fund, and the payment, when income permits, of bonuses, in addition to their salaries, to certain officials and employees, for services performed in operating the camp. Connecticut Junior Republic Association Inc. v. Litchfield, 119 Conn. 106, at page 108, 174 A. 304, at page 306, 95 A. L. R. 56, and cases cited; Tillinghast v. Council at Narragansett Pier, 47 R. I. 406, 133 A. 662, 46 A. L. R. 823; Camden County Council, B. S. of A. v. Bucks County, 13 Pa. Dist. & Co. R. 213. "

Under the Georgia decisions, the fact that the boys are charged a sum sufficient only to pay for their food would not destroy the charitable nature of the institution nor prevent its exemption. Brewer v. American Missionary Association, 124 Ga. 490 (52 S. E. 804); Hurlbutt Farm v. Medders, 157 Ga. 258 (121 S. E. 321). The plaintiffs in error contend that if this be a charity it is a private charity, and not a "purely public" charity, because the camp is open only to boys who

are members of the Scout organization. {185 Ga. 816} We can not agree to this contention. According to the record, every boy on reaching the age of twelve years is eligible to become a member, with no other qualification or restriction. The organization is thus open to all boys alike, within the classification as to age, and all under the age of twelve will in time become eligible, if they live. In Trustees of the Academy of Richmond County v. Bohler, supra, it was held in effect that charitable institutions {196 S.E. 766} are public, if they are open "to the whole public, or to the whole of the classes for whose relief they are intended or adapted." See also Brewer v. American Missionary Association, supra. It follows from what has been said that the court did not err in overruling the demurrer to the petition, or in refusing a new trial.

Judgment affirmed.

INSTITUTE OF NUCLEAR POWER OPERATIONS v. COBB COUNTY BOARD OF TAX ASSESSORS et al. (eight cases).
COURT OF APPEALS OF GEORGIA
January 5, 1999, Decided

Opinion

For the tax years 1993 and 1994, the Institute of Nuclear Power Operations ("INPO" or "Taxpayer") filed a total of eight applications for exemption from tangible property taxes on real and personal property located in Cobb County, Georgia, contending INPO is an institution "of purely public charity." The property at issue consists of business assets such as a computer system, two airplanes, and the multi-story office building used as INPO's headquarters. 1 The Cobb County Board of Tax Assessors and the Board of Equalization ("the Board") denied all applications for an exemption, and INPO appealed to the superior court for a de novo determination. O.C.G.A. 48-5-311 {236 Ga. App. 49} (g) (3). Over INPO's objection, Cobb County and the Cobb County School Board ("Intervenors") were permitted to intervene. On cross-motions for summary judgment, the following undisputed facts were adduced:

After the 1979 nuclear incident at Three Mile Island, "the U.S. nuclear electric utility industry established the [INPO] in 1979 [with the corporate mission] to promote the highest levels of safety and reliability . . . in the operation of . . . nuclear [electric generating] plants, . . ." and thereby promote public health and safety. "All organizations having direct responsibility and legal authority to operate or construct commercial nuclear electric generating plants in the United States are INPO members. Many organizations that jointly own these nuclear power plants are associate members." Conversely, {510 S.E.2d 845} "all INPO members which own Nuclear Power Plants have a commercial license issued by the Nuclear Regulatory Commission [("NRC")]." Specifically, "all members of INPO are investor-owned utilities with the exceptions of the Nebraska Public Power District, New York Power Authority, Omaha Public Power District, Tennessee Valley Authority, and Washington Public Power Supply System." According to Angelina S. Howard, Director of the INPO Communications Division, "all activities of INPO are commercial in the sense that they relate to the commercial generation of electricity." In 1994, the for-profit members of INPO earned a combined net income exceeding $ 12 billion. According to the 1995 annual report, "INPO's value to the industry lies in its ability to provide utilities with timely performance insights that can be used to improve plant operation and to identify and follow up on initiatives to enhance safety, reliability and efficiency." The 1995 financial statement lists "members' net assets -- unrestricted [at $]24,602,010."

INPO is recognized as a charitable organization exempt from income taxes by both the Internal Revenue Service and the Georgia Department of Revenue. "All of INPO's revenues are used to pay its expenses. It has no retained earnings and pays no dividends to its members." All members of INPO's Board of Directors are high officers employed by INPO members. These directors are not compensated for their services. But INPO's 13 full-time officers are paid salaries competitive with the commercial nuclear electricity industry, ranging from $ 84,291.82 to a base salary of $ 390,000 plus a five-year deferred compensation bonus of $ 454,976.31 for the president and Chief Executive Officer, Zack T. Pate. Total salaries and benefits paid in 1995 amounted to $ 31,845,998. INPO paid ad valorem taxes on personalty from 1980 through 1992, before it acquired its headquarters.

All members of INPO must pay dues or lose their membership. For 1993, membership dues amounted to more than $ 50 million. In {236 Ga. App. 50} addition to annual dues, INPO imposes a requirement whereby "each supplier participant provides INPO with one loaned

employee or $ 6,000 per month for each month a loaned employee is not provided. . . . [INPO] believes the INPO loaned employee program provides a valuable benefit and is a career development opportunity for the industry's nuclear management personnel."

According to the Memorandum of Agreement between INPO and the NRC, INPO is an organization sponsored by the nuclear electric utility industry. The NRC "[recognizes] the ability of INPO to contribute to safe and reliable operation with a resulting benefit to public health and safety. . . ." INPO's major activities consist of four cornerstone technical programs: evaluation of member utilities; training and accreditation programs for member utilities; events analysis and information exchange programs for member utilities; and assistance programs, whereby INPO "collects and monitors nuclear plant performance indicator data and provides periodic reports to the industry."

"INPO conducts an evaluation of a nuclear plant by sending a team of engineers and other technical specialists to the plant for two weeks. A team numbers approximately 15 people and includes both INPO personnel and peer evaluators from other nuclear plants. During the two-week evaluation at the plant, the members of the team observe plant personnel carrying out their assigned duties. INPO relies heavily on observations of people at work and on the frank [and confidential] feedback from working-level employees to determine the effectiveness of plant programs and activities. . . ." But because "INPO is not a government organization [it therefore reasons it] has no obligation to provide its reports to the public. The Institute, on behalf of its members, has worked diligently over the years to protect the confidential nature of its evaluation and other plant-specific reports." Consequently, "Plant Evaluation Reports are provided only to the utility . . . responsible for operating the [evaluated] plant. . . ." INPO members who are also members of Nuclear Electric Insurance Limited (NEIL) have authorized and instructed INPO to make available to NEIL at the Institute's office copies of INPO evaluation reports and other data.

INPO's president, Zack T. Pate, publicly acknowledged "there is increasing evidence that the highest levels of safety, reliability, and economic performance go hand in hand. . . . Operators of nuclear power {510 S.E.2d 846} plants are required by law, NRC rules and good business practices to obtain or provide insurance coverage for their plants. The primary sources of insurance are: (1) commercial insurance pools . . .; (2) nuclear utility insurance pools [such as] NEIL; and (3) additional liability insurance as required by the secondary financial requirements of [federal law]." (Emphasis supplied.) NEIL is an "industry {236 Ga. App. 51} captive insurance [company]," or a "mutual insurance company . . ." providing government-mandated insurance to "its members against property losses, business interruption coverage and decontamination [and decommissioning] costs resulting from accidental damage." NEIL administers and services its own insurance plans, and INPO "has no involvement with the provision of [such] insurance. . . ." But NEIL reviews INPO reports and data for items that could affect the insurability of its members, and gives member utilities a ten percent property insurance "premium [credit] for INPO Category 1 plants."

"INPO's meeting facilities are intended primarily for INPO-sponsored and INPO-conducted meetings and trainings. . . . Nuclear industry groups may be approved to meet in INPO meeting facilities subject to the following considerations: . . . The meeting will not be open to the public." An INPO airplane is routinely used by the president of INPO for personal use.

The superior court denied INPO's motion for summary judgment and granted that of the Board, concluding that "INPO is not devoted entirely to charitable pursuits, and the use of the property is not exclusively devoted to those charitable pursuits." These eight appeals concerning four tax

accounts for two tax years raise identical issues of law based on the same facts, and so the appeals are hereby consolidated for disposition in a single appellate decision. Held:

In two related enumerations of error, INPO complains of the grant of the Board's motion for summary judgment and the denial of its own motion, arguing it meets all elements of the appropriate test to be exempt from ad valorem taxes as a purely public charity.

1. "When the tax officer goes forth to search for taxable property, all which he finds employed in the ordinary uses of common life, unless it belongs to the public, he is to regard as taxable." Trustees &c. of Richmond County v. Bohler, 80 Ga. 159, 164 (7 S.E. 633). "Taxation is the rule, and exemption the exception; and, under the [laws] of this state, no property except that specifically mentioned can be exempted from taxation." The Athens City Water-Works Co. v. Mayor &c. of Athens, 74 Ga. 413, hn. 1. "The following property shall be exempt from all ad valorem property taxes in this state: . . . all institutions of purely public charity." O.C.G.A. 48-5-41 (a) (4). "In determining whether property qualifies as an institution of 'purely public charity' as set forth in O.C.G.A. 48-5-41 (a) (4), three factors must be considered and must coexist. First, the owner must be an institution devoted entirely to charitable pursuits; second, the charitable pursuits of the owner must be for the benefit of the public; and third, the use of the property must be exclusively devoted to those charitable pursuits." York Rite Bodies &c. of Savannah v. Bd. of Equalization of Chatham County, 261 Ga. 558 (2) (408 S.E.2d 699).2. INPO first contends it is an institution devoted entirely to {236 Ga. App. 52} charitable pursuits, arguing it is a "practical enterprise for the good of humanity" because its mission is excellence and a high degree of safety in the generation of nuclear power, which redounds to the benefit of the environment and the public at large.

"'A familiar meaning of the word "charity" is almsgiving, but as used in the law it may include "substantially any scheme or effort to better the condition of society or any considerable part of it." [Cit.] "'Charity,' as used in tax exemption statutes, is not restricted to the relief of the sick or indigent, but extends to other forms of philanthropy or public beneficence, such as practical enterprises for the good of humanity, operated at moderate cost to the beneficiaries, or enterprises operated for the general improvement and happiness of mankind." 61 CJ 455, 505.' Tharpe v. Central Ga. Council, B.S.A., 185 Ga. 810 (196 S.E. 762, 116 ALR 373)." Peachtree on Peachtree Inn v. Camp, 120 Ga. App. 403, 409 (170 S.E.2d 709). But of the infinite charities that deserve the plaudits of mankind, {510 S.E.2d 847} our law "restricts tax exemption of institutions of charity to those and those only that are 'purely' charitable and also that are 'public' charity." United Hosp. Svc. Assn. v. Fulton County, 216 Ga. 30, 32 (114 S.E.2d 524).

We do not doubt that INPO's stated mission and successful history of promoting excellence and the highest safety standards within the commercial nuclear power industry benefit all of mankind every day that a nuclear incident is thereby avoided. But such diffuse public benefit is, in our view, inevitably secondary to the immediate pecuniary benefit of INPO's members, predominantly commercial suppliers, and their shareholders, in an industry generating $ 12 billion in net profits. Pursuant to the Price-Anderson Act, 42 USCS 2210 et seq., federal law imposes strict liability in tort for a nuclear incident, via a waiver of all legal defenses in exchange for a limitation of liability. See Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 64-65 (98 S. Ct. 2620, 57 L. Ed. 2d 595). Every avoided Chernobyl-like catastrophe also avoids catastrophic strict liability. Preventing power outages benefits members and their shareholders by preventing lost profits. We can discern no eleemosynary element to all of INPO's admirable efforts. While there is undeniable public benefit attending each avoided nuclear catastrophe, it does not result from INPO's philanthropy or public beneficence in operating an enterprise for the good of humanity or for the general improvement and happiness of mankind.

The Taxpayer's reliance on Chatham County Bd. of Tax Assessors v. Southside Communities Fire Protection, 217 Ga. App. 361, 364 (457 S.E.2d 267) is misplaced. There, a non-profit tax-exempt corporation which provided local fire and rescue services under contract to Chatham County through 48 paid employees and 150 volunteers was held entitled to the charitable exemption from ad valorem taxes, where {236 Ga. App. 53} the evidence showed that "Southside provided its services to all in need of assistance, not just to subscribers." (Emphasis supplied.) Id. That element of charitable intent or truly public beneficence (extended during an existing emergency) is sufficient to distinguish that case from the circumstances of INPO as an entity sponsored by a consortium collectively generating $ 12 billion annual net profits. The superior court in the case sub judice correctly determined that, under the undisputed facts, INPO's efforts are not purely charitable.

3. "The fact that an institution serves a benevolent purpose does not necessarily make it a 'purely public charity.' United Hospitals Service Assn. v. Fulton County, 216 Ga. 30, 33[, supra]. No matter how high the ideals of an institution, nor how lofty its purposes, in order for it to qualify as a charitable institution for tax exemption under Code Ann. 92-201 [now O.C.G.A. 48-5-41 (a) (4)], it must have the sole purpose and activity of dispensing public charity." Camp v. Fulton County Med. Society, 219 Ga. 602, 605 (3) (135 S.E.2d 277). Accord York Rite, 261 Ga. 558 (2), 559 (2) (b), supra.

As the president of INPO acknowledges, plant safety and a high degree of reliability go "hand in hand" with economic performance. The same economic factors indicating that INPO's efforts are not purely charitable also indicate that they are not purely public. The primary purpose of INPO is to collect, analyze and disseminate industry lessons learned based on highly confidential surveys. Moreover, there is not a single outside or disinterested director on INPO's Board of Directors. Members must pay dues to belong. See Ga. Congress of Parents &c. v. Boynton, 239 Ga. 472, 473 (238 S.E.2d 113). That portion of the building occupied by INPO is restricted to members and their guests; the public is expressly excluded from industry meetings. The undisputed facts indicate that INPO does not exist for the sole purpose and activity of dispensing purely public charity.

4. Remaining contentions have been considered and are found to be rendered moot by our holdings in Divisions 2 and 3.

Judgment affirmed. Blackburn and Eldridge, JJ., concur.

CHATHAM COUNTY BOARD OF TAX ASSESSORS v. SOUTHSIDE COMMUNITIES FIRE PROTECTION, INC. (Six Cases).
COURT OF APPEALS OF GEORGIA
May 2, 1995, Decided

Opinion

These cases involve six parcels of land, which are owned by Southside Communities Fire Protection, Inc. ("Southside"). The facts and the legal issues involved in the cases are identical. In its sole enumeration in each case, the Chatham County Board of Tax Assessors ("the Board") contends that the trial court erred in concluding after a bench trial that Southside is a purely public charity pursuant to O.C.G.A. 48-5-41 (a) (4) {457 S.E.2d 268} and, therefore, exempt from ad valorem taxation for the tax year 1992.

Prior to the bench trial, the parties stipulated to most of the relevant facts and in an excellent 17-page order, the Chatham County court recited the following essentially undisputed facts. Southside performs fire fighting and rescue services in large portions of Chatham County in which the county government itself provides no fire protection. Southside is the only protection for the unincorporated areas of the county, except for the Isle of Hope. Although Savannah has a paid professional fire department, it contracts with Southside to provide fire protection to southern portions of the city. Chatham County granted Southside exclusive rights to service these districts. Southside and other fire departments within the county have also agreed to reinforce each other as needed in the event of major emergencies. Southside responds only to calls within its designated fire district, unless it receives a call for mutual assistance from another fire department.

Southside is a non-profit, tax-exempt 501 (c) (4) corporation which is afforded tax-exempt status by the Internal Revenue Service. Southside derives no profits, nor does it distribute any income pursuant to its non-profit status. Southside uses its receipts only to pay expenses. Southside issues no shares of stock, pays no dividends, makes no profit, and accumulates no retained earnings or endowment. It has a board of directors whose members receive no compensation for their services and are elected by the subscribers; its labor force consists primarily of volunteer firefighters who receive no pay for their time and skills. In 1991 and 1992, Southside had 48 paid employees and 150 volunteers.

In addition to fire fighting, Southside provides rescue services within its area of responsibility. According to the stipulation, Southside "participates in wash downs, operates the 'jaws of life' and provides miscellaneous police assistance, within its designated fire districts; operates a first responders unit in the Skidaway Island area {217 Ga. App. 362} with a defibrillator and trained state certified first responders; and, provides fire prevention classes to various organizations; and, does not bill Chatham County for any of these services." Southside also performs planning and prevention tasks such as inspections, fire suppression planning, response coordination, and fire prevention education. Volunteers and paid employees give talks and classes to community groups.

The parties stipulated that the property at issue is used exclusively for the provision of fire protection and rescue services within its designated fire districts.

Southside utilizes a subscription service offered to all persons and entities within its designated fire districts to cover the expenses of providing the services. Southside's annual subscription fees are based on the values of the properties to be provided such services. If Southside provides a

service to a nonsubscriber, the non-subscriber is billed for the cost of the service. City of Savannah residents pay for their fire protection services through payment of property and sales taxes. Southside has, on occasion, filed suit to collect the bill from a non-subscriber.

Southside responds to all fires, regardless of subscription status. The court's order noted that more than ten years ago Southside's policy "may have been" not to fight fires on the property of non-subscribers. Nevertheless, the court found that Southside's policy of responding to all fires is not advertised in the correspondence it sends to non-subscribers in the unincorporated areas of the county. The court noted that this correspondence implies that fire protection will be available only if an application is completed and the fee paid. The court also found that Southside does not advertise that its policy is to give a reduced rate or to waive the fee altogether for indigents, although it does enroll subscribers without a fee when informed of financial problems.

Southside's policy with respect to apartment complexes, shopping centers, and trailer parks is that the owners are requested to pay for the entire complex, instead of individuals purchasing a subscription. Southside requires that if a trailer park owner buys protection, it must be for the entire trailer park complex; the individual trailer owners {457 S.E.2d 269} are not allowed to purchase coverage separately.

On or about April 16, 1992, the Board removed the tax-exempt status of properties owned by Southside. Southside appealed the Board's decision to the Chatham County Board of Equalization, which reversed that decision and held that the properties were exempt. The Board appealed this decision to the Superior Court, and the six cases were consolidated.

After conducting its bench trial, the trial court ruled that Southside was entitled to tax-exempt status as a purely public charity pursuant{217 Ga. App. 363} to O.C.G.A. 48-5-41 (a) (4) . Here, the Board argues that Southside does not qualify as an institution of purely public charity and that the test set forth in York Rite Bodies of Freemasonry &c. v. Bd. of Equalization, 261 Ga. 558 (408 S.E.2d 699) (1991), was not met. The Board contends that tax exemptions are to be strictly construed and that Southside has failed to meet the burden of proving the exemption.

In York Rite, supra at 558, our Supreme Court stated: "in determining whether property qualifies as an institution of 'purely public charity' as set forth in O.C.G.A. 48-5-41 (a) (4) , three factors must be considered and must coexist. First, the owner must be an institution devoted entirely to charitable pursuits; second, the charitable pursuits of the owner must be for the benefit of the public; and third, the use of the property must be exclusively devoted to those charitable pursuits."

The Board first contends that Southside does not qualify for the exemption under the first prong of the York Rite test, in that it is not an institution devoted entirely to charitable pursuits. "In determining whether the owner is an institution devoted entirely to charitable pursuits, it must be remembered that the mere facts that the owner is a non-profit institution, that its charter declares it to be a charitable institution, and that the institution serves a benevolent purpose do not necessarily lead to the conclusion that the institution is exempted from ad valorem taxation by O.C.G.A. 48-5-41 (a) (4) While all of those should be considered, no one of them will be conclusive. Instead, the facts of each case must be viewed as a whole and all of the circumstances surrounding the institution must be considered" York Rite, supra at 558-559.

The Board cites numerous financial facts regarding Southside which it contends establish that Southside is simply a business which performs fire fighting services, rather than a charitable institution. The Board notes that the contract and subscription fees which Southside collected

during 1991 totaled over $ 2,000,000; that Southside accumulated significant interest over the period in question; and that property which Southside owned appreciated during the year. The Board argues that a large portion of Southside's income goes to compensating its employees and instructing volunteer fire fighters, and that Southside uses its remaining income to buy land, buildings, and equipment and to stockpile cash assets.

Additionally, the Board argues that although Southside has a professed policy of providing reduced rates for those who are unable to pay, this policy is not advertised to potential subscribers. It contends that Southside's policy of responding to all fires is not advertised and that the Southside mailings imply that fire protection will be available only to subscribers.

{217 Ga. App. 364} The Board's arguments break down into two major components: that the manner in which Southside bills its subscribers and the manner in which it manages its assets establish that it is not devoted entirely to charitable pursuits. With respect to the first issue, the fact that Southside charges a fee for subscribers is not dispositive. See generally Tharpe &c. v. Central Ga. Council of Boy Scouts &c., 185 Ga. 810 (196 S.E. 762) (1938); Central Bd. on Care of Jewish Aged v. Henson, 120 Ga. App. 627 (1) (171 S.E.2d 747) (1969); Peachtree on Peachtree Inn v. Camp, 120 Ga. App. 403 (170 S.E.2d 709) (1969). Here, the evidence established that the fees Southside charged were used to offset expenses and that subscribers were billed according to their ability to pay. The evidence also showed that Southside provided its services to all in need of assistance, not {457 S.E.2d 270} just to subscribers. Compare Gwinnett County Bd. of Tax Assessors v. Ga. School Bd. Assn., 211 Ga. App. 437 (439 S.E.2d 666) (1993); Ga. Congress of Parents & Teachers v. Boynton, 239 Ga. 472 (238 S.E.2d 113) (1977). Southside had no retained earnings, no dividends, no distribution of profits to members, no endowment, and the evidence showed that the salaries it paid were comparable to those paid to other fire fighters. We agree with the trial court's conclusion that the manner in which the fees were collected supported Southside's claim that it was a "purely public charity."

Moreover, the manner in which Southside uses its property also showed it to be devoted entirely to charitable pursuits. The evidence showed that Southside used its property to produce money, but that the resulting money was used solely to offset expenses. There is no evidence that Southside used the money it accumulated to benefit a small group; instead, the evidence showed that the money generated went to benefiting the general public. Accordingly, we find that Southside met the first prong of the York Rite test.

The Board also argues that Southside fails under the second prong of the York Rite test in that its charitable pursuits are not for the benefit of the public. First, "[a] familiar meaning of the word 'charity' is almsgiving, but as used in the law it may include 'substantially any scheme or effort to better the condition of society or any considerable part of it.' Charity, as used in tax exemption statutes, is not restricted to the relief of the sick or indigent, but extends to other forms of philanthropy or public beneficence, such as practical enterprises for the good of humanity, operated at moderate cost to the beneficiaries, or enterprises operated for the general improvement and happiness of mankind." (Citations and punctuation omitted.) Tharpe, supra at 813-814.

Contrary to the Board's contentions, we find that Southside's services were for the benefit of the public. See generally Peachtree on Peachtree Inn, supra. It is undisputed that Southside provides fire{217 Ga. App. 365} protection and rescue services to all of the public within its region, regardless of the subscription status of the property owner. Moreover, Southside does not turn away subscribers due to their inability to pay the subscription fee. Although the court concluded that Southside's reduced rate policy and non-discriminatory response policy was not advertised in

its correspondence, this fact does not alter the fact that Southside performs its charitable service for the benefit of the public. Southside's policy with regard to subscribers who are located in trailer parks and shopping centers does not alter this conclusion. Moreover, the evidence supported the trial court's conclusion that the organization operated for the benefit of the public and not for the benefit of its employees.

The Board argues that the third prong of the York Rite test is not met and that Southside's property is not exclusively devoted to charitable pursuits. The parties stipulated that the property is exclusively devoted to the provision of fire protection and rescue services. Given the facts of this case, we conclude, as did the trial court, that this prong of the York Rite test is met. The Board also argues the court erred in finding that fire fighting was a charitable pursuit, as a matter of law. Again, given the specific facts before us, we find that Southside operated as a "purely public charity" and the Board's argument is misplaced.

Viewing the facts of this case as a whole, we find proper the trial court's conclusion that the Southside properties were exempt from ad valorem taxation.

Judgments affirmed in Case Nos. A95A0445, A95A0446, A95A0447, A95A0448, A95A449, and A95A0450. McMurray, P. J., and Blackburn, J., concur.

COBB COUNTY BOARD OF TAX ASSESSORS v. MARIETTA EDUCATIONAL GARDEN CENTER, INC.
COURT OF APPEALS OF GEORGIA
August 30, 1999, Decided

Opinion

The Cobb County Board of Tax Assessors and the Board of Equalization (the "Board") denied applications for ad valorem tax exemption as a purely public charity under O.C.G.A. 48-5-41 (a) (4) filed by the Marietta Educational Garden Center, Inc. (the "Garden Center"). The Garden Center appealed to the superior court for a de novo determination pursuant to O.C.G.A. 48-5-311 (g) (3). On cross-motions for summary judgment, the following undisputed facts were adduced:

The Garden Center is the owner of certain real property located at 505 Kennesaw Avenue N.W., Marietta, Georgia. After receiving the property as a gift in 1967, the Garden{521 S.E.2d 894} Center restored it, and the property thereafter was placed on the National Register of Historic Places. For the first time in nearly 30 years, the Garden Center applied for exemption from ad valorem property taxes in 1996 upon notice of reassessment issued by the Cobb Board of Tax Assessors doubling its taxes.

The Garden Center's Articles of Incorporation and Bylaws provide {239 Ga. App. 741} that its objective is to "receive gifts and grants of money and property of every kind and to administer the same for charitable, educational, civic, and philanthropic uses and to do anything necessary and proper for the accomplishment of these purposes." Programs and projects promoted by the Marietta Garden Center include:

Continuing education; Close association with other members to foster ideas and ideals; Growing and exhibiting flowers, fruits, and vegetables; Environmental studies; Beautification of parks, schools, etc.; Assisting other civic clubs in their projects[;] Paper drives for revenue and conservation of trees; Tour of homes, showing tasteful decorations[;] Planning lovely lawns and gardens; Flower Show Schools, Landscape Design Schools and Gardening Study Courses; A library of all phases of garden club activities; and Establishing woodland trails for the blind.

The Marietta Council of Garden Clubs, Inc. (the "Council") operates and maintains the Garden Center "for the benefit of the member clubs and the community." The Council's bylaws also pertinently provide:

The objects of the Council shall be to coordinate the interests of the Garden Clubs of Marietta and Cobb County; to bring them into close relations for mutual helpfulness by association, conference and correspondence; to promote the love of gardening; to promote the study of horticulture; to protect our native trees, wild flowers and birds; and to encourage civic beautification, conservation and pollution control.

The Council assesses its 34 affiliated garden clubs annual dues of $ 5 per year per club member. Additionally, except in the month of January, the Council rents the Garden Center for weddings, social events, and other activities. Income derived from rental fees is used directly to offset expenses incurred in operating and maintaining the Garden Center. The Center was rented 51 times in 1995; 56 times in 1996; and 51 times in 1997. For 1995, the Garden Center's rental income was $ 59,450 or 87.5 percent of its 1995 budget. In 1996, rental income was $ 48,331 or

87.8 percent of that year's budget. In 1997, rental income as a percentage of the annual budget, was 72.4 percent or $ 60,700.

No private shareholder, person, or entity benefits from any of the fees collected by the Garden Center. When the Garden Center is not rented, it is used as a monthly meeting place for member garden clubs and club activities, rent free. While the public may not use the {239 Ga. App. 742} Garden Center on a no-fee basis, the visiting public is allowed to tour its buildings and grounds without charge.

The superior court granted the Marietta Garden Center's cross-motion for summary judgment and denied the Board's motion for summary judgment, concluding that: (a) the Board violated the equal protection doctrine of the Georgia and United States Constitutions taxing the property of the Garden Center while exempting like property of another owner; and (b) the Garden Center qualified as an institution of purely public charity whose property was entitled to exemption from taxation under O.C.G.A. 48-5-41 (a) (4). Held:

In two related enumerations of error, the Board complains of the grant of the Garden Center's cross-motion for summary judgment and the denial of its own motion, arguing the Garden Center failed to preserve its equal protection claim on appeal and failed to establish its status as a purely public charity entitled to exemption from ad valorem property taxation.

1. The record reflects the Garden Center first raised its equal protection claim in support of its motion for summary judgment in the superior court, arguing the Board's grant of tax exemptions to the Young Men's Christian Association and the Young Women's Christian Association as institutions of purely public charity as to their{521 S.E.2d 895} Cobb County properties entitled the Garden Center to similar tax treatment.

Where the taxpayer appeals an assessment of the Board of Tax Assessors to the Board of Equalization, and from the decision of the latter to the superior court for a de novo hearing [O.C.G.A. 48-5-311 (g)], he is not permitted to raise in the superior court appeal issues which were not raised in the original appeal to the Board of Equalization. Camp v. Boggs, 240 Ga. 127 (1) (239 S.E.2d 530) (1977).Mundy v. Clayton County Tax Assessors, 146 Ga. App. 473 (2) (246 S.E.2d 479).

The Garden Center's notice of appeal to the Board 1 failed to raise the matter of the denial of equal protection as entitling it to exemption {239 Ga. App. 743} from taxation as a purely public charity under O.C.G.A. 48-5-41 (a). Consequently, the Garden Center failed to preserve its equal protection claim on appeal, whether to the Board or thereafter to the superior court. Since the Garden Center's equal protection claim was not before the superior court for de novo review of the parties' contentions before the Board of Equalization, the trial court lacked authority to rule the Garden Center had been denied equal protection as a basis for granting its cross-motion for summary judgment. Camp v. Boggs, 240 Ga. 127 (1), 128, supra.

2. The Board contends the Garden Center is not a purely public charity entitled to exemption from ad valorem taxation, arguing the Garden Center fails to meet the controlling three-prong test established by York Rite Bodies &c. of Savannah v. Bd. of Equalization of Chatham County, 261 Ga. 558 (2) (408 S.E.2d 699)."In determining whether property qualifies as an institution of 'purely public charity' as set forth in O.C.G.A. 48-5-41 (a) (4), three factors must be considered and must coexist. First, the owner must be an institution devoted entirely to charitable pursuits; second, the charitable pursuits of the owner must be for the benefit of the public; and third, the use of the property must be exclusively devoted to those charitable pursuits." York Rite Bodies

&c. of Savannah v. Bd. of Equalization of Chatham County, 261 Ga. 558 (2)[, supra].Institute of Nuclear Power Operations v. Cobb County Bd. of Tax Assessors, 236 Ga. App. 48, 51 (1) (510 S.E.2d 844).

The Garden Center urges its entitlement to ad valorem tax exemption in that: (a) its articles of incorporation and bylaws are directed at charitable purposes; (b) its programs and activities in the Marietta-Cobb County community are charitable in nature; (c) its restored property, an historical landmark, is open to the touring public in addition to its dues-paying membership and those renting the property for use as a reception facility; and (d) its rental income is used exclusively to offset operations and maintenance expenses.

"'A familiar meaning of the word "charity" is almsgiving, but as used in the law it may include "substantially any scheme or effort to better the condition of society or any considerable part of it." (Cit.) "'Charity,' as used in tax exemption statutes, is not restricted to the relief of the sick or indigent, but extends to other forms of philanthropy or public beneficence, such as practical enterprises for the good of humanity, operated at moderate cost to the beneficiaries, or enterprises operated for the general improvement and happiness {239 Ga. App. 744} of mankind." 61 CJ 455, 505,' Tharpe v. Central Ga. Council, B.S.A., 185 Ga. 810, 814 (196 S.E. 762, 764, 116 A.L.R. 373)." Peachtree on Peachtree Inn v. Camp, 120 Ga. App. 403, 409 (170 S.E.2d 709). But of the infinite charities that deserve{521 S.E.2d 896} the plaudits of mankind, our law "restricts tax exemption of institutions of charity to those and those only that are 'purely' charitable and also that are 'public' charity." United Hosp. Svc. Assn. v. Fulton County, 216 Ga. 30, 32 (114 S.E.2d 524).Institute of Nuclear Power Operations v. Cobb County Bd. of Tax Assessors, 236 Ga. App. at 52, supra.

The test of whether property is exempt from taxation . . . as an institution of "purely public charity" is not whether the owner is an organization of purely public charity, but whether the property is dedicated to charity and used exclusively as an institution of "purely public charity." Tharpe v. Central Ga. Council of Boy Scouts of America, 185 Ga. 810 (196 S.E. 762, 116 ALR 373). That the organization is non-profit, is not used for commercial purposes, and its charter declares it to be a charitable and benevolent institution, do not make it a charitable institution. Mu Beta Chapter Chi Omega House Corp. v. Davison, 192 Ga. 124 (14 S.E.2d 744). Nor does the fact that it may serve a benevolent purpose make it such. Taylor v. Trustees of Jesse Parker Williams Hospital, 190 Ga. 349 (9 S.E.2d 165). See United [Hosp. Svc.] Assn. v. Fulton County, 216 Ga. 30[, supra].Historic House Museum Corp. v. Camp, 223 Ga. 510, 511 (156 S.E.2d 361).

Certainly no one would dispute that the Garden Center's contribution to aesthetics and appreciation for the environment in Marietta and Cobb County benefits all who visit the Garden Center. Nevertheless, in our view, such benefit to the public must inevitably be regarded as subordinate to those benefits the Garden Center provides the memberships of 34 member clubs through the free use of its facilities and those renting them. Historic House Museum Corp. v. Camp, 223 Ga. 510, 156 S.E.2d 361, supra.

The Garden Center's reliance on Chatham County Bd. of Tax Assessors v. Southside Communities Fire Protection, 217 Ga. App. 361, 365 (457 S.E.2d 267), and Elder v. Henrietta Egleston Hosp. for Children, 205 Ga. 489, 492 (53 S.E.2d 751), for the proposition that rental income does not foreclose entitlement to exemption from ad valorem taxes as a purely public charity is misplaced. The Garden {239 Ga. App. 745} Center correctly notes that the evidence in these cases showed exemption from ad valorem taxation despite the use of property for the production of money used thereafter only to offset expenses. Unlike the circumstances in the case sub judice, the services provided by those charities were provided to "all" 2 requiring assistance,

rather than as incident to status as a dues-paying member or private person having purchased a service for a fee. Inasmuch as the undisputed evidence of record shows the contrary in the case sub judice, we conclude the Garden Center is not dispensing purely public charity. In the context of the three-prong test established by York Rite, supra, the evidence shows that the payment of member club dues and rent to the Garden Center results in the provision of substantial services and benefits not available to the general public, that is, the free use of the Garden Center to dues-paying member clubs and{521 S.E.2d 897} their memberships in support of a wide variety of club activities and programs and the use of the facility to non-members paying a rental fee. To the extent this is true, the Garden Center may neither be deemed entirely engaged in charitable pursuits nor its charitable pursuits deemed purely public. For the same reasons, it follows that the Garden Center's property is not used exclusively for charitable objectives. Since the Garden Center failed to meet the three-prong test of York Rite, supra, the superior court erred in determining the Garden Center was purely a charitable institution entitled to exemption from ad valorem taxes. Under the undisputed facts, the superior court further erred in denying the Board's motion for summary judgment.

Judgment reversed. Andrews, P. J., concurs. Ruffin, J., concurs specially.

Concur

I concur fully with Division 2 of the majority opinion, holding that the Garden Center does not qualify as a "purely public charity" so as to be entitled to an exemption from ad valorem taxation. I also agree that the trial court erred in relying on the Garden Center's equal protection argument as a basis for its ruling, but write separately to express my reasoning on this issue. 1 In Camp v. Boggs, 240 Ga. 127, 128 (1) (239 S.E.2d 530) (1977), the Supreme Court noted that Code Ann. 92-6912 (5) (A) (now O.C.G.A. 48-5-311 (e) (1)) allowed a taxpayer, in an appeal to a county board of equalization, to raise '"matters of taxability, uniformity of assessment, and value.'" The Court further noted that (1) the statute required the notice of appeal to '"specifically state the grounds for appeal,'" (2) the board of equalization was required to specifically decide in writing all questions presented to it, and (3) the statute allowed the taxpayer to appeal decisions of the board of equalization to the superior court. Id. The Supreme Court construed the statute to mean that a taxpayer may not, in an appeal to the superior court, assert a different basis for appeal from that raised before the board of equalization. Thus, for example, where the sole issue presented to the board of equalization is the taxability of the subject property, the taxpayer may not raise the separate issue of uniformity of assessments in a de novo appeal to the superior court.

Since the Supreme Court's decision in Camp, the statute has been amended to delete the requirement that a notice of appeal to the board of equalization '"specifically state the grounds for appeal.'" See Ga. L. 1990, pp. 1361-1362, 1. The statute now provides that [a] written objection to an assessment of real property received by a county board of tax assessors stating the location of the real property and the identification number, if any, contained in the tax notice shall be deemed a notice of appeal by the taxpayer under the grounds listed in paragraph (1) of this subsection[, i.e., taxability, uniformity of assessment, and value]. (Emphasis supplied.) O.C.G.A. 48-5-311 (e) (2) (A). Under the current statute, therefore, where a taxpayer files a proper notice of appeal without specifying the grounds for the appeal, the notice of appeal is deemed to raise each of the three statutory grounds. {239 Ga. App. 747} In this case, however, the notice of appeal filed by the Garden Center clearly indicated that the only ground for appeal was the taxability of the subject property. The Garden Center admits in its appellate brief that its appeal to the board of equalization was based on the issue of taxability. Moreover, its notice of appeal to the superior court also indicated that the only

issue raised was taxability. Accordingly, it is clear that the only issue presented to the board of equalization for decision was the taxability of the subject property. The Garden Center concedes that, under Camp, a taxpayer may not appeal to the{521 S.E.2d 898} board of equalization based on one of the three statutory grounds and then raise a different ground on appeal to the superior court. However, it asserts that its equal protection argument in fact relates to the issue of taxability that was presented to the board of equalization. This assertion is without merit.

Reduced to its essence, the Garden Center's equal protection argument is as follows: (1) regardless of whether the Garden Center meets the criteria for a "purely public charity" as set forth in York Rite Bodies &c. of Savannah v. Bd. of Equalization of Chatham County, 261 Ga. 558 (2) (408 S.E.2d 699) (1991), two other entities in allegedly similar circumstances were previously approved for tax-exempt status by the Cobb County Board of Tax Assessors; (2) by not giving the Garden Center tax-exempt status, the board of tax assessors unlawfully treated the Garden Center differently from similarly situated taxpayers. The success or failure of the Garden Center's equal protection argument thus turns not on whether the Garden Center in fact meets the criteria for a "purely public charity," but on whether it is unlawful to treat the Garden Center differently from other similarly situated taxpayers. It is thus clear that the Garden Center's equal protection argument is in fact a challenge to the uniformity of the Board's assessments rather than to the taxability of the Garden Center's property. The fact that the equal protection argument is couched in constitutional terms does not change the analysis, as county boards of equalization are authorized to consider constitutional challenges to tax assessments. See Vann v. DeKalb County Bd. of Tax Assessors, 186 Ga. App. 208, 210 (1) (367 S.E.2d 43) (1988). As the Supreme Court noted in Delta Air Lines v. Coleman, 219 Ga. 12, 19 (4) (131 S.E.2d 768) (1963),the discrimination in taxation which the equal protection clauses forbid is the failure of the taxing authorities to tax all like property which is subject to taxation equally or to tax the property of one owner and exempt like property belonging to another owner.

That the Garden Center's equal protection argument does not in {239 Ga. App. 748} fact go to the taxability of its property is made more clear when we consider that county boards of equalization have ample authority to remedy deficiencies in the uniformity of assessments required by the Constitution, including the authority to order the entire digest recompiled if such action is necessary to obtain uniformity. Butts County v. Briscoe, 236 Ga. 233, 235 (1) (223 S.E.2d 199) (1976). See also O.C.G.A. 48-5-311 (d) (2). Thus, even if the Garden Center could show that it was treated differently from a similarly situated taxpayer, this would not automatically lead to the conclusion that its property was not taxable. As the majority correctly notes in Division 2, the Garden Center does not meet the criteria for a purely public charity as laid down by the Supreme Court in York Rite Bodies, supra. Had the Garden Center raised the issue of uniformity before the board of equalization, and established that it was treated differently from other similarly situated taxpayers, the Board could have remedied the situation by reexamining the taxability of the other taxpayers' property, rather than by giving the Garden Center an unauthorized tax exemption. Because the Garden Center's equal protection argument is in fact a challenge to the uniformity of the Board's assessments rather than a challenge to the taxability of the subject property, and because the issue of uniformity was not presented to the board of equalization for decision, I agree with the majority that the trial court erred in considering such issue in ruling on the parties' motions for summary judgment.

ATLANTA ARTISTS CENTER, INC. v. FULTON COUNTY BOARD OF ASSESSORS.
COURT OF APPEALS OF GEORGIA
July 19, 2000, Decided

Opinion

The primary question for decision in this case is whether a facility owned and operated by the Atlanta Artists Center, Inc. (AAC) constitutes a building "erected for and used as a college, incorporated academy, or other seminary of learning," thereby entitling it to an ad valorem tax exemption under O.C.G.A. 48-5-41 (a) (6). We conclude that it does not.

The Fulton County Board of Tax Assessors denied AAC's application for a tax exemption. AAC appealed to the Fulton County Board of Equalization. In the appeal, AAC also complained of the valuation of the property and a lack of uniformity in assessment based on assessments against real properties of similar educational institutions.

After the Board of Equalization rendered a decision adverse to it, AAC appealed to the Fulton Superior Court. AAC moved for summary judgment on the issue of its tax-exempt status. The Board of Assessors filed a cross-motion for summary judgment, asserting that the sole issue in this case is the taxability of the subject property. {245 Ga. App. 254} AAC responded to the cross-motion, stating that there are issues of uniformity of taxation and valuation as well as taxability. The superior court found that the property is not tax exempt and awarded complete summary judgment to the Board.

The evidence shows that AAC is a nonprofit, nonstock corporation recognized by the Internal Revenue Service as exempt from federal income taxes. It is supported by membership dues and voluntary contributions. The object of the corporation, as set{537 S.E.2d 702} forth in its charter application, is the advancement of artistic standards for its members and the community, promotion of the general welfare and good fellowship among artists, assistance in the cultural advancement of the community, and other charitable activities. AAC's facility, known as the Atlanta Arts Center, is located on Grandview Avenue in Atlanta. At the center, a library is maintained, art meetings are conducted at which art teachers or instructors make educational presentations, and off-site educational activities are coordinated.

AAC maintains that the center is entitled to a 90 percent tax exemption because it is used 90 percent of the time for "sketch groups," which are offered to members and nonmembers. One of AAC's officers, who is also a professional artist, testified that only persons who have an innate and natural ability to form perceptions and translate the form of animate and inanimate objects to paper or canvas can become artists; that only those who have developed this ability can be taught artistic techniques; and that development of this ability is achieved through sketching, which improves through practice and is self-taught. Aspiring artists learn of AAC sketch groups through word of mouth, art teachers in high schools and colleges, and artists. Fees range from $ 2 to $ 5 dollars. Sketching sessions are held throughout the year. There are no teachers or students. There is no grading, curriculum, or degree program. Held:

1. It is the use to which property is put that determines the question of exemption from taxation under O.C.G.A. 48-5-41 (a) (6). 1 We construe this statute by giving the words used in it their ordinary and everyday meaning. 2

The ordinary and everyday meaning of "college" is a school of higher learning that grants a bachelor's degree in liberal arts or science or both and may include a technical or professional school. 3 An "academy" is ordinarily understood as meaning a secondary or college-preparatory school. 4 A "seminary" is ordinarily thought of simply {245 Ga. App. 255} as a school, especially a theological school for the training of members of the clergy. 5 According to ordinary understanding, a school is an institution in which teachers instruct students. 6

Consistent with these meanings, J.A.T.T. Title 7 held that a four-year post-high school trade school qualified for a property tax exemption. Camp 8 held that a building owned by a society of physicians and used for the continuing education of members and for the meetings of various civic organizations and medical professional groups did not qualify for an exemption. American Institute of Indus. Engineers v. Chilivis 9 held that the national headquarters for an organization composed of industrial engineers and dedicated to the purpose of advancing engineering knowledge was not tax exempt.

The latter two cases show that use of a building for some educational purpose does not necessarily qualify it for a tax exemption. At a minimum, the building must be a place where teachers instruct students. A building in which aspiring artists develop their abilities by practicing their craft does not qualify. The superior court did not err in granting summary judgment to the Board on the issue of taxability.

2. The court did, however, err in awarding full summary judgment to the Board in view of the unresolved issues relating to property valuation and uniformity of assessment.

Johnson, C. J., and Smith, P. J., concur.

J.A.T.T. TITLE HOLDING CORPORATION v. ROBERTS et al.
Supreme Court of Georgia
September 23, 1988, Decided

Opinion

We granted certiorari to determine whether the property owned by a non-profit corporation comes within the terms of the exemption set forth in O.C.G.A. 48-5-41 (a) (6) for buildings erected for and used as a "seminary of learning." Roberts v. J.A.T.T. Title Holding Corp., 185 Ga. App. 892 (366 S.E.2d 297) (1988).

The Mechanical Trades Institute is located on the property in question, and provides an apprenticeship program in the plumbing and steamfitting-pipefitting industry for persons with high school educations. The program consists of four years of educational training, including more than 800 hours of classroom instruction and almost 7,000 hours of practical training.

1. O.C.G.A. 48-5-41 (a) (6) provides that "all buildings erected for and used as a college, incorporated academy, or other seminary of learning" are exempt from ad valorem property taxes, provided that they are open to the general public, and that they are "not . . . used for the purpose of producing private or corporate profit and income . . . and any income from such property shall be used exclusively for . . . educational . . . institutions." See O.C.G.A. 48-5-41 (b) , (c), (d). This provision is consistent with the constitutional authorization.1

2. The term "seminary of learning" long has been construed to denote educational institutions in general.2 The term appeared in Georgia law as early as the 1700's, as a general reference to educational institutions, as here delineated:

(a) In 1783, the General Assembly authorized the commissioners of Augusta to lay out lots and resell them for the purpose of erecting an "academy or seminary of learning." "And, whereas, a seminary of learning {371 S.E.2d 863} is greatly necessary for the instruction of our youth, and ought to be one of the first objects of attention, after the promotion of religion. . . ." Sec. 4, Act of July 31, 1783. Marbury and Crawford, p. 132.

(b) In 1784 the General Assembly enacted legislation for the endowment of a state university, which was to be a "College or seminary of learning." Cobb's Digest, p. 1082.

(c) The Constitution of Georgia of 1798 contained this provision: "The arts and sciences shall be promoted in one or more seminaries of learning. . . ." Art. 4, Sec. 13. Cobb's Digest, p. 1125.

3. The term first was applied to tax exemptions in the 1870's, when statewide public education was required in Georgia. The language employed was identical to that of the current statute and constitution.3

4. The resolution of the tax exempt status of "buildings erected for and used as a college, incorporated academy, or other seminary of learning" has been determined by the use made of the property, and not by any specific definition of terms. Trustees of Richmond Academy v. Bohler, 80 Ga. 159, 163-4 (7 S.E. 633) (1887). 4 Thus while an {258 Ga. 521} educational institution may be exempt, some of its grounds and buildings may be taxed if those grounds or buildings generate a private profit. Mundy v. Van Hoose, 104 Ga. 292 (30 S.E. 783) (1898); Rabun Gap-Nacoochee School v. Thomas, 228 Ga. 231 (184 S.E.2d 824) (1971). 5

5. The term "seminary of learning," as applied in its general meaning, does not exclude an institution such as the Mechanical Trades Institute. We decline to import into the meaning of the term any of the restrictions6 suggested by the taxing authority. To do so would be unduly to enlarge upon constitutional and statutory pronouncements, and, worse, to convert the tax commissioner into the supervisor of curricula for every educational institution within the taxing jurisdiction.

6. The record does not show that the use made of the property by the Institute failed to comply with the constitutional and statutory requirements for exemption from taxation. The trial court's order finding entitlement to the exemption was correct.

Judgment reversed.

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S10A0905. MASTERS v. DEKALB COUNTY BOARD OF TAX ASSESSORS.

MELTON, Justice.

In 1978, Sandra H. Masters and her husband purchased a home in DeKalb County, and they lived there with their children until they separated in 1992. At that time, Masters' husband moved out of the house, and Masters remained. The parties have lived separately since 1992, but they have never divorced. In 1998, Masters' husband deeded his interest in the house to Masters, and she applied for and received a homestead exemption on the property the following year. Meanwhile, by 2001, Masters' husband had acquired another home in Glynn County, and he applied for and received a homestead exemption on that property as well.

In 2008, the DeKalb County Board of Tax Assessors (Board) learned about the Glynn County homestead exemption, and the Board decided to rescind Masters' DeKalb County exemption retroactively. The Board then charged Masters with back taxes for the years 2002 through 2007. In addition, the Board

prohibited Masters from receiving any future homestead exemption on the DeKalb property as long as one existed on the Glynn County property of Masters' husband. Although Masters paid the back taxes assessed against her, she subsequently filed suit against the Board, contending, among other things, that the statute providing for homestead exemptions is unconstitutional based on equal protection grounds. The trial court granted summary judgment in favor of the Board, and Masters appeals. For the reasons set forth below, we reverse.

1. Masters contends that, because Section 48-5-40 (1) (A) (i) of the homestead exemption statute defines an applicant, in part, as a "married individual living with his or her spouse," a married couple who live in separate residences cannot apply for a homestead exemption. As a result, Masters contends that the statute contains an equal protection violation. As the trial court found, however, the homestead statute treats all married persons equally. There is no question that the statute was intended to afford one exemption to all married couples, whether living together or separately. The statute clearly states: "Only one homestead shall be allowed to one immediate family group." OCGA § 48-5-40 (1) (G). A husband and wife qualify as such a group. Furthermore, the statute explicitly indicates that a homestead subject to an exemption may

include a home "[w]here a husband *or* wife occupies a dwelling and the title of the homestead is in the name of the wife." (Emphasis supplied.) OCGA § 48-5-40 (1) (E). In addition, the statute defines a home "[o]ccupied primarily as a dwelling" to mean that an "applicant or members of his family occupy the property as a home." OCGA § 48-5-40 (6) (A). Both of these provisions contemplate that a home inhabited by a married person separated from his or her spouse may be subject to a homestead exemption. The partial definition of applicant in OCGA § 48-5-40 (1) (A) (i) does not alter this fact. Contrary to Masters' arguments, the statute does not prevent a married person living separately from his or her spouse from applying for a homestead exemption, and, as shown by the provisions above, the statutory text presumes that married persons living separately will have the same rights to an exemption as those living together. Therefore, the statute extends one exemption to each married couple, whether living together or separately, and, as a result of this equal treatment of all married couples, Masters' equal protection argument necessarily fails. See, e.g., Copeland v. State, 268 Ga. 375 (3) (490 SE2d 68) (1997).

2. This does not mean, however, that Masters' homestead exemption was properly taken away from her. Under the analysis of the Board, Masters' pre-

existing homestead exemption was automatically nullified by her husband's later request and approval for a homestead exemption on a different house in a different county. This does not automatically follow from a finding that any married couple is entitled to only one homestead exemption, especially under facts like those currently before us. To the contrary, the facts here show that the homestead exemption on the home in which Masters resided had been in place for at least four years before her husband filed for a second homestead exemption on his home. In addition, there was no mutual intent between the parties to transfer the homestead exemption to another county; instead, Masters' husband intended to create a new, additional exemption. Under these circumstances, there is no legal authority to allow Masters' husband, years later, to nullify the pre-existing exemption. In other words, at the time that Masters' husband applied for a homestead exemption, there was already a valid exemption in place. As a result, the exemption request of Masters' husband should not have been honored, and Masters' valid, pre-existing homestead exemption should not have been rescinded by the Board. Therefore, the trial court's ruling in this case must be reversed.

Judgment reversed. All the Justices concur, except Benham, J., who

dissents.

BENHAM, Justice, dissenting.

I respectfully dissent because I disagree with Division 2 of the opinion which reverses the trial court's grant of summary judgment in favor of appellee. In Division 2, the majority creates a rule neither contemplated by the homestead statute nor called for by the issues raised on appeal.[1] Instead of simply determining the issues raised, the majority has decided to reverse the trial court based on what Glynn County "should have" done with regard to its administration of homestead exemptions. Specifically, the majority concludes that DeKalb County's act of rescinding the homestead exemption on the DeKalb County property in which appellant resides was erroneous because Glynn County should not have "honored" husband's homestead application based on the fact appellant's residence had the exemption during the four years prior to husband's application. In effect, the majority has created an equitable rule awarding the right of the homestead exemption to the property of the estranged spouse who first obtained such an exemption.

One problem with this result is the fact that neither Glynn County nor Mr. Masters are parties to this lawsuit. Indeed, the trial court did not make any determinations regarding their actions, but only determined that the homestead statute was constitutional and that the Masters were a "family group" such that

[1]Appellant has only challenged the constitutionality of the homestead statute and the definition of the term "family group" therein.

they were only entitled to one homestead exemption. The majority's reversal does nothing to rectify the underlying problem at hand because, when appellee reinstates the homestead exemption on appellant's residence, as the majority opinion seemingly obliges it to do, the Masters will again have two homestead exemptions which the majority agrees in its Division 1 is not permitted by the homestead statute.

The majority is overreaching in its effort to resolve the matter as a response to Mr. Masters' implied bad behavior of causing the "nullification"[2] of the exemption on appellant's DeKalb County residence. The majority overlooks the fact that, because the Masters are married, the homestead exemption on the Glynn County property, which presumably is marital property, is as much appellant's homestead exemption as it is her husband's. The alleged estrangement[3] that causes the Masters to be unable or unwilling to decide for themselves which of their properties they will apply their one homestead exemption does not justify denying DeKalb County the ability to administer the homestead exemption in compliance with the homestead statute.[4] Nor do the vagaries of the couple's purported estrangement justify this Court making

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[2]Although Mr. Masters is not a party to this case, the majority takes issue with his being able to "nullify the pre-existing exemption" without authority.

[3]Given the fact that the appellant is employed by her husband in his private tax business and that her husband is a certified public accountant, I find it difficult to believe that the couple is so completely estranged that they cannot make basic tax-related decisions.

[4]The majority does not explain how or why DeKalb County would have authority over Glynn County's administration of the homestead exemption, or vice versa.

equitable rulings beyond the scope of the issues raised on appeal. Since DeKalb County became aware that the Masters had two homestead exemptions and the law does not allow such, it was entitled to rescind the homestead exemption on the DeKalb County property. Accordingly, I would affirm the trial court's grant of summary judgment to appellee.

Decided November 22, 2010.

OCGA § 48-5-40; constitutional question. DeKalb Superior Court. Before Judge Hunter.

Richard J. Dreger, Kenneth P. Robin, for appellant.

Duane D. Pritchett, Stephen E. Whitted, for appellee.

BLEVINS v. DADE COUNTY BOARD OF TAX ASSESSORS

S10A1083
SUPREME COURT OF GEORGIA.
November 1, 2010

Opinion: Justice Nahmias

On April 25, 2002, the General Assembly passed House Bills 918 and 919, which provided for local homestead exemptions for Dade County, subject to the approval of Dade County voters. House Bill 918 established a homestead exemption from certain Dade County ad valorem taxes for county purposes in an amount equal to the amount by which a residential property's current year assessed value exceeds the base year assessed value. House Bill 919 established a similar homestead exemption from certain Dade County School District taxes for educational purposes. The base year under the bills "is the taxable year immediately preceding the taxable year in which the [homestead] exemption is first granted to the most recent owner of [the] homestead." The bills therefore generally establish acquisition value tax exemptions. The exemptions are available to homeowners only, and they apply only to a taxpayer's primary residence and not more than three contiguous acres of land immediately surrounding the residence. The exemptions do not apply to taxes assessed on "improvements to the homestead" or to land that is added to the homestead after July 1 of the base year. Dade County voters approved the homestead exemptions on November 5, 2002.

Appellant Rex Blevins owns land in Dade County but not a home that qualifies for the exemptions. He brought this action, challenging the constitutionality of the homestead exemption bills on several grounds. The trial court ruled against Blevins's claims, and he appealed. We now affirm.

1. Blevins contends that the tax exemptions violate the Uniformity Clause of the Georgia Constitution, which provides that "all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." Ga. Const. of 1983, Art. VII, Sec. I, Para. III (a). In addition, Paragraph III (b) provides that, with limited exceptions not applicable here, "the classes of subjects for the taxation of property shall consist of tangible property and one or more classes of intangible personal property."

To support its position that the tax exemptions do not violate the Uniformity Clause, the Dade County Board of Tax Assessors relies on cases that hold that, "[w]here uniformity of taxation is involved, reasonableness of classification is all that is required." Chanin v. Bibb County, 234 Ga. 282, 290 (216 S.E.2d 250) (1975). Accord Lake Lanier Theatres v. Hall County, 229 Ga. 54, 55-56 (189 S.E.2d 439) (1972). These cases, however, did not involve "tangible property." See Chanin, 234 Ga. at 287-290 (excise taxes); Lake Lanier Theatres, 229 Ga. at 55-56 (business license taxes); Wright v. Hirsch, 155 Ga. 229, 235-242 (116 S.E. 795) (1923) (occupation taxes).

By contrast, the Constitution creates "tangible property" as a single class of property. See Art. VII, Sec. I, Para. III (b). "Tangible property" includes real and personal property, and "the General Assembly has no authority to establish different classes or subclasses of tangible property other than as fixed by the [Constitution.]" Griggs v. Greene, 230 Ga. 257, 263-264 (197 S.E.2d 116) (1973). See also Benson-Corwin, Inc. v. Cobb County School Dist., 239 Ga. 199, 200 (236 S.E.2d 361) (1977) (holding that real and personal tangible property "constitutes a single class of property and must be assessed and taxed alike"). The types of tangible property

that may be separately classified and subclassified by the General Assembly under the Uniformity Clause are listed in subsection (b) of Article VII, Section I, Paragraph III and are inapplicable in this case.

Thus, the Uniformity Clause itself does not permit the classification and subclassification of the "tangible property" involved in this case. Nevertheless, we conclude that the Dade County homestead exemptions are constitutional under one of the Tax Exemption Clauses of our Constitution. See Ga. Const. of 1983, Art. VII, Sec. II, Para. II. Tax exemptions in general are at odds with the equality of taxation sought by the Uniformity Clause. See Southwestern Bell Tel. Co. v. Combs, 270 SW3d 249, 263 (Tex. App. 2008) (holding that "exemptions from taxation are subject to strict construction because they place a greater burden on other tax-paying businesses and individuals rather than placing the burden on all taxpayers equally. . . . As such, tax exemptions are 'the antithesis of equality and uniformity.'" (citation omitted)); Gilman v. Sheboygan, 67 U.S. 510, 517 (17 L. Ed. 305) (1863) ("'It cannot be denied that under the power of exemption unjust enactments in respect of the power of taxation might be made. But those who framed the [Wisconsin] Constitution did not see fit to prevent such evils by depriving the Legislature of the power.'" (citation omitted)).

The Georgia Constitution, however, expressly authorizes statewide tax exemptions that are inconsistent with uniformity and equality in taxation of tangible property. Article VII, Section II, Paragraph II (a) (1) permits the General Assembly to provide for a broad range of exemptions of property from ad valorem taxation if the "exemption is approved by two-thirds of the members elected to each branch of the General Assembly and by a majority of the qualified electors of the state voting in a referendum thereon." Pursuant to this authority, the General Assembly has approved, for example, homestead exemptions for each resident of the State who owns and occupies a home as a residence, OCGA 48-5-44; additional homestead exemptions for each person who is 65 years of age or older, OCGA 48-5-47, and for disabled veterans, OCGA 48-5-48; and exemptions for qualified farm products, OCGA 48-5-41.1. The General Assembly has also provided a homestead exemption for individuals 62 or older with annual incomes not exceeding $ 30,000 that is calculated in the same fashion as the exemptions in this case. See OCGA 48-5-47.1 (a) (3) and (b) (authorizing an exemption equal to the amount by which a property's current year assessed value exceeds the value for the taxable year immediately preceding the taxable year in which the exemption was first granted to the resident, with the exemption applying only to five acres of land immediately surrounding the residence and not applying to improvements to the property or to land added to the property after the base year).

In contrast to the number of statewide tax exemptions the General Assembly, along with the citizens, may approve, Article VII, Section II, Paragraph II (a) (2) of the Constitution permits only one exemption -- for a homestead -- to be enacted by local law, and it must be approved by the General Assembly and "by a majority of the qualified electors residing within the limits of the taxing jurisdiction voting in a referendum thereon." Over the years, the General Assembly has approved and local voters have ratified many local homestead exemptions like those in this case. See, e.g., Ga. L. 2006, p. 4636 (Dekalb County); Ga. L. 2002, p. 5858 (Walton County). This Court must construe the Georgia Constitution to make its parts harmonize and to give sensible meaning to each of them. See Blum v. Schrader, 281 Ga. 238, 241 (637 S.E.2d 396) (2006); Fulton County v. Perdue, 280 Ga. 807, 810 (631 S.E.2d 362) (2006). Construing the Uniformity Clause and the Tax Exemption Clauses of the Constitution in this way, we conclude that the legislature and the voters of this State have the constitutional authority to exempt certain tangible property from taxation even though it creates some nonuniformity of taxation. Any other construction would defeat the constitutional grant of authority to authorize homestead exemptions. See Chicagoland Chamber of Commerce v. Pappas, 378 Ill. App. 3d 334, 880 NE2d

1105, 1125-1132, 317 Ill. Dec. 113 (Ill. App. 2007) (holding that a homestead exemption similar to those provided in Dade County did not violate Illinois's Uniformity Clause); Simmons v. Idaho State Tax Comm., 111 Idaho 343, 723 P2d 887, 890-892 (Id. 1986) (holding that a homestead exemption exempting the lesser of the first $ 50,000 or 50% of the value of an owner-occupied residence did not violate Idaho's Uniformity Clause).

In Simmons, the owners of income-producing property argued that the homestead exemption had the same effect as a tax scheme that initially assessed owner-occupied residences at a lower rate than income-producing property and that Idaho courts had held that such schemes violated Idaho's Uniformity Clause. See id. at 890. But the Idaho Supreme Court held that, "[w]hile the effect of initial assessment of owner-occupied residential property at rates differing from income producing property may differ little in substance from an initial uniform assessment of both properties, followed by a partial exemption of the residential property, the state constitution contemplates such a distinction." Id.

The Georgia Constitution contemplates the same distinction. We note that the hurdles to creating a local homestead tax exemption -- a decision of the General Assembly to place the matter before the affected voters and then voter approval of the proposed exemption -- provide much greater protection for citizens than a system that would permit every local tax authority to make its own unilateral decision, with no input from the taxpayers, to impose different assessment rates on different types of tangible property. Thus, Benson-Corwin, on which Blevins relies, is inapplicable. There, Benson-Corwin's property was annexed into the City of Marietta from the unincorporated area of Cobb County, and the assessed value of its property was increased. See 239 Ga. at 199. Benson-Corwin argued that the assessed value of its property should have been frozen when it was annexed into the City. See id. This Court disagreed, holding that permitting the local tax authority to freeze the assessed value would violate the Uniformity Clause. See id. at 200. Because Benson-Corwin did not involve a tax exemption enacted pursuant to another provision of the Constitution, it is inapplicable.

For these reasons, we conclude that the Dade County homestead exemptions do not violate the Uniformity Clause. *1*

2. Blevins contends that the school tax exemption will result in homestead property in Dade County being valued at below its correctly "assessed value" and that it therefore violates Article VIII, Section VI, Paragraph 1 (a) of the Georgia Constitution, which provides that the fiscal authority of a board of education "shall annually levy [the school] tax upon the assessed value of all taxable property within the territory served by said school system." Blevins correctly notes that we have interpreted the term "assessed value" in this context to mean "the correctly assessed value (i.e., the assessed value approved by the revenue commissioner), not an incorrectly assessed value." Bd. Of Commrs. of Newton County v. Allgood, 234 Ga. 9, 17 (214 S.E.2d 522) (1975). However, contrary to Blevins's argument, the school tax exemption does not result in homestead property being valued at below its correctly assessed value. Instead, under Article VIII, Section VI, Paragraph I (a), the Dade County School District first levies the school tax on the correctly "assessed value" of homestead property in the county. Then, under the separate constitutional authority for the homestead exemptions, the homeowners' school tax liability is reduced by the amount of the exemption. Although the effect of this scheme may differ little in its result from a scheme in which the school tax is directly levied on the "base year assessed value" of the homestead property, with no exemption thereafter reducing the taxpayer's liability, "the state constitution contemplates such a distinction." Simmons, 723 P2d at 890. See also Blum 281 Ga. at 241 (explaining that courts must construe our Constitution to make its parts harmonize and to give sensible meaning to each of them); Columbus-Muscogee County, 276 Ga. at 334 n.2

(holding, after concluding that the freezing of a homestead property's value for ad valorem tax purposes at the fair market value on the date the homestead was acquired or one several alternative dates did not violate the Uniformity Clause, that there was also no merit to the contention that the homestead freeze violated Article VIII, Section VI, Paragraph 1 (a)).

For these reasons, we reject Blevins's contention that the school tax exemption violates Article VIII, Section VI, Paragraph 1 (a).

3. Blevins argues that the phrase "improvements to the homestead" is facially vague and may result in arbitrary decisions by Dade County's tax appraisers. "To withstand an attack of vagueness or indefiniteness, a civil statute must provide fair notice to those to whom the statute is directed and its provisions must enable them to determine the legislative intent." Jekyll Island-State Park Auth. v. Jekyll Island Citizens Assn., 266 Ga. 152, 153 (464 S.E.2d 808) (1996). Moreover, "[o]utside the First Amendment overbreadth context, a plaintiff can succeed in a facial challenge only by establish[ing] that no set of circumstances exists under which the [statute] would be valid, i.e., that the law is unconstitutional in all of its applications, or at least that the statute lacks a plainly legitimate sweep." Smith v. Baptiste, 287 Ga. 23, 39 (694 S.E.2d 83) (2010) (Nahmias, J., concurring specially) (citation and internal quotation marks omitted).

The terms "improvements" or "improvements to the homestead" are used frequently in our Revenue Code, including in other homestead exemption statutes, and have never been deemed unconstitutionally vague. See, e.g., OCGA 48-5-20 (a) (2) (imposing burden on taxpayer to "file a new timely claim for a homestead exemption . . . or to file a timely return where improvements have been made to the real property since it was last returned for taxation"); OCGA 48-5-47.1(b) (providing that the homestead exemption for persons 62 years of age or older and who have an annual income of less than $ 30,000 does not to "improvements to the homestead"); OCGA 48-5-269 (b) (providing in the context of bona fide conservation use property that "improvements shall have their current use value determined as otherwise provided by law").

Moreover, when determining if work done on property constitutes an "improvement to real property" for purposes of the statute of limitation set forth in OCGA 9-3-51, we have held that "[s]everal factors have arisen as being important to a commonsense analysis of what constitutes an improvement to real property." Mullis v. Southern Co. Services, 250 Ga. 90, 94 (296 S.E.2d 579) (1982) (explaining that the factors are whether the improvement is permanent in nature, whether it adds to the value of the realty for the purposes for which it was intended to be used, and whether the "improvement" is intended to be an improvement to real property or to remain personalty); Armstrong v. Royal Lakes Assocs., 232 Ga. App. 643, 645 (502 S.E.2d 758) (1998) (same). We therefore see no merit to this contention as presented in this case.

4. Blevins argues that the Dade County homestead exemptions violate the Due Process and Equal Protection Clauses of the Georgia Constitution, see Ga. Const. of 1983, Art. I, Sec. I, Paras. I and II, because they create a class of earlier assessed homeowners that obtain more tax relief than later assessed homeowners, treat homeowners more favorably than owners of other types of property, arbitrarily limit the exemption to three acres of land, and arbitrarily preclude a homeowner who initially acquires less than three acres from claiming an exemption for land that he subsequently adds if his total is still not more than three acres.

However, in Columbus-Muscogee County, this Court upheld against due process and equal protection challenges a tax scheme that froze a homestead property's value for ad valorem tax purposes at the fair market value on the date the homestead was acquired or one several alternative dates. See 276 Ga. at 334-338. Applying rational basis review and acknowledging that

a governing body is given particularly wide discretion in drawing classifications for purposes of taxation, we explained that the scheme promoted legitimate governmental purposes including the "encouragement of neighborhood preservation, continuity, and stability, and the protection of reliance interest of existing homeowners." Id. at 335. See also Nordlinger v. Hahn, 505 U.S. 1, 11-12 (112 S. Ct. 2326, 120 L. Ed. 2d 1) (1992) (upholding a similar California tax scheme against due process and equal protection challenges). Likewise, we conclude here that the General Assembly reasonably could have concluded that Dade County's tax exemptions served the governmental purposes recognized in Columbus-Muscogee County and that the limits placed on the exemptions are not arbitrary. See also City of Atlanta v. Spence, 242 Ga. 194, 197 (249 S.E.2d 554) (1978) (holding that a statute limiting the tax exemption of real property owned by a local government outside its territorial jurisdiction to 300 acres was not an arbitrary classification).

Judgment affirmed.
All the Justices concur.

Footnotes

1. In Columbus-Muscogee County Consol. Govt. v. CM Tax Equalization, 276 Ga. 332 (579 S.E.2d 200) (2003), we addressed whether a local constitutional amendment violated the Uniformity Clause. The amendment did not create a homestead exemption but provided, among other things, that homestead property would be valued for ad valorem tax purposes "based upon the fair market value of the property as of January 1, 1983; or as of January 1 of the first year when homestead exemption is allowed and claimed after January 1, 1983; or as of January 1 of the year following the last change of ownership after January 1, 1983, whichever is later." Id. at 332. This Court held that the local constitutional amendment did not violate the Uniformity Clause because it constituted an amendment to the Uniformity Clause and was therefore valid. See id. at 333-334.

FULTON COUNTY BOARD OF TAX ASSESSORS et al. v. MARANI et al. (two cases).

A09A0915, A09A0916
COURT OF APPEALS OF GEORGIA
August 6, 2009

Counsel: Robert D. Ware, Cheryl M. Ringer, Vincent D. Hyman, Carmen R. Alexander, for appellants.
Proctor Hutchins, Robert J. Proctor, Bradley A. Hutchins, Christopher M. Porterfield, for appellees.

OPINION: Judge Phipps

Fulton County property owners Mark and Judith Marani filed a class action against Fulton County, the Fulton County Board of Tax Assessors ("BTA"), various BTA members, and the Fulton County Tax Commissioner (collectively, "the County"), alleging that the County had improperly assessed property taxes without affording taxpayers the required notice and opportunity to appeal. The Maranis sought, among other things, to enjoin the County from collecting these taxes from them and other similarly situated property owners. Following an evidentiary hearing, the trial court certified the class and entered a final judgment granting equitable relief to class members. In Case No. A09A0915, the County appeals the trial court's class certification order, and it challenges the final judgment in Case No. A09A0916. *1* For reasons that follow, we affirm.

The underlying facts are not in dispute. In 2004, the General Assembly passed a local {683 S.E.2d 138} act that granted Fulton County property owners an additional homestead exemption beyond the exemptions set forth in the Georgia Code. *2* The amount of the new exemption varied from parcel to parcel, depending on factors such as the property's assessed value, the structures on the parcel, and the Consumer Price Index. The BTA calculated the exemption for property owners such as the Maranis and applied that calculation to property tax bills issued for 2005, 2006, and 2007.

In 2008, however, the County determined that the BTA had miscalculated the homestead exemption for thousands of property owners. As to certain taxpayers, it had undervalued the exemption, resulting in an overpayment of taxes in 2005, 2006, and 2007. Those taxpayers received refunds in 2008. The County also concluded, however, that it had overvalued the exemption for more than 5,000 property owners, resulting in tax underpayments. That group of {299 Ga. App. 581} owners, which included the Maranis, received tax bills in 2008 assessing additional taxes for 2005, 2006, and 2007. The new bills did not address whether taxpayers had a statutory right to appeal the recalculations to the Fulton County Board of Equalization under OCGA 48-5-311. And when taxpayers contacted the County about the bills, they were told that they had no right to appeal.

Asserting that affected taxpayers had not been afforded proper notice and appeal rights, the Maranis brought this class action suit to challenge the new assessments. The trial court certified a class of taxpayers and entered equitable relief for the class. These appeals followed.

Case No. A09A0915

The appeal in Case No. A09A0915 focuses on the trial court's class certification order. Pursuant to that order, the trial court certified as a class "all taxpayers whose property tax assessments and/or homestead exemptions have been changed for tax years 2005, 2006, 2007, and/or 2008 without first having received adequate legal notice of said changes pursuant to O.C.G.A. 48-5-306 and an opportunity to appeal the same pursuant to O.C.G.A. 48-5-311."

A trial court exercises its discretion in granting class certification, and its decision will be upheld absent abuse of that discretion. 3 Before certifying a class, however, the trial court must make several determinations. Under OCGA 9-11-23 (a), it must find that: (1) the class is so numerous that joinder of all members is impracticable; (2) questions of law or fact are common to the class; (3) the representative parties' claims or defenses are typical of the class members' claims or defenses; and (4) the representative parties will fairly and adequately protect the interests of class members. 4 If the class meets these four requirements - known as numerosity, commonality, typicality, and adequacy - the trial court must then find that the litigation satisfies at least one of the following three grounds outlined in OCGA 9-11-23 (b):

(1) the prosecution of separate actions would create a risk of inconsistent adjudications or would impair other parties' ability to protect their interests; (2) the defendant has acted {299 Ga. App. 582} or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or declaratory relief with respect to the whole class; or (3) questions of law or fact common to members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. 5

1. The trial court determined that the taxpayer class met all four requirements of OCGA 9-11-23 (a) - numerosity, commonality, {683 S.E.2d 139} typicality, and adequacy. On appeal, the County focuses on the commonality requirement, arguing that class members do not share common questions of law and/or fact. Specifically, it contends that because class members are entitled to a unique homestead exemption based on the particular characteristics of their property, common questions do not exist.

The trial court, however, did not address whether the County had properly recalculated the homestead exemptions. It merely considered whether taxpayers had statutory notice and tax appeal rights, a procedural question common to all class members. After finding such rights, the trial court noted that substantive challenges to the calculations would have to be raised through individual taxpayer appeals to the Fulton County Board of Equalization. Simply put, the trial court certified a class solely to consider a common procedural issue - whether the County was required to provide class members with statutory notice of and the right to appeal the exemption recalculations. Accordingly, it did not abuse its discretion in finding commonality. 6

2. The County also argues that the trial court erred in certifying the class because class action litigation was not the best method for resolving this controversy. Although the "superior" method of adjudication is relevant to class certification under OCGA 9-11-23 (b) (3), an appropriate class may pursue class action litigation if it meets any one of the three grounds in OCGA 9-11-23 (b). 7 In this case, the trial court determined that class litigation could proceed under OCGA 9-11-23 (b) (1) or (b) (2). It made no finding with respect to OCGA 9-11-23 (b) (3).

{299 Ga. App. 583} The County has not argued or demonstrated that the trial court erred in certifying the class under OCGA 9-11-23 (b) (1) or (b) (2). Its claim regarding OCGA 9-11-23 (b) (3), therefore, presents no basis for reversal. *8*

Case No. A09A0916

In this appeal, the County challenges the trial court's entry of final judgment and equitable relief. The trial court ultimately found that the County had improperly denied class members their statutory right to notice and appeal under OCGA 48-5-306 and 48-5-311, violated various revenue statutes, and infringed upon the taxpayers' due process rights. It granted the class equitable relief, requiring the County to: (1) provide taxpayers with proper notice of and the right to appeal changes in the homestead exemptions; (2) stop collecting taxes referenced in bills sent without proper notice; and (3) refund any tax money collected based on bills issued without such notice. The trial court also concluded that the County could issue supplemental tax bills relating to the exemptions if it complied with the statutory notice and appeal requirements.

3. On appeal, the County questions the trial court's underlying conclusion that statutory notice and appeal rights attached to the homestead exemption recalculations. It argues that taxpayers had no right to appeal the recalculations under OCGA 48-5-311, which provides in pertinent part:

Any resident or nonresident taxpayer may appeal from an assessment by the county board of tax assessors to the county board of equalization or to an arbitrator or arbitrators as to matters of taxability, uniformity of assessment, and value, and, for residents, as to denials of homestead exemptions. *9*

Asserting that this case involves the correction of a homestead exemption, rather than the denial of an exemption, the County argues that OCGA 48-5-311 does not apply. It also claims that OCGA 48-5-306, which requires the BTA to notify taxpayers {683 S.E.2d 140} of changes to or corrections in taxpayer returns, has no application here. We disagree.

The County's strict interpretation of OCGA 48-5-311 ignores {299 Ga. App. 584} specific language relating to homestead exemptions in OCGA 48-5-49. That Code section authorizes the BTA to determine both a property owner's eligibility for an exemption and the value of the exemption. It then grants property owners "the right of appeal from the decision of the [BTA] to the county board of equalization as provided in Code Section 48-5-311." *10*

The record shows that the BTA reviewed homestead exemptions claimed by thousands of Fulton County property owners and concluded that the exemptions had been improperly assessed. For many of those property owners, it determined that the exemptions had been overcalculated, resulting in a tax deficiency. The recalculations involved the value of the exemptions, bringing them within OCGA 48-5-49, which specifically permits an appeal under OCGA 48-5-311. *11* Furthermore, a reasonable reading of OCGA 48-5-311 reveals that a taxpayer who is entitled to an appeal must be given the statutory notice required by OCGA 48-5-306. *12*

When interpreting a statute, a court must construe the provision "in relation to other statutes of which it is a part, reading all statutes together so as to ascertain the legislative intent and give effect thereto." *13* The trial court did so here, properly viewing OCGA 48-5-49, 48-5-306, and 48-5-311 together to provide notice and appeal rights to the class members in this case. Accordingly, we find no error.

4. Finally, the County claims that the trial court should not have granted injunctive or equitable relief because class members had an adequate remedy at law. *14*

(a) Asserting that class members did not need access to the appeal procedures in OCGA 48-5-311, the County argues that members could have challenged the recalculations by paying the additional tax and seeking a refund under OCGA 48-5-380. *15* In {299 Ga. App. 585} essence, it claims that the class litigation and resulting equitable relief were unnecessary, given the tax refund procedure.

Taxpayers generally have two avenues for challenging an improper tax assessment: (1) the appeal process in OCGA 48-5-311, and (2) the refund procedure in OCGA 48-5-380. *16* These distinct remedies, however, serve different purposes. An appeal under OCGA 48-5-311 provides "the most expeditious resolution of a taxpayer's dissatisfaction with an assessment, preferably before taxes are paid." *17* In contrast, an OCGA 48-5-380 refund action has been described as a "procedure . . . to protect taxpayers from later-discovered defects in the assessment process which have resulted in taxes being erroneously or illegally assessed and collected." *18* Moreover, the refund procedure is available only to correct {683 S.E.2d 141} errors of fact or law that caused erroneous or illegal taxation. *19* It cannot be used to address "[a] claim based on mere dissatisfaction with an assessment, or on an assertion that the assessors, although using correct procedures, did not take into account matters which the taxpayer believes should have been considered." *20*

Some class members may have been able to challenge the newly assessed taxes through an OCGA 48-5-380 refund action. But this is not a situation where taxpayers ignored the administrative process and filed a lawsuit. *21* On the contrary, they sued to secure access to the tax appeal procedure that they were entitled to use. Given the differences between the appeal and refund remedies - as well as the possibility that a refund action might not be available to all class members - the trial court did not err in determining that equitable relief was necessary to protect the class members' right to pursue the legal remedy provided in OCGA 48-5-311.

(b) In a related claim, the County argues that once the trial court determined that class members had a right to appeal under OCGA 48-5-311, the members had an adequate remedy at law and no longer needed equitable relief. Again, however, equitable relief was imposed to protect the taxpayers' appeal rights and make sure that they did, in fact, have access to the remedy in OCGA 48-5-311. {299 Ga. App. 586} The trial court did not err in granting such relief. *22*

Judgments affirmed. Smith, P. J., and Bernes, J., concur.

Footnotes

1. The Fulton County Tax Commissioner did not join in the appeal in Case No. A09A0915, and neither the Commissioner nor Fulton County joined in Case No. A09A0916. For ease of discussion, however, we will continue to refer to the appellants collectively as "the County."

2 . See, e.g., OCGA 48-5-44 (general homestead exemption); OCGA 48-5-47 (homestead exemption for persons 65 years and older); OCGA 48-5-47.1 (homestead exemption for persons 62 years or older with annual income not exceeding $ 30,000); OCGA 48-5-48 (exemption for qualified disabled veterans).

3. Village Auto Ins. Co. v. Rush, 286 Ga. App. 688 (649 S.E.2d 862) (2007).

4. See id.

5. EarthLink, Inc. v. Eaves, 293 Ga. App. 75, 76 (1) (666 S.E.2d 420) (2008) (footnote omitted).

6. See Village Auto, supra at 690-691 (1) (common issues existed where class action complaint alleged that insurance company engaged in standard practices and tactics towards its customers).

7. See EarthLink, Inc., supra.

8. See id. at 77 (2) (where trial court properly certifies class under one ground of OCGA 9-11-23 (b), appellate court need not consider whether certification was proper under alternate ground).

9. OCGA 48-5-311 (e) (1) (A).

10. OCGA 48-5-49 (b).

11. See GMC Group v. Harsco Corp., 293 Ga. App. 707, 709 (667 S.E.2d 916) (2008) (absent contrary legislative intent, a specific statute prevails over a general statute when resolving inconsistencies in statutory language).

12. See OCGA 48-5-311 (e) (2) (A) ("An appeal shall be effected by mailing to or filing with the county board of tax assessors a notice of appeal within 45 days from the date of mailing the notice pursuant to Code Section 48-5-306. . . .").

13. Aircraft Spruce & Specialty Co. v. Fayette County Bd. of Tax Assessors, 294 Ga. App. 241, 244 (669 S.E.2d 417) (2008) (citation and punctuation omitted).

14. See Glynn County Bd. of Tax Assessors v. Haller, 273 Ga. 649, 650 (3) (543 S.E.2d 699) (2001) ("[A] superior court should not grant an injunction in a tax case when state law provides an adequate remedy at law.") (footnote omitted).

15. See OCGA 48-5-380 (a) ("Each county and municipality may refund to taxpayers any and all taxes . . . which are determined to have been erroneously or illegally assessed and collected from the taxpayers under the laws of this state or under the resolutions or ordinances of any county or municipality or which are determined to have been voluntarily or involuntarily overpaid by the taxpayers.").

16. See Wilmington Trust Co. v. Glynn County, 265 Ga. App. 704, 705 (595 S.E.2d 562) (2004).

17. Gwinnett County Bd. of Tax Assessors v. Gwinnett I Ltd. Partnership, 265 Ga. 645, 646 (458 S.E.2d 632) (1995).

18. Id. (punctuation omitted).

19. Id. at 646-647.

20. Id. at 647.

21. Compare Haller, supra.

22. See Roberts v. Lee, 289 Ga. App. 714, 717 (3) (658 S.E.2d 258) (2008) (trial court has broad discretion to fashion equitable remedies based on the exigencies of each case and should craft an injunction that is least oppressive to the defendant but protects the plaintiff's rights).

MARATHON INVESTMENT CORPORATION v. SPINKSTON et al.
S07A0523.
SUPREME COURT OF GEORGIA
281 Ga. 888; 644 S.E.2d 133; 2007 Ga. LEXIS 306; 2007 Fulton County D. Rep. 1373

April 24, 2007, Decided
DISPOSITION: Judgment affirmed.
CASE SUMMARY: In a quiet title action filed by the successful bidder at a tax sale against two trustees, in their representative capacities for the subject property, a special master found in the trustees' favor on the issue that the property was tax-exempt, making the tax sale void or voidable. A Georgia trial court approved and adopted the special master's report, vesting title in the trustees and declaring the tax sale void. The bidder appealed.
OVERVIEW: After a review of the record, it was undisputed that the property at issue was exempt from taxes. But, the trustees never received notice of the tax sale. Moreover, no past or present member of the congregation ever lived at the address which the tax notices were sent, and the special master was authorized to so find. Thus, because the trustees were never given the required notice, their due process rights were violated by the tax sale and the deed to the bidder resulting from that unconstitutional sale was, therefore, void. Second, the exception to the tender requirement applied, as taxes were not due at the time the property was sold because of its tax-exempt status.

COUNSEL:

Perrie, Bone & Burr, C. Terry Blanton , Amelia T. Phillips, for appellant.

Luann M. Evans, Jennesia M. Primas , William A. Castings, Jr., for appellees.

JUDGES: CARLEY , Justice. All the Justices concur.

OPINION BY: Carley , Justice.

At a tax sale, Marathon Investment Corporation (MIC) was the successful bidder for a vacant lot located at 321 Hills Avenue in Atlanta and a tax deed was executed and delivered. The owners of the parcel and defendants in fi. fa. were listed as Janet Spinkston and Roxie Taylor, in their representative capacities as trustees for the Hills Avenue Baptist Church (Church). At the [**134] time of the sale, the Church was an unincorporated religious association. The Church sanctuary and the subject property were separated by the main parking lot for the parishioners' vehicles. The parcel at 321 Hills Avenue was used for overflow parking.

A year after receiving the tax deed, MIC filed notice of foreclosure of the right to redeem the property. Ms. Spinkston and Ms. Taylor (Trustees) were personally served, but neither they nor the Church tendered the redemption price to MIC. Thereafter, MIC initiated this quiet title action. The Trustees answered, and asserted that, because the property [***2] actually belonged to the Church, it was tax-

exempt and that the tax sale was, therefore, void or voidable. The proceeding was heard by a special master, who found in favor of the Trustees. The superior court approved and adopted the special master's report, vesting title in Trustees and declaring the tax sale void. MIC appeals from the superior court's order.

1. OCGA § 48-5-41 (a) (2.1) (A) provides thatHN1 “[a]ll places of religious worship” are exempt from ad valorem taxes.HN2 “[T]he words ‘religious worship’ import a concept of a congregation assembling in a place open to the public to honor the Deity through reverence and homage.” Leggett v. Macon Baptist Assn., 232 Ga. 27, 30 (II) (205 SE2d 197) (1974). 321 Hills Avenue is the site of the Church's auxiliary parking lot, not its actual sanctuary. However, OCGA § 48-5-41 (a) (2.1) (A) is phrased in inclusive general terms of “all places of religious worship,” and does not employ the terms “house” or “church” of religious worship, which, arguably, might have limited it to a building. If the presence of the omnipotent and omnipresent God cannot be [***3] restricted to a mere man made edifice, surely it was not intended to limit the worship of such a God to a building. … Even in cases relating primarily to exemptions for “buildings” of colleges, this [C]ourt has held that “the exemption embraces the land adjacent thereto necessary for their proper use, occupancy, and enjoyment.” [Cits.] (Emphasis in original.) [*889] Roberts v. Atlanta Baptist Assn., 240 Ga. 503, 508-509 (241 SE2d 224) (1978). Certainly, the proper use, occupancy and enjoyment of places of religious worship can require that accommodation be provided for the vehicles of the members of the attending congregation.

There does not appear to be any dispute that the Church's primary parking lot, which is located between the sanctuary and the subject parcel, is exempt from taxes. Thus, “[t]he evidence in the case sub judice showed that the two contiguous tracts [to that where the sanctuary was located] were principally or even exclusively used as a ‘place of religious worship.’ ” Roberts v. Atlanta Baptist Assn., supra at 509. GA(1)(1) It follows that “[t]he vacant lot here involved was, for reasons indicated above, properly held exempt [***4] from taxation.” Elder v. Trustees of Atlanta Univ., 194 Ga. 716, 720 (1) (22 SE2d 515) (1942).

2. Prior to the tax sale, the Trustees did not contest the tax assessment and claim tax exempt status for the parcel. However, the evidence also shows that the opportunity to do so was never provided, because all tax notices for 321 Hills Avenue were sent to an address on Cascade Road at which neither of them had ever resided. Moreover, the Church pastor testified that no past or present member of the congregation had ever lived at the address to which the tax notices were sent. There was no evidence that, after the notices sent to Cascade Road proved ineffective, any additional effort was made to locate the Trustees, even though their names and correct addresses were listed in the telephone directory. Thus, the special master was authorized to make the following finding: Practically speaking this Church had absolutely no notice that taxes were due. The notices did not go to an address known by any witness. … The Church itself was tax exempt with the exception of charges for trash collection and sewage which were billed and paid. The result is that the Church [***5] had no opportunity to either dispute or pay the taxes and the Church's right to due process to object to the taxes (or even to pay the taxes) was denied when it received no notice.

[**135] HN3“[D]efects in following the notice provisions of the tax sale statute may give an injured party a claim for damages, but will not render the tax sale or the deed therefrom void. [Cit.]” GE Capital Mortgage Services v. Clack, 271 Ga. 82, 83 (1) (a) (515 SE2d 619) (1999). However, the circumstances here show more than a mere “defect” in providing a taxpayer with notification of a sale to be conducted for the failure to pay taxes assessed on property that is unquestionably taxable. Compare GE Capital Mortgage Services v. Clack, supra; Haden v. Liberty Co., 183 Ga. 209, 210 (1) (188 SE 29) (1936); Harper v. Foxworthy, 254 Ga. App. 495, 497 (1) (562 SE2d 736) (2002). GA(2)(2) What [*890] is involved is property which is otherwise tax-exempt, coupled with the lack of notification to the owner so that the tax records can be corrected and the proper exemption can be claimed. Under those circumstances, the “defect” is potentially of constitutional magnitude. [***6] HN4“Constitutional due process of law includes notice and hearing as a matter of right where one's property interests are involved. [Cit.]” Hamilton v. Edwards, 245 Ga. 810, 811 (267 SE2d 246) (1980). “(T)he enforcement and collection of taxes through the sale of the taxpayer's property has been regarded as a harsh procedure, and, therefore, the policy has been to favor the rights of the property owner in the interpretation of such laws. …” [Cits.]Blizzard v. Moniz, 271 Ga. 50, 53-54 (518 SE2d 407) (1999). That policy of favoring the rights of the owner is certainly no less applicable where, as here, the taxes that were collected pursuant to the sale were unauthorized because the property was exempt from taxation. As a practical matter, the owner of taxable property will generally have at least constructive or implied notice that taxes will be assessed and that, unless they are paid, the parcel may be sold. However, that is in stark contrast to the present circumstances in which, as found by the special master, “it is uncontroverted that neither [Trustee] expected a tax billing statement as the [s]ubject [p]roperty was thought [***7] to be tax exempt due to its use solely by the Church.” Notice is defined as “information; the result of observation, whether by senses or the mind; knowledge of the existence of a fact or state of affairs; the means of knowledge.” [Cit.] We cannot conclude that the [Trustees] had either information, observation, knowledge or means of knowledge prior to the receipt of the notice [that taxes had been assessed on Church property].Hamilton v. Edwards, supra. However, that notice was never received. [A]n interested party is entitled to notice which is reasonably calculated, under all of the circumstances, to apprise him of the pendency of a tax sale. [Cits.] … [T]he current constitutional standard … is that the notice must be sent to those interested parties whose names and addresses are ascertainable by “reasonably diligent efforts.” [Cits.] [*891] Hamilton v. Renewed Hope, 277 Ga. 465, 467 (589 SE2d 81) (2003). GA(3)(3) Because the Trustees were never given that requisite notice, their due process rights were violated by the tax sale and the deed to MIC resulting from that unconstitutional sale is, therefore, void.

[***8] 3. MIC urges that the Trustees lack standing to contest the tax sale because they did not tender the amount of unpaid taxes for which the property was sold. However, HN5the requirement that the redemption price be tendered before the validity of a tax deed can be challenged does not apply if “it clearly appears that … [t]he tax or special assessment for the collection of which the execution under or by virtue of which the sale was held was not due at the time of the sale. …” OCGA § 48-4-47 (b) (1). GA(4)(4) That exception to the tender requirement is applicable here, since taxes were not due at the time the property was sold because of its tax-exempt status.

Judgment affirmed. All the Justices concur.

Marathon Inv. Corp. v. Spinkston, 281 Ga. 888, 887-891 (Ga. 2007)

MARCONI AVIONICS, INC. v. DeKALB COUNTY
No. 65504
Court of Appeals of Georgia
165 Ga. App. 628; 302 S.E.2d 384; 1983 Ga. App. LEXIS 1983

February 16, 1983, Decided

DISPOSITION: Judgment reversed.

CASE SUMMARY: Appellant taxpayer sought review of a decision of the DeKalb Superior Court (Georgia), which granted appellee county's motion to dismiss the taxpayer's action for refund of overpayment of property taxes, which it filed pursuant to Ga. Code Ann. § 48-5-380. The trial court granted the motion on the ground that Ga. Code Ann. § 48-5-311(e) provided the exclusive procedure for challenging a property tax assessment on the ground of taxability.

OVERVIEW: The taxpayer overpaid state property taxes and later filed an action seeking a refund. The trial court granted the county's motion to dismiss the action. On appeal, the court reversed. The court held that Ga. Code Ann. § 48-5-380 provided a procedure whereby a taxpayer could claim a refund of taxes that were erroneously assessed or overpaid and provided that if such a claim was denied by the governing authority, the taxpayer could file an action for a refund in the superior court. The court rejected the county's argument that Ga. Code Ann. § 48-5-311(e), which provided that a taxpayer could only raise issues of taxability in the superior court on appeal from a decision of the board of equalization, was the exclusive procedure for challenging an assessment on the ground of taxability. The court found that such a requirement was not stated in Ga. Code Ann. § 48-5-380 and was not consistent with its provisions or purpose, in that it would have virtually eliminated refunds when the mistake of overpayment was discovered only after the taxes were paid. The court found that § 48-5-380 clearly contemplated claims for refund for any reason, including those based on questions of taxability.

OUTCOME: The court reversed the grant of the county's motion to dismiss the taxpayer's petition for a refund of a tax overpayment.

COUNSEL: Mims Wilkinson, Jr., John G. McCullough, Hugh H. Howell, Jr., for appellant.
George Dillard, Gail C. Flake, for appellee.

JUDGES: Birdsong, Judge. Shulman, C. J., and McMurray, P. J., concur.
OPINION BY: BIRDSONG

This is an appeal from the trial court's grant of DeKalb County's motion to dismiss this action for refund of overpayment of property taxes. The trial court granted the motion on the ground that O.C.G.A. § 48-5-311 (e) (Code Ann. § 91A-1449) provides the exclusive procedure for challenging a property tax assessment on the ground of taxability. We reverse.

1. This action was instituted by appellant pursuant to O.C.G.A. § 48-5-380. This enactment, which was originally codified in Code Ann. § 92-3901a et seq. (Ga. L., 1975, p. 774, § 1) and recodified as Code [*629] Ann. § 91A-1601 (Ga. L., 1978, p. 309, § 2), altered the preexisting rule that a payment of taxes, even under protest, was a voluntary payment and could not be recovered. [***2] Town of Lyerly v. Short, 234 Ga. 877, 879 (218 SE2d 588). HN1 O.C.G.A. § 48-5-380 (Code Ann. § 91A-1601) clearly sets forth a procedure whereby taxpayers may obtain a refund of "any and all taxes . . . which are determined to have been erroneously or illegally assessed and collected from the taxpayers . . . or which are determined to have been voluntarily or involuntarily overpaid by the taxpayers." Id. (a). The statute provides that the taxpayer must file its claim for refund with the appropriate governing authority within three years of the payment of the tax for which a refund is sought. Id. (b). If the claim is denied by the governing authority, the taxpayer has an additional year from the date of the denial to file "an action for a refund in the superior court of the county in which the claim arises." Id. (c).

The complaint seeks to recover $ 32,766.18 "by reason of the voluntary overpayment [**385] of property taxes" and alleges compliance with the refund provisions. Aside from certain statements contained in the trial court's order, the record contains no further description of the nature of appellant's claim for refund. Treating the motion to dismiss as a motion on the pleadings, it is [***3] clear that the complaint is not subject to dismissal. It states a cause of action for refund of voluntarily overpaid tax and alleges acts showing compliance with the statutory procedure O.C.G.A. § 48-5-380 (Code Ann. § 91A-1601). Acceptance of appellee's position, which is based on failure to state a claim, and on jurisdictional and statute of limitation grounds, all of which are premised on appellant's failure to comply with O.C.G.A. § 48-5-311 (e) (Code Ann. § 91A-1449), would place a requirement on O.C.G.A. § 48-5-380 (Code Ann. § 91A-1601) clearly not contemplated by the statute. The refund statute does not state that the taxpayer must first have complied with O.C.G.A. § 48-5-311 (e) (Code Ann. § 91A-1449) before it is entitled to a refund of improperly paid taxes. Indeed, the wording of O.C.G.A. § 48-5-380 (a) (Code Ann. § 91A-1601) giving the taxpayer the right to a refund of "any and all taxes . . . which are determined to have been . . . voluntarily or involuntarily overpaid," belies any attempt to place such a severe, artificial, and non-statutory restriction on that right. Appellee's argument, which would prevent recovery of a refund for any taxes paid without exhaustion of appeal [***4] rights pursuant to O.C.G.A. § 48-5-311 (e) (Code Ann. § 91A-1449), would virtually eliminate refunds when the mistake of overpayment is discovered only after the taxes are paid. This would again render most tax payments unrecoverable "voluntary payments," which O.C.G.A. § 48-5-380 (Code Ann. § 91A-1601) was designed to alleviate. Town of Lyerly, supra. We hold [*630] that HN2a taxpayer need not comply with the appeal procedure provided in O.C.G.A. § 48-5-311 (e) (Code Ann. § 91A-1449) prior to proceeding under O.C.G.A. § 48-5-380 (Code Ann. § 91A-1601).

2. Appellee argues, however, that this claim questions the taxibility of appellant's property, and that questions of taxability may be raised only through O.C.G.A. § 48-5-311 (e) (Code Ann. § 91A-1449). It should be noted that since the pleadings do not raise the issue of taxability, the trial court obviously considered matters outside the record in reaching the conclusion that this action is premised on appellant's discovery, after payment of the tax, that certain property upon which tax was paid was exempt. HN3To the extent that the motion requires consideration of matters outside the record, it will

be treated as a motion for summary [***5] judgment and subject to the notice and hearing requirements of O.C.G.A. § 9-11-56 (Code Ann. § 81A-156). Ellis v. Major Gas &c. Co., 154 Ga. App. 34 (267 SE2d 485). The record in this case indicates that these requirements have been satisfied.

Appellee cites Buoy v. Kiley, 238 Ga. 47, 48 (230 SE2d 861), and C. C. Leasing Corp. v. Bd. of Tax Assessors of Hall County, 143 Ga. App. 520 (239 SE2d 204), in support of its argument that a taxpayer cannot initiate an action in the superior court to raise questions of taxability except on appeal from a decision of the Board of Equalization pursuant to O.C.G.A. § 48-5-311 (e) (Code Ann. § 91A-1449), and that the superior court does not have jurisdiction to consider taxibility except on such appeal. However, neither Buoy nor C. C. Leasing was brought pursuant to the refund statute and neither is apposite to the present case. Acceptance of appellee's position would render the refund statute virtually meaningless, since it would preclude refund actions by taxpayers who later discover that property not properly subject to taxation "has been erroneously or illegally assessed and [taxes] collected from the taxpayers" or that [***6] taxes "have been voluntarily or involuntarily overpaid." O.C.G.A. § 48-5-380 (a) (Code Ann. § 91A-1601). This is the very "injustice to taxpayers" remedied by the refund statute. See Town of Lyerly, supra, p. 881 (Hill, J., concurring). We interpret HN4the refund statute according to its literal and logical meaning: it applies to all property "erroneously or illegally assessed" and taxes "voluntarily [**386] or involuntarily overpaid," for whatever reason.

Appellee's attempt to limit O.C.G.A. § 48-5-380 (Code Ann. § 91A-1601) to situations involving errors of a clerical nature, as where duplicate payments are made, belies the language of subsection (e) of the statute, which provides that the "governing authority" may delegate the "approval or disapproval of claims where the reason for the claim is based on an obvious clerical error." However, HN5"[i]n [*631] disputed cases where there is no obvious error, the approval or disapproval of claims may not be delegated by the governing authority." O.C.G.A. § 48-5-380 (e) (Code Ann. § 91A-1601). Thus, the statute clearly contemplates claims for refund going beyond mere correction of clerical errors.

"It is a well-established principle [***7] that HN6a statute must be viewed so as to make all its parts harmonize and to give a sensible and intelligent effect to each part. It is not presumed that the legislature intended that any part would be without meaning." Houston v. Lowes of Savannah, 235 Ga. 201, 203 (219 SE2d 115). The legislature clearly has provided a statutory scheme whereby a taxpayer may obtain a refund for overpaid or erroneously or illegally assessed taxes. There is nothing in that statutory scheme, or in the procedure for appeals from property tax assessments, that precludes consideration of the taxability or non-taxability of the property if that forms the basis of the allegation that the property was erroneously or illegally assessed or that there was an overpayment. Accordingly, the trial court erred in granting appellee's motion to dismiss.

Judgment reversed.

Marconi Avionics, Inc. v. De Kalb County, 165 Ga. App. 628, 628-631 (Ga. Ct. App. 1983)

A Brief History of Property Tax

By Richard Henry Carlson

This paper was initially delivered at the IAAO Conference on Assessment Administration in Boston, Massachusetts, on September 1, 2004.

Taxation has existed in various forms since civilization began. In days of old the source of wealth was land and its proceeds. Before the existence of a monetary system, taxes were paid by a percentage of crops raised. Through most of history, the tax assessor and the tax collector were the same person; therefore, "tax collector" is used interchangeably with "tax assessor" throughout the following paper. Some of the most common forms of taxation over the millennia were poll taxes, tariffs on goods, and property taxes on the value of land, buildings, and other personal property. The purpose of this paper is to present some of the major moments in the history of real and personal property taxation. Let's take a short walk through time to understand what we have in common with our ancestor assessors, what we can learn from them, and how developed the current property tax system has come to be.

Ancient Times

The earliest known tax records, dating from approximately six thousand years B.C., are in the form of clay tablets found in the ancient city-state of Lagash in modern day Iraq, just northwest of the Tigris and Euphrates Rivers. The king used a tax system called *bala*, which meant "rotation." The assessors would focus on one area of the city-state, assessing and taxing one area each month, thereby breaking down the arduous task into more manageable components. (This is a lesson that we have used in present day Boston by not attempting to focus on all property in a revaluation year. Instead, we focus great attention on the valuation of retail and industrial property during one year, following up the next year with apartments or other sub-sets of property. This allows a thorough review of the various components of value and ultimately leads to better assessments.) In Lagash taxes were very low, but in a time of crisis or war the tax rate was ten percent of all goods, which were primarily composed of food.

You can have a Lord, you can have a King, but the man to fear is the tax assessor. ~ Anonymous citizen of Lasgash

Property taxes were used in Egypt, Babylon, Persia, and China and throughout the ancient world. Most people were poor and lived in hovels. The primary focus of early property taxation was land and its production value.

Ancient Egypt had a thriving culture that began around 5,000 B.C. and lasted thousands of years. Taxes were levied against the value of grain, cattle, oil, beer and land. Approximately one in a hundred people were literate; they were called scribes. Some of the scribes were tax assessors. They kept records about who owned title to lands along with the size of their fields. At various times they collected annual or biannual data by counting cattle and checking the crop yields. The most common taxpayers were the farmers, from whom assessors coerced collection. If a taxpayer did not or was not able to pay, he was brought before courts that immediately dispensed justice. A typical tax rate was ten percent of all production. Tax assessors were highly valued people because of their skills with hieroglyphics and their ability to collect revenue. Often when a king died, the assessor was the only staff person not killed and buried along with the king, so valued was his service. There were tombs and monuments for assessors in Egypt and Syria that rivaled those of some kings. In Egypt, the famous Rosetta Stone was actually a tax document granting exemption to priests.

Be weary of strong drink. It can make you shoot at tax assessors... and miss. ~ Robert Heinlein

Tax assessors were also highly valued officials in ancient Greece. Near the Acropolis there is a monument to the honest tax assessor. The Athenian general Aristides (530 B.C.–468 B.C.) completely reformed the property tax assessment system of Athens while serving as treasurer (i.e., assessor). Known as the most competent and impartial person who ever held the position in Athens, Aristides acted in the interests of the city above all else. His prestige was so great that be became known as Aristides the Just.

The good and fair tax system established by Aristides fell apart during the Peloponnesian War (Sparta vs. Athens,

431 B.C.–404 B.C.). Athenian citizens complained that real and personal property taxes were too high and demanded that the government lower expenditures. The tax assessment system was also perceived as biased and inefficient compared to the earlier standards set by Aristides. The Athenian council decided to reduce property taxes but increased both tariffs and tributes paid by council allies. The tribute from each ally was calculated according to the value of property that came under each state. Taxes assessed in Athens and Attica (Athens's territory) were assessed according to the value and productivity of the land, with the more productive lands receiving higher assessments. As the Peloponnesian War dragged on, the Athenians increased the tribute expected from allies to the breaking point. The tribute was doubled and then doubled again. Ultimately, Athens ran out of money and lost the war.

Alexander the Great (356 B.C. – 323 B.C.) conquered the known world. While he was a military genius, he was also an able administrator. As he moved through Persia, India, Egypt and other parts of his world, he left administrators with explicit instructions on how to implement property taxes. Specifically, he was concerned that there would be revolts in areas that were already conquered. When there were, he was brutal in stopping them. Prior to his conquest, the people were very heavily taxed, and the collected money typically went to the treasury of the king, not to public improvements. Alexander's tack was to substantially cut taxes and use half of the raised funds for public improvements (water systems, roads, ports, etc.) while keeping the remaining half for his treasury. Therefore, the people not only paid fewer taxes while receiving more benefits for their taxes, but they were also far less likely to revolt against his administrators.

From roughly 200 B.C. to 300 A.D., Romans paid property taxes on the value of land, buildings, livestock, trees, vines and other personal property. When Julius Caesar was preparing for the Gaulic campaign, one of his generals told him there was not enough money to pay for the needed materials. Caesar's response was, "Send out the assessors!" Pothinus once asked Julius Caesar, "Is it possible that Caesar, the conqueror of the world, has time to occupy himself with such a trifle as our taxes?" Caesar's response "My friend, taxes are the chief business of a conqueror of the world."

Only little people pay taxes. ~ Leona Helmsley

Early Roman administrations had tax policies with intended outcomes. Prior to Augustus Caesar, the state sold the rights to collect taxes to private citizens. These people would make significant profits by enforcing Roman tax law. Today we call such people consultants. Augustus put an end to the practice by making Roman assessors public employees. In the early years of the Roman Republic, the tax rate was just one percent of value (land, buildings and all personal property including plants and animals). The tax rate climbed during war and crisis to three percent. However, as Rome expanded public benefits the budget was stretched. Prior to Julius Caesar, over 300,000 people received food from the state. Caesar thought that many of these people should be working instead of receiving public benefits and therefore cut the number of recipients of public welfare in half. The result was that expenditures went down, and with more people plowing fields, the tax revenue increased.

Augustus Caesar was greatly concerned that people were not producing at maximum levels and made other adjustments to the system. One of the more important advances was a reassessment based on flat land rates. He implemented a valuation system based not on what a farmer produced but what a farmer *could* produce. If a farmer worked hard and produced more crops than a less productive neighbor, he still paid the same in property taxes. Economic incentive and maximum use of the land was at the heart of his taxation policy. The tax rate for wealthy farmers became one percent of value per year.

Other Roman emperors were far less insightful. Tiberius Caesar cut back on public improvements and retained huge portions of tax in his treasury. This resulted in a financial crisis where money was in short supply. Over time there were other emperors who implemented disastrous policies that were largely to blame for the collapse of the empire. Public expenditures increased with more expensive entertainment. Entire months of the year became holidays and public welfare systems became very generous. Over time, fewer people produced goods and the tax rates began to soar. Some emperors wanted to reduce the wealthy Senate class and taxed the value of their estates so high that the property was confiscated or the owners were driven away or into hiding. The emperors also began to reduce the silver content of coins. This practically destroyed the economy. In fact, some property owners tried to give themselves up as slaves until it was declared illegal to do so by Emperor Valens (368 A.D.). Eventually the system so completely broke down that there was no longer a monetary system and trade went back to barter. Of course with no ability to pay an army, the entire system collapsed and the barbarians invaded Rome. It has been noted that many citizens were happy to be free of the excessive tax burdens and could once again produce for themselves.

In Roman times assessors were no longer honored but considered evil and low class people who often required military escort. After being criticized by religious leaders for associating with tax assessors in Jerusalem, Jesus Christ said, "The tax assessors and prostitutes are entering the kingdom of God ahead of you." Christ also said, "Render unto Caesar the things that are Caesar's, and render unto

God the things that are God's." The apostle Matthew was a tax assessor.

Medieval Times

It is the part of the good Shepherd to shear his flock, not slay it. ~ Tiberius Caesar

In the 11th century, Lady Godiva rode naked on a white horse through the streets of Coventry, England to protest the tax assessment on her husband's property. He received an abatement. Although poll taxes were prevalent in England, land taxes had existed for hundreds of years, and although the lords and king owned land, most peasants paid taxes by way of rent each year. If the land was especially productive, the rental value was higher. In the tenth, eleventh and twelfth centuries an average peasant paid one tenth (a tithe) of the value of crops to the lord who then passed on a percentage to the king. Peasants were also required to give either an additional one-tenth of their crop to the church or spend one tenth of their labor working for the church.

After 1066, William the Conqueror created an early form of land taxation. Town officials kept cadastral records of everyone who owned property. Each parcel was measured, its value estimated. Each town kept a book of the assessment of each property and the total amount of property tax due for each person. This book was called the *Domesday Book*, and the name lasted for hundreds of years. Some people in England refer to the assessor's records as the Doomsday Book even to this day.

After abusing his power and raising taxes to a confiscatory level in 1215, King John was forced to sign the Magna Carta, which limited the king's power to raise revenue. Taxes from this point on could be collected only with the common consent of his barons. By the sixteenth century, the king's own lands and estates were taxed. In 1689, the English Bill of Rights endorsed a law that the king could not tax without Parliament's consent.

After 1290, personal property taxes were implemented with exemptions for the poorest (i.e., those whose assessments were less than a shilling). The church was also exempt, as were certain items such as a knight's armor and a merchant's capital. The personal property tax rate was one-tenth for those who resided in cities and one-fifteenth for rural residents. These assessments were rough estimates of a person's assets, and underassessment was the norm. The average tax equaled about two shillings per annum, which was about two days' wages for a peasant.

The personal property tax was difficult to administer because many people attempted to hide and move personal property. This practice was especially common among wealthier taxpayers who had multiple residences and moved assets to avoid taxation.

From 1662 to 1689, a hearth tax was administered in England and spread to some continental counties. The tax was an estimate of a building's value. Assessors recorded the number and size of hearths in each home and determined value accordingly. A one-hearth cruck house (typical peasant housing) received a low assessment compared to some mansions that had twenty or thirty heated rooms. This tax was hated and was eventually phased out.

The power of taxing people and their property is essential to the very existence of government. ~ James Madison

In the legend of Robin Hood, the Sheriff of Nottingham collected taxes. The role originated in the tenth century when each "shire" had a "reeve." The shire or sheriff was the most important local government official, and his responsibilities included law enforcement, tax assessing and collection. This position was brought over to the colonies.

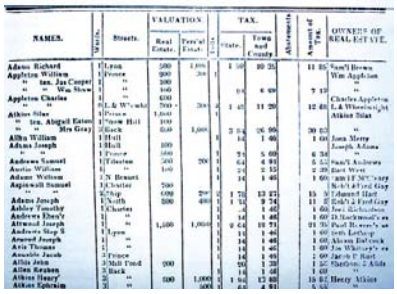

Table. Figures from Boston assessor records from 1691, 1791, 1891 and today.

	1691	1791	1891	Today
Population	5,996	18,038	448,477	589,141
Total value	20,000 pounds	538,200 pounds	$855.1 million	$66.1 billion
Levy	200 pounds	8,000 pounds	$10.8 million	$1.1 billion
Res. Rate	1 penny per pound or $10 per thousand	$14.86	$12.60	$10.15

Colonial Period

In 1620 the Pilgrims landed at Plymouth Massachusetts and began building. After receiving a bundle of arrows wrapped in snakeskin—which was interpreted as a threat from local Indians—they decided to build a fort. The 102 Pilgrims formed a pact that bound them to a set of laws, among them the creation of taxes and assessments. People were generally allocated equal portions of land, but the more productive land was assessed at a higher rate.

In Boston, the Puritans implemented property taxes to pay for the church and the religious education of their children. Regardless of one's religion, it was mandatory that everyone pay the property tax. Taxes from

Boston's towns went directly to the church. This practice lasted for over one hundred years.

So who exactly was the assessor at this time? In Boston up until 1733, the sheriff was the ex-officio tax assessor and collector. Property taxes paid for the expenses of the community—a sharp contrast to the English stamp act and tea tax that were designed to pay for the cost of security in the New World.

The Boston Town Records of 1676 show the name of each taxpayer, the number of acres of land, the value of houses, the number of cows, swine and sheep, the value of mills and the assessment of personal estate. The assessors kept maps that were numbered. Each number had corresponding narratives listing assets, value and tax. Detailed and proportionate maps showed the metes and bounds of property. Assessors used maps of various scale. By 1822, Boston assessing records broke down real and personal property value along with the calculated taxes for each taxpayer.

In Boston, the expenses of local government were low. There were watchmen at night, a multi-tasking sheriff, expenses for common defense, public infrastructure and education. In fact, Boston had the first public school, Boston Latin, established in 1635. The town council met every year at a public hearing and discussed taxes and expenses. Citizens' particular situations were also discussed. The grievances of people who were held responsible for municipal expenses beyond the norm were considered.

The art of taxation consists in so plucking the goose as to get the most feathers with the least hissing. ~ Jean Baptiste Colbert

An examination of a two hundred year old record of a town council meeting in Boston shows that each property assessment and bill laid out before the council required calling upon certain individuals who may have been sick, aged or in poverty. When determining the tax bill for a widow with twelve children, for example, the council voted to not only exempt her from property taxes but grant her a certain number of shillings quarterly out of the general tax fund. Conversely, a Mr. Phillips, who ran over three light posts while riding drunk down Tremont St. on a horse and wagon, was called before the council and told he would not only be required to pay his property tax bill but also the cost of repairs.

There was a general property tax assessing the value of land, buildings, animals and all personal property. The assessors had accurate records as to ownership, number and types of animals and all personal property including intangible assets. At an early town meeting, voters directed the town council to publish and distribute a complete list of all taxpayers together with the amount and base of their taxes. For years there had been rumblings of inequitable assessments, abatement irregularities, and residency fraud (i.e., moving assets to another town when the assessors were coming).

Note in the table that the tax rate is lower today, but the assessments are probably closer to market value. It has been common throughout history that property is underassessed compared to market value. In the *Memorial History of Boston* it is stated that property is worth approximately five times its assessed value. The theme of underassessment has repeated itself throughout the history of assessing property values.

As for the rest of the northern colonies, similar systems were in place, but the Southern colonies had already established that property taxes were not in the interest of the wealthy classes who owned large estates and significant personal property.The south opted for a greater focus on poll taxes.

Early United States

During the Revolution, the colonies agreed to raise taxes (mostly through property, except in the south where the tax system was more dependent on poll taxes) by state quotas.This system did not work well; in fact, states did not meet their quotas. As a result the Continental Congress spent far more cash than it had; the money was borrowed and not paid off until 1834.

But in this world nothing is certain but death and taxes. ~ Benjamin Franklin

During the debate for the U.S. constitution, delegates grappled with the revenue issue. Advocates pushed for a national property tax, but because of the interest of the large estates of the southerners, no agreement could be reached. The tax clause in the constitution (the same clause that apportions representatives) states that all direct taxes (as opposed to indirect taxes like tariffs) should be apportioned among the states according to population.Ultimately, the primary sources of federal government revenue for the Civil War were tariffs and sales of public land.

There were attempts to implement national taxes with quotas apportioned among the states by population. There were two primary camps after the revolution: the Alexander Hamilton camp that thought there should be a larger central government with greater revenue raising capacity and the Jefferson camp that thought revenue should be raised locally because it more suits a democracy. The first camp also argued that the country should push for industrial development, while the latter pushed for a more agrarian society to foster independence and democracy. Hamilton was the first Secretary of the Treasury of the United States. He was a financial genius for the country, helping create the foundation of the capitalist system that we have here today; however, the issue of taxation turned into a disaster for him and his party.

The Washington and Adams Administrations attempted to implement various national taxes that created rebellions such as the Whiskey

Rebellion and the Fries Rebellion. In 1797, John Adams was greatly concerned that war with France was imminent. He required revenue to pay for a force to resist the French. Congress enacted a national property tax apportioned by population. Two million dollars was to be raised with Pennsylvania's share at $237,000. The tax became known as the window tax because assessors were to assess real estate according to the number and size of windows and doors of each house in addition to a land tax. The German settlers of Pennsylvania were outraged because it reminded them of the much hated hearth tax in Germany. John Fries became the leader of the tax protesters. Small bands were formed to search for federal assessors who were coming to count and measure windows. These bands intimidated, beat up and ran assessors off to the county line. In one case three assessors were captured and brought to Enoch Roberts Tavern and held for some time. Their papers were destroyed. The sheriff went with thirteen or fourteen men to the Inn to arrest the responsible parties. He captured nineteen men and held them at the Inn when a party of 400 men came to try to rescue prisoners. John Fries negotiated the release of the assessors' kidnappers. The sheriff sent word to President Adams, who rallied troops to arrest the parties involved. John Fries was captured and convicted of various charges including hindering assessors in their duties. He was sentenced to death. There was much consternation regarding his sentence, and the governor was pressured to repeal the sentence and release him. At the last minute Fries was pardoned due to irregularies at the trial. The tax was repealed.

Another early rebellion took place in Massachusetts resulting from excessive property taxes and court rulings on farmers' debts. Daniel Shays, a former Revolutionary War captain, led the armed rebellion. His group took over a courthouse and demanded lower property taxes along with more protection for farmers from foreclosure and "sound money" polices. In the end, the rebellion was put down by Federal troops. There were death sentences issued, but they were commuted.

Death and taxes may be inevitable, but they shouldn't be related. ~ J. C. Watts, Jr.

Throughout the nineteenth century, most state and local governments raised their revenue through the property tax, though the south continued extensive use of poll taxes with some property taxes. Most state constitutions required uniformity of taxation. The administration of taxes came primarily through the sheriff's office where the sheriff continued to be law enforcer, tax assessor and collector. One finds that the more rural and further west you went in the United States, the more recent the separation of law enforcement and financial responsibilities. Most of the western and rural states did not separate the role of sheriff from that of financial officer until the late 1800's.

Wyatt Earp moved to Tombstone Arizona in the late 1870's. He was the most famous lawman in the country, but he retired and went to Arizona to make his fortune. Once there, he became engaged in town politics. His brother Virgil became chief of police to help protect the brothers' financial interests. Wyatt signed on as deputy sheriff to supplement his income as owner of a gambling concession in a saloon. While it is well known that the shoot-out at the OK corral took place in 1881, few people know that Wyatt ran for the office of sheriff. In Tombstone, as elsewhere in the rural west, the sheriff was both law enforcement officer and tax assessor/collector, as was Wyatt Earp's opponent, incumbent Sheriff Johnny Behan. Compared to Behan, who might be called a cowboy Democrat by modern standards, the Earp brothers were urbanized Republicans. Due in part to the financial officer's unchecked power in Tombstone, Wyatt Earp was unable to defeat Behan.

Before becoming U.S. President, Abraham Lincoln was a general attorney, whose responsibilities included trying murder cases, preparing estates and wills, and even representing property taxpayers in the Illinois courts. Yes, Lincoln was a actually a property tax attorney: a tax rep. There were three famous cases that he tried:

1. The owner of a ferryboat moved his boat out of its assessing jurisdiction on the lien date. The assessor taxed the boat at a normal assessment and Lincoln appealed the case in court, arguing that the boat was not in the jurisdiction of the assessor on the lien date. He won the case.

2. Another case was a valuation issue for The Illinois Central Railroad. The railroad was under construction and approximately half complete on the lien date. Lincoln contended that the property was assessed as though the work was completed, but that the assessment should have reflected its true value as half constructed. He won this case for the biggest legal fee of his life: $5,000.

3. He tried another railroad case on an exemption issue and won that case also.

Twentieth Century

By the end of the 1900's, it was widely felt that the tax system in the United States could not equitably tax the complicated economy. There were various reform movements to implement sales and income taxes and reduce reliance on property taxes. Part of this reform effort intended to narrow personal property taxes especially for homeowners and intangible assets. Presidents Cleveland, McKinley, T. Roosevelt, Wilson and others began to push for lower property taxes and the implementation of sales and income taxes. State by state things changed, and by 1913 the sixteenth amendment was passed allowing for direct taxes without apportionment and income taxes.

By the time of the Great Depression, people's incomes began to drop. With so many unemployed, the property tax collection rates dropped. The result was fiscal reform throughout the country. Many states began to implement sales taxes and cut property taxes. This is the period during which many homestead exemptions were created. In 1932 and 1933, sixteen states also implemented property tax limitation laws.

What is the difference between a taxidermist and a tax assessor? A taxidermist takes only your skin. ~ Mark Twain

Two other reasons for such major reform were the institution of prohibition and the booming 1920's economy. Alcohol tax revenues from licenses and taxes (formerly a major source of revenue) declined to nothing for cities, states, and the federal government. This loss combined with added expenses on enforcing the new law. Personal incomes, meanwhile, were rising, and property taxes didn't seem overwhelmingly burdensome.

Income taxes, which had stayed low and affected few people until World War II, nearly doubled as a percentage of one's income from 11.6% in 1929 to 21.1% in 1932. On the local level, property taxes doubled from 5.4% of people's income in 1929 to 11.7% in 1932. The tax delinquency rate rose to over 30%. The rate in some areas, especially rural communities, was much higher.

In 1933, prohibition ended, greatly increasing revenue at all governmental levels. In 1932, the federal government collected no liquor tax revenue. In 1934, $259 million was collected, and in 1939, $624 million was collected. The tax rate was 100%. Despite the high tax, prices of alcohol came down significantly.

Hundreds of taxpayer groups formed across the country to address and demand real tax reform. In 1934, the National Association of Assessing Officers was created and eventually become the International Association of Assessing Officers.

Some of the major tax reforms of the first half of the century:

- Narrowly defined personal property taxes on citizens and almost complete elimination of intangible property taxation;
- Creation of various exemptions for sick, aged, poor, farms, homesteads;
- Creation of circuit breakers were to limit the percentage of one's income going to property tax;
- Creation of property tax limitations in a large number of states.

After World War II, the economy grew at significant rates along with people's incomes and total property tax collections. However, property taxes as a percentage of total revenue began to drop. More notably, as a source of state revenue, property taxes were supplanted by sales and income taxes. Even at the local level, property taxes as a percentage of total tax revenue declined as cities began adopting sales and income taxes. In 1927, property taxes accounted for 97.3% of total local tax revenue; today the total is less than 75%.

The wisdom of man never yet contrived a system of taxation that would operate with perfect equality. ~ Andrew Jackson

During the 1970's, states that had not implemented property tax limits came under increasing pressure from referendum votes and court cases. On June 7, 1978, Proposition 13 passed in California, limiting the assessment to current value plus 2% per year. When the property sold or was newly constructed, the assessment process began again with the new sale price.

Massachusetts after years of taxpayers' complaints and failed attempts to lower property taxes:

- implemented state sales tax and distributed revenue to cities and towns in 1967;
- implemented a state lottery to distribute revenue to relieve property tax pressure in 1971;
- increased state income and sales taxes for revenue sharing in 1975.

Property taxes still did not decline and during the same time period, Massachusetts courts made the following decisions:

- Springfield mandated 100% valuation in 1961.
- Sudbury mandated the predecessor of the Department of Revenue to enforce 100% standard in 1974.
- The classification amendment enabled cities and towns to tax commercial, industrial and personal property at a higher rate than residential property to avoid a massive tax shift.
- The Tregor decision cost Boston tens of millions of dollars in abatements when it lost a disproportionate assessing case.

Finally on November 4, 1978, Proposition 2½ passed, severely limiting the amount and growth of property taxes.

The past thirty years have led to advances in assessing practices through the use of statistics, cadastral maps, advances in technology and various refinements of old ideas.

Conclusion

Gross inequalities may not be ignored for the sake of ease of tax collection. ~ Owen J. Roberts

Since the beginning of civilization property taxes have been a major source of revenue for most governments. Oliver Wendell Holmes said "Taxes are what we pay for a civilized society." There have been good taxation policies created by admirable assessors like Aristides the Just and disastrous ones invented by corrupt leaders such as the latter Roman emperors. While modern assessors are mandated to develop more fair and accurate assessments than most of our predecessors, the pressure to have a fair tax system has always existed. It is not enough to have an equitable tax system; the taxpayers need to under-

stand that they are paying their fair share. The tools at our disposal, combined with advances in methodology and the lessons of the past have put us in a more favorable position to make intelligent decisions. Our everyday decisions have significant consequences on residential and commercial taxpayers. We need to have a balanced view that considers our obligations to both the taxpayers and their jurisdictions. People make the difference in making the system better or worse. Those people are us. It is up to us to think, work hard, be prospective, anticipate problems, and come up with creative solutions to those problems. The best means to develop an understanding of improvements in assessing is to pursue education. Take classes through the IAAO and other appraisal and assessing groups. Learn from each other when opportunities such as conferences present themselves. Most importantly, perhaps, learn and prioritize the responsibilities within your own jobs. You may come up with answers to complicated issues if you try. Strive to become the modern day Aristides. ■

No government can exist without taxation. This money must necessarily be levied on the people; and the grand art consists of levying so as not to oppress. ~ Frederick the Great

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Richard Henry Carlson has been the Director of Valuation for the City of Boston Assessing Department for eleven years, helping to develop the most accurate real estate assessments in the city's history as measured by descriptive statistics and the lowest number of taxpayer complaints in twenty years. Richard has formulated multiple linear regression equations for valuation of residential properties and has implemented new valuation techniques including the use of geographic information systems. He has worked to resolve thousands of appeals at the Massachusetts Appellate Tax Board and has been actively involved in the development and implementation of tax policy as well as the valuation of all commercial, industrial and personal property assessments in Boston. A member of both IAAO and MAAO, Richard has a Bachelor of Arts Degree from the University of Massachusetts at Boston with majors in Political Science and Economics.

A Man of Many Hats: Richard Henry Carlson

One of the highlights of this year's Annual IAAO Conference on Assessment Administration was Richard Henry Carlson's animated presentation on the History of Property Tax. Richard recalls the event and describes how he came to be an assessor of so many hats.

The IAAO Conference in Boston last year provided me with the unique opportunity to present a history of property taxes to fellow professionals.

Having long been a student of Ancient, European, and American History, I have conducted extensive research on property taxes in Boston, and have sifted through old tax records from the 17th through the 20th centuries. In the process, I've become familiar with the proceedings of colonial town meetings and have assembled tax rates, values and levies from 1691, 1791, 1891, analyzing them and comparing them to those of 1991.

Using my knowledge of history and my eighteen years of experience in Boston's Assessing Department to compliment my research, I detailed the impact of property taxes over the course of history, from the system of high property taxation under the later Roman emperors through the failed attempts at implementing a national property tax after our Revolutionary War. Not only did I stress how much has changed since then, but I illustrated how many similar policy issues have populated the historical landscape for thousands of years, considering both macro and micro policy issues—those of the state and nation and those of the average taxpayer.

With a flair for the dramatic, I discoursed and dressed as a 19th century sheriff, given that he was also a tax assessor. As my chronological presentation continued, I changed hats, wearing a Roman emperor's laurel, then a proud pilgrim's hat followed by a colonial tricorn hat and a 1930s fedora. Hopefully, the costume changes not only informed but entertained in a pointed fashion. I thoroughly enjoyed presenting the paper and was most grateful for the keen attentivness of my fellow assessors.

A very special thanks to Commissioner Rakow and the IAAO Education Committee for allowing me to share my passion and knowledge of the history of property taxes. I hope my presentation enlightened all to the historical record as well as the value of our assessing tasks and profession. Indeed our work is of great value.

Photos: courtesy of Richard Henry Carlson.

Above: Richard and some of his many hats: a Roman laurel, a 16th century Pilgrim hat, an 18th century tricorn hat, and a 19th century sheriff hat.

Left and Right: Some of the 17th Century assessors' maps Richard studied in preparing his presentation.

Senate Bill 284

By: Senator Golden of the 8th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 4 of Title 48 of the Official Code of Georgia Annotated, relating to tax sales, so as to provide for provisions governing the creation and operation of land banks on and after July 1, 2012; to provide a short title and a statement of construction, intent, and scope; to provide for legislative findings; to define certain terms; to provide for the creation, existence, and board membership of land banks; to provide for land bank powers, including those powers related to the acquisition and disposition of tax delinquent and other properties; to provide for financing of land banks; to provide for public meetings of land banks, for the adoption of rules and regulations to address potential conflicts of interest, and for the dissolution of land banks; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 4 of Title 48 of the Official Code of Georgia Annotated, relating to tax sales, is amended in Code Section 48-4-61, relating to land bank authority established by interlocal cooperation agreement, powers, purpose, and dissolution, by adding a new subsection to read as follows:

"(f) No land bank authority shall be created pursuant to this article on or after July 1, 2012. Except as otherwise provided in subsection (j) of Code Section 48-4-104, any land bank created pursuant to this article prior to July 1, 2012, shall continue to be governed by this article."

SECTION 2.

Said chapter is further amended by adding a new article to read as follows:

″ARTICLE 6

48-4-100.

(a) This article shall be known and may be cited as the 'Georgia Land Bank Act.'

(b) Any land bank created prior to July 1, 2012, pursuant to Article 4 of this chapter shall not be affected by this article but shall be entitled to continue in existence and exercise all powers granted in such article. The board of any existing land bank may vote, in the manner provided in subsection (j) of Code Section 48-4-104, to continue in existence under the provisions of this article, thus exercising the additional authorities and powers contained herein.

48-4-101.

The General Assembly finds and declares that:

(1) Georgia's communities are important to the social and economic vitality of this state. Whether urban, suburban, or rural, many communities are struggling to cope with dilapidated, abandoned, and tax delinquent properties;

(2) Citizens of Georgia are affected adversely by dilapidated, abandoned, and tax delinquent properties, including properties that have been abandoned due to mortgage foreclosure;

(3) Dilapidated, abandoned, and tax delinquent properties impose significant costs on neighborhoods and communities by lowering property values, increasing fire and police protection costs, decreasing tax revenues, and undermining community cohesion;

(4) There is an overriding public need to confront the problems caused by dilapidated, abandoned, and tax delinquent properties, and to return properties which are in nonrevenue-generating, nontax-producing status to an effective utilization status in order to provide affordable housing, new industry, and jobs for the citizens of this state through the creation of new tools that enable communities to turn abandoned spaces into vibrant places; and

(5) Land banks are one of the tools that can be utilized by communities to facilitate the return of dilapidated, abandoned, and tax delinquent properties to productive use.

48-4-102.

As used in this article, the term:

(1) 'Board of directors' or 'board' means the board of directors of a land bank.

(2) 'Consolidated government' means a unified government created pursuant to Article IX, Section III, Paragraph II of the Constitution of Georgia.

(3) 'Intergovernmental contract' means a contract as authorized pursuant to Article IX, Section III, Paragraph I of the Constitution of Georgia and paragraph (5) of Code Section 36-34-2, and entered into by counties, consolidated governments, and municipal corporations pursuant to this article.

(4) 'Land bank' means a public body corporate and politic established in accordance with the provisions of this article.

(5) 'Land bank member' means the local governments that are parties to the intergovernmental contract or resolution creating a land bank and the local governments that join a land bank subsequent to its creation pursuant to the provisions of this article.

(6) 'Real property' means all lands and the buildings thereon, all things permanently attached to land or to the buildings thereon, and any interest existing in, issuing out of, or dependent upon land or the buildings thereon.

(7) 'School district' means any school district, independent school system, or other local school system in this state.

48-4-103.

(a) Any county, municipal corporation, or consolidated government may elect to create a land bank in accordance with subsection (b) of this Code section by the adoption of a local law, ordinance, or resolution as appropriate to the applicable counties, consolidated governments, or municipal corporations, which action specifies the following:

(1) The name of the land bank;

(2) The number of members of the board of directors, which shall consist of an odd number of board members and be not less than five board members or more than 11 board members;

(3) The initial individuals to serve as board members and the length of terms for which they will serve; and

(4) The qualifications, manner of selection or appointment, and terms of office of board members.

(b) A land bank may be created pursuant to an intergovernmental contract by any of the following and any combination of the following methods:

(1) A county and one or more municipal corporations located wholly or partially within the county;

(2) Two or more counties and one or more municipal corporations located wholly or partially within the geographical boundaries of each county;

(3) A consolidated government and one or more municipal corporations located wholly or partially within the same county as the consolidated government; or

(4) Any consolidated government without a municipal corporation located wholly or partially within the same county as the consolidated government may create a land bank as follows:

(A) Through ordinance or resolution of the governing authority of the consolidated government;

(B) Through an intergovernmental contract with another consolidated government without a municipal corporation located wholly or partially within the same county as the consolidated government; or

(C) Through an intergovernmental contract with other counties, municipal corporations, or consolidated governments creating land banks pursuant to paragraph (1), (2), or (3) of this subsection.

(c) Any intergovernmental contract creating a land bank shall specify the matters identified in subsection (a) of this Code section.

(d) Subject to the limitations of subsection (b) of this Code section, any county or municipal corporation or consolidated government may elect to join any preexisting land bank by executing the intergovernmental contract or resolution that created the land bank and such other documentation as may be necessary.

(e) A land bank shall have the power to acquire real property only in those portions of the county located outside of the geographical boundaries of a nonparticipating municipal corporation located within the county; provided, however, that a land bank may acquire real property lying within such nonparticipating municipal corporation with the consent of such municipal corporation.

(f) A school district may participate in a land bank pursuant to an intergovernmental contract provided such contract specifies any members of the board of education serving on the board of the land bank and any actions of the land bank which are subject to approval by the board of education.

(g) A land bank shall be a public body corporate and politic and shall have permanent and perpetual duration until terminated and dissolved in accordance with the provisions of subsection (c) of Code Section 48-4-111.

48-4-104.

(a) The initial size of a board shall be determined in accordance with paragraph (2) of subsection (a) of Code Section 48-4-103. Unless restricted by the actions or agreements specified in Code Section 48-4-103, and subject to the limits stated in this Code section, the size of the board may be adjusted in accordance with the bylaws of the land bank.

(b) In the event the board of a land bank created by a county and a municipal corporation or by a consolidated government before July 1, 2012, votes to continue in existence under

the provisions of this article, the land bank members shall jointly nominate and approve at least one additional board member so that there is an odd number of board members. In the event the land bank members of such a preexisting land bank are unable to approve such additional board members, such preexisting land bank shall not exist under the provisions of this article unless and until a new intergovernmental contract is approved in accordance with this article.

(c) Notwithstanding any law to the contrary, an elected member of the municipal governing authority shall be eligible to serve as a board member, and the acceptance of the appointment shall neither terminate nor impair that public office. Any municipal employee shall be eligible to serve as a board member. Notwithstanding any law to the contrary, an elected member of the county governing authority shall be eligible to serve as a board member, and the acceptance of the appointment shall neither terminate nor impair that public office. Any county employee shall be eligible to serve as a board member. Notwithstanding any law to the contrary, an elected member of a consolidated government governing authority shall be eligible to serve as a board member, and the acceptance of the appointment shall neither terminate nor impair that public office. Any consolidated government employee shall be eligible to serve as a board member. A tax commissioner or tax collector, or both, may serve ex officio as a member of the land bank board if so authorized by the intergovernmental contract, local law, ordinance, or resolution that creates the land bank or by subsequent intergovernmental contracts with the land bank members.

(d) The members of the board shall select annually from among themselves a chairperson, vice chairperson, secretary, treasurer, and such other officers as the board may determine and shall establish their duties as may be regulated by the intergovernmental contract or by rules adopted by the board. When in actual conflict the intergovernmental contract shall control over the bylaws or rules adopted by the board.

(e)(1) The board shall establish rules and regulations relative to the attendance and participation of board members in its regular and special meetings. The rules and regulations may prescribe a procedure whereby a board member who fails to comply with the rules and regulations of the board may be removed from office by no less than a majority vote of the remaining members of the board, and that board member's position shall be vacant as of the first day of the next calendar month.

(2) A land bank member may remove any board member appointed by that land bank member.

(3) Any board member removed under the provisions of this subsection shall be ineligible for reappointment to the board, unless the reappointment is confirmed by at least a two-thirds' vote of the governing authority of the appointing land bank member.

(f) A vacancy on the board shall be filled in the same manner as the original appointment.

(g) Board members shall serve without compensation. The board may reimburse a board member for expenses actually incurred in the performance of duties on behalf of the land bank.

(h) The board shall meet in regular session according to a schedule adopted by the board and also shall meet in special session as convened by the chairperson or upon written notice signed by a majority of the board members.

(i) A quorum of board membership shall be a simple majority of the entire board membership, and no action of the board shall be taken in the absence of a quorum. All actions of the board must be approved by the affirmative vote of a majority of the members of the board present and voting; provided, however, that no action of the board shall be authorized on the following matters unless approved by a majority of the entire board membership:

(1) Adoption of bylaws and other rules and regulations for conduct of the land bank's business;

(2) Hiring or firing of any employee or contractor of the land bank. Such function may by majority vote be delegated by the board to a specified officer or committee of the land bank under such terms and conditions and to the extent that the board may specify;

(3) Incurring of debt;

(4) Adoption or amendment of the annual budget; and

(5) Sale, lease, encumbrance, or alienation of real property, improvements, or personal property with a value of more than $50,000.

(j) A land bank created pursuant to Article 4 of this chapter may continue in existence in accordance with provisions of this article upon the unanimous consent of the board members, and contingent upon the appointment of at least one additional board member pursuant to subsection (b) of this Code section.

(k) A board member shall not be liable personally on obligations of the land bank, and the rights of creditors of a land bank shall be solely against the land bank.

(l) A board member shall be prohibited from voting by proxy. A board member may request a recorded vote on any resolution or action of the land bank.

48-4-105.

A land bank may employ an executive director, its own counsel and legal staff, and such technical experts, other agents, and employees, permanent or temporary, as it may require and may determine the qualifications and fix the compensation and benefits of those persons. A land bank may also enter into contracts and agreements with municipal corporations or counties or consolidated governments for staffing services to be provided

to the land bank by agencies or departments thereof or for a land bank to provide such staffing services to agencies or departments thereof.

48-4-106.

(a) A land bank shall constitute a public body, corporate and politic, and shall have all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this article, including the following powers:

(1) To adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business;

(2) To sue and be sued in its own name and plead and be impleaded in all civil actions, including, but not limited to, actions to clear title to property of the land bank;

(3) To adopt a seal and to alter the same at pleasure;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purposes of the land bank;

(5) To acquire, accept, or retain equitable interests, security interests, or other interests in any real property, personal property, or fixtures by loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure credit extended by the land bank;

(6) To borrow from private lenders, from municipal corporations, counties, or consolidated governments, from the state, or from federal government funds, as may be necessary, for the operation and work of the land bank;

(7) To borrow money to further or carry out its public purpose and to execute notes, other obligations, leases, trust indentures, trust agreements, agreements for the sale of its notes or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable, in the judgment of the land bank, to evidence and to provide security for such borrowing;

(8) To issue notes or other obligations of the land bank and use the proceeds thereof for the purpose of paying all or any part of the cost of any land bank projects and otherwise to further or carry out the public purpose of the land bank and to pay all costs of the land bank incidental to, or necessary and appropriate to, furthering or carrying out such purpose;

(9) To make application directly or indirectly to any federal, state, county, or municipal government or agency or to any other source, whether public or private, for loans, grants, guarantees, or other financial assistance in furtherance of the land bank's public purpose

and to accept and use the same upon such terms and conditions as are prescribed by such federal, state, county, or municipal government or agency or other source;

(10) To enter into agreements with the federal government or any agency thereof to use the facilities or services of the federal government or any agency thereof in order to further or carry out the public purposes of the land bank;

(11) A land bank shall have no authority to lend money to a nongovernmental entity; provided, however, that a land bank may administer funds in the form of a loan to a nongovernmental entity when such funds are received from federal, state, and local government entities for the purpose of making such loans; provided, further, that only such transactions which are fully consistent with the purpose of the land bank shall be permitted. In those transactions, a land bank may extend credit to any person, corporation, partnership, whether limited or general, or other entity for the costs of any land bank projects which credit may be evidenced or secured by loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, or such other instruments, or by rentals, revenues, fees, or charges, upon such terms and conditions as the land bank shall determine to be reasonable in connection with such extension of credit, including provision for the establishment and maintenance of reserve funds, and, in the exercise of powers granted by this article in connection with any land bank projects the land bank shall have the right and power to require the inclusion in any such loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument of such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project, and such other terms and conditions, as the land bank may deem necessary or desirable;

(12) As security for repayment of any notes or other obligations of the land bank, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the land bank, including, but not limited to, real property, fixtures, personal property, and revenues or other funds, and to execute any lease, trust indenture, trust agreement, agreement for the sale of the land bank's notes or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the land bank, to secure any such notes or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the land bank upon default in any obligation of the land bank, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument. The state, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein, waives any right it or such county,

municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the land bank upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(13) To receive and administer gifts, grants, and devises of money and property of any kind and to administer trusts;

(14) To use any real property, personal property, or fixtures or any interest therein or to rent or lease such property to or from others or make contracts with respect to the use thereof, or to sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner as it deems to be in the best interests of the land bank and the public purpose thereof;

(15) To procure insurance or guarantees from the General Assembly or federal government of the payments of any debts or parts thereof incurred by the land bank and to pay premiums in connection therewith;

(16) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, intergovernmental contracts for the joint exercise of powers under this article. Intergovernmental contracts with municipal corporations, counties, or consolidated governments may include contracts for the performance of services by municipal corporations, counties, or consolidated governments on behalf of the land bank or by the land bank on behalf of municipal corporations, counties, or consolidated governments, whether or not such counties, consolidated governments, or municipal corporations are located inside or outside the geographical boundaries of the land bank members;

(17) To procure insurance against losses in connection with the real property, assets, or activities of the land bank;

(18) To accept and issue deeds in its name, including without limitation the acceptance of real property in accordance with the provisions of paragraph (2.1) of subsection (u) of Code Section 16-13-49;

(19) To finance by loan, grant, lease, or otherwise, refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage real property or rights or interests in property, and to pay the costs of any such project from the proceeds of loans by persons, corporations, partnerships, whether limited or general, or other entities, all of which the land bank is authorized to receive, accept, and use;

(20) To fix, charge, and collect rents, fees, and charges for the use of real property of the land bank and for services provided by the land bank;

(21) To grant or acquire a license, easement, lease, as lessor or lessee, or option with respect to real property of the land bank;

(22) To enter into partnerships, joint ventures, and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development, and disposition of real property;

(23) To hold title to real property for purposes of establishing contracts with nonprofit community land trusts, including, but not limited to, long-term lease contracts;

(24) To organize and reorganize the executive, administrative, clerical, and other departments of the land bank and to fix the duties, powers, and compensation of all employees, agents, and consultants of the land bank; and

(25) To do all other things necessary or convenient to achieve the objectives and purposes of the land bank or other laws that relate to the purposes and responsibilities of the land bank.

(b) The exercise of a specific power by a land bank may be limited or withdrawn by a land bank member when the land bank is acting with respect to real property within the jurisdiction of such member. Procedures for the exercise of such limitation or withdrawal of power shall be provided in the intergovernmental contract.

48-4-107.

A land bank shall neither possess nor exercise the power of eminent domain.

48-4-108.

(a) The real property of a land bank and its income and operations are exempt from all taxation by the state and by any of its political subdivisions, including, but not limited to, real property held by a land bank as lessor pursuant to long-term lease contracts with community land trusts.

(b) A land bank may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the board considers is in the best interest of the land bank.

(c)(1) A land bank may acquire real property by purchase contracts, lease-purchase agreements, and may accept transfers from municipal corporations, counties, or consolidated governments upon such terms and conditions as agreed to by the land bank and the municipal corporation, county, or consolidated government.

(2) Notwithstanding any other law to the contrary, a municipal corporation, county, or consolidated government may transfer to a land bank real property and interests in real property of the municipal corporation, county, or consolidated government on such terms and conditions and according to such procedures as determined by the municipal

corporation, county, or consolidated government, so long as the real property is located within the geographical boundaries of the land bank.

(3) The acquisition of property by the land bank shall not be governed or controlled by any regulations or laws relating to procurement or acquisition of property of the counties, consolidated governments, or municipal corporations that are members of the land bank unless specifically provided in the applicable intergovernmental contract or resolution, and transfers of property by municipal corporations, counties, or consolidated governments to the land bank shall be treated as transfers to a body politic as contemplated by subparagraph (a)(2)(A) of Code Section 36-9-3.

(d) A land bank shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.

(e)(1) Except as otherwise provided in paragraph (2) of this subsection, a land bank shall not own or hold real property located outside the geographical boundaries of the land bank members.

(2) A land bank may be granted pursuant to an intergovernmental contract with a county, consolidated government, or municipal corporation the authority to manage and maintain real property located within the geographical boundaries of such county, consolidated government, or municipal corporation, but outside the geographical boundaries of the land bank members.

48-4-109.

(a) A land bank shall hold in its own name all real property acquired by the land bank without regard to the identity of the transferor of the property.

(b) A land bank shall maintain and make available for public review and inspection an inventory of all real property held by the land bank.

(c) A land bank may convey, exchange, sell, transfer, lease as lessor, grant, and mortgage as mortgagor any and all interests in, upon, or to real property of the land bank in some form and by such method as determined by the board to be in the best interest of the land bank.

(d)(1) A land bank shall determine the terms, conditions, form, and substance of consideration necessary to convey, exchange, sell, transfer, lease as lessor, grant, and mortgage as mortgagor any interests in, upon, or to real property.

(2) Consideration may take the form of monetary payments and secured financial obligations, covenants, and conditions related to the present and future use of the property, contractual commitments of the transferee, and such other forms of consideration as determined by the board to be in the best interest of the land bank.

(e)(1) The board shall determine and state in the land bank policies and procedures the general terms and conditions for consideration to be received by the land bank for the transfer of real property and interests in real property.

(2) The disposition of property by the land bank shall not be governed or controlled by any regulations or laws of the participating land bank members unless specifically provided in the applicable intergovernmental contract.

(f) Land bank members may, in the resolution or intergovernmental contract creating a land bank, establish a hierarchical ranking of priorities for the use of real property conveyed by a land bank, or, if the resolution or intergovernmental contract creating the land bank is silent, the board of directors may establish a hierarchical ranking of priorities for the use of real property conveyed by a land bank, including but not limited to:

(1) Use for purely public spaces and places;

(2) Use for affordable housing;

(3) Use for retail, commercial, and industrial activities;

(4) Use as conservation areas;

(5) Use for land trusts or for other public entities; and

(6) Such other uses and in such hierarchical order as determined by the board of directors of the land bank.

(g)(1) Subject to the requirements of paragraph (5) of subsection (i) of Code Section 48-4-104, a county, municipal corporation, or consolidated government may, in the applicable intergovernmental contract or in the resolution creating a land bank, require that any particular form of disposition of real property, or any disposition of real property located within specified jurisdictions, be subject to specified voting and approval requirements of the board.

(2) Except and unless restricted or constrained as provided in paragraph (1) of this subsection, the board may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance, and all other related documents pertaining to the conveyance of real property by the land bank.

48-4-110.

(a) A land bank may receive funding through grants and loans from the land bank members, from any other municipal corporations, counties, or consolidated governments in the state, from the General Assembly, from the federal government, and from other public and private sources.

(b) A land bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from

investments, and for any other asset and activity lawfully permitted to a land bank under this article.

(c) Up to 75 percent of the real property taxes collected on real property, exclusive of any state or school district ad valorem tax, conveyed by a land bank pursuant to the laws of this state shall be remitted to the land bank. The specific percentage of such taxes to be remitted, as to each land bank member, shall be set forth in the local law, ordinance, or resolution or in the intergovernmental contract of the land bank. Such allocation of property tax revenues shall commence with the first taxable year following the date of conveyance and shall continue for a period of five years. Such funds shall be remitted to the land bank in accordance with the administrative procedures established by the tax commissioner or tax collector of the county or counties in which the land bank is located. Such allocation of property tax revenues shall not occur if such taxes have been previously allocated to a tax allocation district, or to secure a debt of the municipal corporation or consolidated government, unless the tax allocation district, municipal corporation, county, or consolidated government enters into an agreement with the land bank for the remittance of such funds to the land bank.

(d) At the time that the land bank sells or otherwise disposes of property as part of its land bank program, the proceeds from the sale, if any, shall be allocated as determined by the land bank among the following priorities:

(1) Furtherance of land bank operations;

(2) Recovery of land bank expenses; and

(3) Remitter to the tax commissioner or tax collector for distribution to the appropriate taxing entity in proportion to and to the extent of their respective tax bills and costs.

Any excess proceeds shall be distributed pursuant to any applicable intergovernmental contract or land bank rules, regulations, or bylaws in accordance with the public policy stated in this article.

48-4-111.

(a) All meetings shall be open to the public, except as otherwise provided by Chapter 14 of Title 50, and a written record shall be maintained of all meetings. All records of a land bank shall be subject to Article 4 of Chapter 18 of Title 50, relating to open records.

(b) No board member or employee of a land bank shall acquire any interest, direct or indirect, in real property owned or to be acquired by the land bank, nor shall any board member assist any third party in negotiating against the land bank for property identified by the land bank for acquisition by the land bank. No board member or employee of a land bank shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a land bank. The board may adopt

supplemental rules and regulations addressing potential conflicts of interest and ethical guidelines for board members and land bank employees.

(c)(1) A land bank may be dissolved as a public body corporate and politic 60 calendar days after an affirmative resolution approved by two-thirds of the membership of the board.

(2) Sixty calendar days' advance written notice of consideration of a resolution of dissolution shall be given to the governing authorities of the land bank members, shall be published in a local newspaper of general circulation.

(3) Upon dissolution of the land bank, all real property, personal property, and other assets of the land bank shall become the assets of the municipal corporation, county, or consolidated government in which the property is located, unless provided otherwise in any applicable intergovernmental contracts.

(4) Land banks created pursuant to paragraphs (2) through (4) of subsection (b) of Code Section 48-4-103 shall not automatically dissolve upon the withdrawal of one or more land bank members unless the intergovernmental contract so provides, except that no municipal corporation may maintain the existence of a land bank if the county in which the municipal corporation is located withdraws from the land bank, and no county may maintain the existence of a land bank if the single municipal corporation that is both located within that county and is a member of the land bank withdraws from the land bank.

48-4-112.

(a) Whenever any real property is acquired by a land bank and is encumbered by a lien or claim for real property taxes owed to one or more of the land bank members or to municipal corporations, counties, or consolidated governments that have an intergovernmental contract with the land bank, the land bank may, by resolution of the board, discharge and extinguish any and all such liens or claims. The decision by the board to extinguish such liens or claims is subject to the voting requirements contained in subsection (i) of Code Section 48-4-104. Unless provided otherwise in an applicable intergovernmental contract, whenever any real property is acquired by a land bank and is encumbered by a lien or claim for real property taxes owed to a school district, the land bank shall notify the school district of its intent to extinguish all such liens and claims in writing. If the school district fails to object in written form to the proposed extinguishment within 30 days of receipt of such notice to the land bank, the land bank shall have the power, by resolution of the board, to discharge and extinguish any and all such liens or claims. To the extent necessary and appropriate, the land bank shall file in appropriate public records evidence of the extinguishment and dissolution of such liens or claims.

(b) To the extent that a land bank receives payments of any kind attributable to liens or claims for real property taxes owed to a municipal corporation, county, consolidated government, or school district on property acquired by the land bank, the land bank shall remit the full amount of the payments to the tax commissioner or tax collector for distribution to the appropriate taxing entity.

(c)(1) A tax commissioner or tax collector may assign, transfer, or sell to a land bank any ad valorem tax executions issued against a single property or ad valorem tax executions issued against multiple tracts of property in the geographical jurisdiction of the land bank in one or more transactions and upon such terms and conditions as are mutually acceptable to the tax commissioner and the land bank. Notwithstanding the notice requirements in subsection (c) of Code Section 48-3-19, when the land bank is the holder of a tax execution, the land bank shall provide notice of the transfer of the tax execution to the land bank in the following manner:

(A) Immediately upon acquisition of one or more tax executions, the land bank shall send notice of the tax execution transfer by certified mail, return receipt requested, to all interested parties whose identity and address are reasonably ascertainable. Copies of the notice of the tax execution transfer shall also be sent by first class mail to the property address to the attention of the occupants of the property, if any. In addition, notice shall be posted on the property; and

(B) Within 30 days of the tax execution transfer, the land bank shall cause a notice of the tax execution transfer to be published on two separate dates in the official organ of the county in which the property is located.

(2) The notice contained in subparagraphs (A) and (B) of paragraph (1) of this subsection shall specify:

(A) The name of the land bank and the contact information for the individual responsible for collecting the delinquent taxes;

(B) The property address;

(C) A description of the property;

(D) The tax identification number of the property;

(E) The applicable period of tax delinquency; and

(F) The principal amount of the delinquent taxes together with interest and penalties.

(3) The land bank may submit the execution to the levying officer 12 months after the date of transfer or 24 months after the tax giving rise to the execution was originally due, whichever is earlier.

(d)(1) Notwithstanding any other provision of law, at a nonjudicial tax sale conducted pursuant to Article 1 of this chapter where the tax commissioner or tax collector or the land bank is the holder of the tax execution giving rise to the sale, a land bank may tender

a bid in an amount equal to the total amount of all tax liens which were the basis of the execution and any accrued interest, penalties, and costs. In the event of such tender by the land bank, such bid comprises the land bank's commitment to pay not more than all costs of the sale and its assumption of liability for all taxes, accrued interest thereon, and penalties, and, if there is no other bid, the tax commissioner or tax collector shall accept the land bank's bid and make a deed of the property to the land bank.

(2) If there are third parties who bid on a given parcel and the land bank tenders the highest bid on that parcel, the land bank shall pay the tax commissioner or tax collector the full amount of the bid tendered by the land bank in order to obtain the parcel.

(e)(1) A land bank may tender a bid at any sale ordered by the court pursuant to Article 5 of this chapter in an amount equal to the total amount of all tax liens which were the basis of the judgment and any accrued interest, penalties, and costs. In the event of such tender by the land bank, such bid shall comprise the land bank's commitment to pay not more than all costs of the sale and its assumption of liability for all taxes, accrued interest thereon, and penalties. If there is no other bid and the property is not redeemed by the owner in accordance with subsection (c) of Code Section 48-4-81, the tax commissioner or tax collector shall accept the land bank's bid and make a deed of the property to the land bank.

(2) If there are third parties who bid on a given parcel and the land bank tenders the highest bid on that parcel, the land bank shall pay the tax commissioner or tax collector the full amount of the bid tendered by the land bank in order to obtain the parcel.

(3) Subject to the statutory 60 day redemption period required pursuant to subsection (c) of Code Section 48-4-81, the land bank, as purchaser at such sale, shall take and thereafter have an absolute title to the property sold, free and discharged of all tax and municipal claims, liens, mortgages, charges, and estates of whatsoever kind except for those interests referenced in subsection (b) of Code Section 48-4-79. In the event of purchase by a land bank, the conveying instrument described in subsection (g) of Code Section 48-4-81 shall note the conveyance to the land bank pursuant to this article.

(4) The deed to the land bank shall be executed and delivered to the land bank within 90 days of the sale pursuant to subsection (d) of Code Section 48-4-81.

(5) Notwithstanding any other provision of law, a land bank that is a transferee and holder of tax executions may file petitions of foreclosure pursuant to Article 5 of this chapter on real property located within a jurisdiction that has authorized the ad valorem tax foreclosure process contained in Article 5 of this chapter. In a petition of foreclosure pursuant to Article 5 of this chapter, a land bank is authorized to combine in a single petition multiple tracts of real property, and the court may order in a single final judgment that all or part of the real properties identified in the petition be sold to the land bank free

and clear of all liens and encumbrances so long as the petition and accompanying affidavits provide:

(A) Identification of each tract of real property;

(B) The identities of all parties having an interest in each respective tract of property;

(C) The amount of the tax lien due and owing; and

(D) The nature of the notice of the proposed sale provided to such interested parties.″

SECTION 3.

This Act shall become effective on July 1, 2012.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.

House Bill 397 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 171st, Bearden of the 68th, Powell of the 29th, Greene of the 149th, Baker of the 78th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to comprehensively revise the provisions of law regarding open meetings and open records; to provide definitions relating to open meetings; to provide for the manner of closing meetings; to provide for open meetings; to provide for remedies for improperly closing meetings; to provide for notice of meetings; to provide for exceptions; to provide for certain privileges; to provide for sanctions; to provide for related matters; to provide for legislative intent regarding open records; to provide for definitions relating to open records; to provide for applicability; to provide for procedures regarding disclosure and enforcement of disclosure provisions; to provide for fees and the amount and manner of collection thereof; to provide for exceptions and exemptions; to provide for sanctions; to provide for related matters; to conform certain cross references; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by revising Chapter 14, relating to open and public meetings, as follows:

"CHAPTER 14

50-14-1.

(a) As used in this chapter, the term:

(1) 'Agency' means:

(A) Every state department, agency, board, bureau, <u>office,</u> commission, public corporation, and authority;

(B) Every county, municipal corporation, school district, or other political subdivision of this state;

- (C) Every department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state;

(D) Every city, county, regional, or other authority established pursuant to the laws of this state; and

(E) Any nonprofit organization to which there is a direct allocation of tax funds made by the governing ~~authority~~ body of any agency as defined in this paragraph ~~and~~ which ~~allocation~~ constitutes more than 33 1/3 percent of the funds from all sources of such organization; provided, however, that this subparagraph shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization, person, or firm furnishing medical or health services to a citizen for which they receive reimbursement from the state whether directly or indirectly; nor shall this term include a subagency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

(2) 'Executive session' means a portion of a meeting lawfully closed to the public.

(3)(A) 'Meeting' means ~~the~~:

(i) The gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon; or

(ii) The gathering of a quorum of any committee of ~~it's~~ the members of the governing body of an agency or a quorum of any committee created by ~~such~~ the governing body~~,~~ ~~whether standing or special, pursuant to schedule, call, or notice of or from such governing body or committee or an authorized member, at a designated time and place at which any public matter, official business, or policy of the agency is to be discussed or presented or at which official action is to be taken or, in the case of a committee, recommendations on any public matter,~~ at which any official business, ~~or~~ policy ~~to the governing body are to be~~, or public matter of the committee is formulated, presented, ~~or~~ discussed, or voted upon.

(B) 'Meeting' shall not include:

(i) The ~~assembling together~~ gathering of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency ~~or for the purposes of meeting with the governing bodies, officers, agents, or employees of other agencies at places outside the geographical jurisdiction of an agency and~~ at which no ~~final~~ other official business of the agency is to be discussed or official action is to be taken ~~shall not be deemed a 'meeting.'~~;

(ii) The gathering of a quorum of the members of a governing body or committee for the purpose of attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency at which no official action is to be taken by the members;

(iii) The gathering of a quorum of the members of a governing body or committee for the purpose of meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices and at which no official action is to be taken by the members;

(iv) The gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or

(v) The gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum.

This subparagraph's exclusions from the definition of the term 'meeting' shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.

(b)(1) Except as otherwise provided by law, all meetings ~~as defined in subsection (a) of this Code section~~ shall be open to the public. All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter.

(2) Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision ~~must~~ shall be commenced within 90 days of the date such contested action was taken~~, provided that~~ or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, any action under this chapter contesting a zoning decision of a local governing authority shall be commenced within the time allowed by law for appeal of such zoning decision.

(c) The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual~~, sound, and visual~~ and sound recording during open meetings shall be permitted.

(d)(1) Every agency subject to this chapter shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted at least one week in advance and maintained in a conspicuous place available to the public at the regular ~~meeting~~ place of ~~the~~ an agency or committee meeting subject to this chapter as well as on the agency's website, if any. Meetings shall be held in accordance with a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting.

(2) For any meeting, other than a regularly scheduled meeting of the agency for which notice has already been provided pursuant to this chapter, ~~Whenever any meeting required to be open to the public is to be held at a time or place other than at the time and place prescribed for regular meetings, the agency shall give due notice thereof. 'Due notice' shall be the posting of a written notice for at least 24 hours at the place of regular meetings and giving of~~ written or oral notice shall be given at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in ~~said~~ such county at least equal to that of the legal organ; provided, however, that, in counties where the legal organ is published less often than four times weekly ~~'due notice'~~, sufficient notice shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone ~~or~~, facsimile, or e-mail to that requesting media outlet at least 24 hours in advance of the called meeting. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately or as soon as practicable make the information available upon inquiry to any member of the public. Upon written request from any local broadcast or print media outlet, a copy of the meeting's agenda shall be provided by facsimile, e-mail, or mail through a self-addressed, stamped envelope provided by the requestor.

(3) When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances, including notice to ~~said~~ the county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be

recorded in the minutes. ~~Whenever notice is given to a legal organ or other newspaper, that publication shall immediately make the information available upon inquiry to any member of the public. Any oral notice required or permitted by this subsection may be given by telephone.~~ Such reasonable notice shall also include, upon written request within the previous calendar year from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet.

(e)(1) Prior to any meeting, the agency or committee holding such meeting shall make available an agenda of all matters expected to come before the agency or committee at such meeting. The agenda shall be available upon request and shall be posted at the meeting site~~,~~ as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting and shall be posted, at a minimum, at some time during the two-week period immediately prior to the meeting. Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item.

(2)(A) A summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting ~~of any agency~~.

(B) The regular minutes of a meeting ~~of any agency~~ subject to this chapter shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency or its committee, but in no case later than immediately following ~~the~~ its next regular meeting ~~of the agency~~; provided, however, that nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Such ~~Said~~ minutes shall, ~~as~~ at a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, the identity of the persons making and seconding the motion or other proposal, and a record of all votes. ~~In the case of a roll-call vote the~~ The name of each person voting for or against a proposal shall be recorded ~~and in all other cases it~~. It shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining.

(C) Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session by the agency or committee. In the case of executive sessions where matters subject to the attorney-client privilege are discussed, the fact that an attorney-client discussion occurred and its subject shall be identified, but the substance of the discussion need not be recorded and shall not be identified in the minutes. Such minutes shall be kept and

preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session.

(f) An agency with state-wide jurisdiction or committee of such an agency shall be authorized to conduct meetings by ~~telecommunications conference~~ teleconference, provided that any such meeting is conducted in compliance with this chapter.

(g) Under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services, agencies or committees thereof not otherwise permitted by subsection (f) of this Code section to conduct meetings by teleconference may meet by means of teleconference so long as the notice required by this chapter is provided and means are afforded for the public to have simultaneous access to the teleconference meeting. On any other occasion of the meeting of an agency or committee thereof, and so long as a quorum is present in person, a member may participate by teleconference if necessary due to reasons of health or absence from the jurisdiction so long as the other requirements of this chapter are met. Absent emergency conditions or the written opinion of a physician or other health professional that reasons of health prevent a member's physical presence, no member shall participate by teleconference pursuant to this subsection more than twice in one calendar year.

50-14-2.

This chapter shall not be construed so as to repeal in any way:

(1) The attorney-client privilege recognized by state law to the extent that a meeting otherwise required to be open to the public under this chapter may be closed in order to consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved; provided, however, the meeting may not be closed for advice or consultation on whether to close a meeting; and

(2) Those tax matters which are otherwise made confidential by state law.

50-14-3.

(a) This chapter shall not apply to the following:

(1) Staff meetings held for investigative purposes under duties or responsibilities imposed by law;

(2) The deliberations and voting of the State Board of Pardons and Paroles; and in addition ~~said~~ such board may close a meeting held for the purpose of receiving information or evidence for or against clemency or in revocation proceedings if it

determines that the receipt of such information or evidence in open meeting would present a substantial risk of harm or injury to a witness;

(3) Meetings of the Georgia Bureau of Investigation or any other law enforcement or prosecutorial agency in the state, including grand jury meetings;

(4) Adoptions and proceedings related thereto;

(5) Gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party. In such a gathering, the neutral party may caucus jointly or independently with the parties to the mediation to facilitate a resolution to the conflict, and any such caucus shall not be subject to the requirements of this chapter. Any decision or resolution agreed to by an agency at any such caucus shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement agreement, memorandum of agreement, memorandum of understanding, or other similar document, however denominated, in which an agency has formally resolved a claim or dispute shall be subject to the provisions of Article 4 of Chapter 18 of this title;

(6) Meetings:

(A) Of any medical staff committee of a public hospital;

(B) Of the governing authority of a public hospital or any committee thereof when performing a peer review or medical review function as set forth in Code Section 31-7-15, Articles 6 and 6A of Chapter 7 of Title 31, or under any other applicable federal or state statute or regulation; and

(C) Of the governing authority of a public hospital or any committee thereof in which the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law is discussed, considered, or voted upon;

(7) Incidental conversation unrelated to the business of the agency; or

(8) E-mail communications among members of an agency; provided, however, that such communications shall be subject to disclosure pursuant to Article 4 of Chapter 18 of this title.

(b) Subject to compliance with the other provisions of this chapter, executive sessions shall be permitted for:

~~(4)~~(1) Meetings when any agency is discussing ~~the future acquisition of real estate, except that such meetings shall be subject to the requirements of this chapter for the giving of the notice of such a meeting to the public and preparing the minutes of such a meeting; provided, however, the disclosure of such portions of the minutes as would identify real estate to be acquired may be delayed until such time as the acquisition of the real estate has been completed, terminated, or abandoned or court proceedings with respect thereto initiated;~~ or voting to:

(A) Authorize the settlement of any matter which may be properly discussed in executive session in accordance with paragraph (1) of Code Section 50-14-2;

(B) Authorize negotiations to purchase, dispose of, or lease property;

(C) Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;

(D) Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; or

(E) Enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote.

No vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote;

~~(5) Meetings of the governing authority of a public hospital or any committee thereof when discussing the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law;~~

~~(6)~~(2) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee ~~but not when receiving evidence~~ or interviewing applicants for the position of the executive head of an agency. This exception shall not apply to the receipt of evidence or when hearing argument on ~~charges filed to determine~~ personnel matters, including whether to impose disciplinary action or ~~dismissal of~~ dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;

~~(7) Adoptions and proceedings related thereto;~~

~~(8)~~(3) Meetings of the board of trustees or the investment committee of any public retirement system created by or subject to Title 47 when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition; and

~~(9)~~(4) Portions of meetings during which that portion of a record made ~~Meetings when discussing any records that are~~ exempt from public inspection or disclosure pursuant to ~~paragraph (15) of subsection (a) of Code Section 50-18-72, when discussing any~~

~~information a record of which would be exempt from public inspection or disclosure under said paragraph, or when reviewing or discussing any security plan under consideration pursuant to paragraph (10) of subsection (a) of Code Section 15-16-10~~ Article 4 of Chapter 18 of this title is to be considered by an agency and there are no reasonable means by which the agency can consider the record without disclosing the exempt portions if the meeting were not closed.

50-14-4.

(a) When any meeting of an agency is closed to the public pursuant to any provision of this chapter, the specific reasons for such closure shall be entered upon the official minutes, the meeting shall not be closed to the public except by a majority vote of a quorum present for the meeting, the minutes shall reflect the names of the members present and the names of those voting for closure, and that part of the minutes shall be made available to the public as any other minutes. Where a meeting of an agency is devoted in part to matters within the exceptions provided by law, any portion of the meeting not subject to any such exception, privilege, or confidentiality shall be open to the public, and the minutes of such portions not subject to any such exception shall be taken, recorded, and open to public inspection as provided in subsection (e) of Code Section 50-14-1.

(b)(1) When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the ~~chairperson or other~~ person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

(2) In the event that one or more persons in an executive session initiates a discussion that is not authorized pursuant to Code Section 50-14-3, the presiding officer shall immediately rule the discussion out of order and all present shall cease the questioned conversation. If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer shall immediately adjourn the executive session.

50-14-5.

(a) The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this chapter, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person, firm, corporation, or other entity, the Attorney General shall have authority to bring enforcement actions, either civil

or criminal, in his or her discretion as may be appropriate to enforce compliance with this chapter.

(b) In any action brought to enforce the provisions of this chapter in which the court determines that an agency acted without substantial justification in not complying with this chapter, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of having provided access to such information.

50-14-6.

Any person knowingly and willfully conducting or participating in a meeting in violation of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed ~~$500.00~~ $1,000.00. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this chapter against any person who negligently violates the terms of this chapter in an amount not to exceed $1,000.00 for the first violation. A civil penalty or criminal fine not to exceed $2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date that the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions.″

SECTION 2.

Said title is further amended by revising Article 4 of Chapter 18, relating to inspection of public records, as follows:

″ARTICLE 4

50-18-70.

(a) The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The General Assembly

further finds and declares that there is a strong presumption that public records should be made available for public inspection without delay. This article shall be broadly construed to allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly to exclude only those portions of records addressed by such exception.

~~(a)~~(b) As used in this article, the term:

(1) 'Agency' shall have the same meaning as in Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization that has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state, their officers, or any combination thereof and derives more than 33 1/3 percent of its general operating budget from payments from such political subdivisions.

(2) 'Public record' means ~~'public record' shall mean~~ all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use. ~~in the course of the operation of a public office or agency. 'Public record' shall also mean such items received or maintained by a private person or entity on behalf of a public office or agency which are not otherwise subject to protection from disclosure; provided, however, this Code section shall be construed to disallow an agency's placing or causing such items to be placed in the hands of a private person or entity for the purpose of avoiding disclosure. Records received or maintained by a private person, firm, corporation, or other private entity in the performance of a service or function for or on behalf of an agency, a public agency, or a public office shall be subject to disclosure to the same extent that such records would be subject to disclosure if received or maintained by such agency, public agency, or public office. As used in this article, the term 'agency' or 'public agency' or 'public office' shall have the same meaning and application as provided for in the definition of the term 'agency' in paragraph (1) of subsection (a) of Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization which: (1) has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state or their officers or any combination thereof; and (2) derives a substantial portion of its general operating budget from payments from such political subdivisions.~~

~~(b) All public records of an agency as defined in subsection (a) of this Code section, except those which by order of a court of this state or by law are prohibited or specifically~~

~~exempted from being open to inspection by the general public, shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen.~~

~~(c) Any computerized index of a county real estate deed records shall be printed for purposes of public inspection no less than every 30 days and any correction made on such index shall be made a part of the printout and shall reflect the time and date that said index was corrected.~~

~~(d) No public officer or agency shall be required to prepare reports, summaries, or compilations not in existence at the time of the request.~~

~~(e) In a pending proceeding under Chapter 13 of this title, the 'Georgia Administrative Procedure Act,' or under any other administrative proceeding authorized under Georgia law, a party may not access public records pertaining to the subject of the proceeding pursuant to this article without the prior approval of the presiding administrative law judge, who shall consider such open record request in the same manner as any other request for information put forth by a party in such a proceeding. This subsection shall not apply to any proceeding under Chapter 13 of this title, relating to the revocation, suspension, annulment, withdrawal, or denial of a professional education certificate, as defined in Code Section 20-2-200, or any personnel proceeding authorized under Part 7 and Part 11 of Article 17 and Article 25 of Chapter 2 of Title 20.~~

~~(f) The individual in control of such public record or records shall have a reasonable amount of time to determine whether or not the record or records requested are subject to access under this article and to permit inspection and copying. In no event shall this time exceed three business days. Where responsive records exist but are not available within three business days of the request, a written description of such records, together with a timetable for their inspection and copying, shall be provided within that period; provided, however, that records not subject to inspection under this article need not be made available for inspection and copying or described other than as required by subsection (h) of Code Section 50-18-72, and no records need be made available for inspection or copying if the public officer or agency in control of such records shall have obtained, within that period of three business days, an order based on an exception in this article of a superior court of this state staying or refusing the requested access to such records.~~

~~(g) At the request of the person, firm, corporation, or other entity requesting such records, records maintained by computer shall be made available where practicable by electronic means, including Internet access, subject to reasonable security restrictions preventing access to nonrequested or nonavailable records.~~

50-18-71.

(a) All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted from disclosure. Records shall be maintained by agencies to the extent and in the manner required by Article 5 of this chapter. ~~In all cases where an interested member of the public has a right to inspect or take extracts or make copies from any public records, instruments, or documents, any such person shall have the right of access to the records, documents, or instruments for the purpose of making photographs or reproductions of the same while in the possession, custody, and control of the lawful custodian thereof, or his authorized deputy. Such work shall be done under the supervision of the lawful custodian of the records, who shall have the right to adopt and enforce reasonable rules governing the work. The work shall be done in the room where the records, documents, or instruments are kept by law. While the work is in progress, the custodian may charge the person making the photographs or reproductions of the records, documents, or instruments at a rate of compensation to be agreed upon by the person making the photographs and the custodian for his services or the services of a deputy in supervising the work.~~

(b)(1)(A) Agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed three business days of receipt of a request; provided, however, that nothing in this chapter shall require agencies to produce records in response to a request if such records did not exist at the time of the request. In those instances where some, but not all, records are available within three business days, an agency shall make available within that period those records that can be located and produced. In any instance where records are unavailable within three business days of receipt of the request, and responsive records exist, the agency shall, within such time period, provide the requester with a description of such records and a timeline for when the records will be available for inspection or copying and provide the responsive records or access thereto as soon as practicable. ~~Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply.~~

(B) A request made pursuant to this article may be made to the custodian of a public record orally or in writing. An agency may, but shall not be obligated to, require that all written requests be made upon the responder's choice of one of the following: the agency's director, chairperson, or chief executive officer, however denominated; the senior official at any satellite office of an agency; a clerk specifically designated by an agency as the custodian of agency records; or a duly designated open records officer of an agency; provided, however, that the absence or unavailability of the designated agency officer or employee shall not be permitted to delay the agency's response. At

the time of inspection, any person may make photographic copies or other electronic reproductions of the records using suitable portable devices brought to the place of inspection. Notwithstanding any other provision of this chapter, an agency may, in its discretion, provide copies of a record in lieu of providing access to the record when portions of the record contain confidential information that must be redacted.

(2) Any agency that designates one or more open records officers upon whom requests for inspection or copying of records may be delivered shall make such designation in writing and shall immediately provide notice to any person upon request, orally or in writing, of those open records officers. If the agency has elected to designate an open records officer, the agency shall so notify the legal organ of the county in which the agency's principal offices reside and, if the agency has a website, shall also prominently display such designation on the agency's website. In the event an agency requires that requests be made upon the individuals identified in subparagraph (B) of paragraph (1) of this subsection, the three-day period for response to a written request shall not begin to run until the request is made in writing upon such individuals. An agency shall permit receipt of written requests by e-mail or facsimile transmission in addition to any other methods of transmission approved by the agency, provided such agency uses e-mail or facsimile in the normal course of its business.

(3) The enforcement provisions of Code Sections 50-18-73 and 50-18-74 shall be available only to enforce compliance and punish noncompliance when a written request is made consistent with this subsection and shall not be available when such request is made orally.

(c)(1) An agency may impose a reasonable charge for the search, retrieval, redaction, and production or copying costs for the production of records pursuant to this article. An agency shall utilize the most economical means reasonably calculated to identify and produce responsive, nonexcluded documents. Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply when certified copies or other records to which a specific fee may apply are sought. In all other instances, the charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour. ~~Where no fee is otherwise provided by law, the agency may charge and collect a uniform copying fee not to exceed 25¢ per page.~~

(2) In addition to a charge for the search, retrieval, or redaction of records, an agency may charge a fee for the copying of records or data, not to exceed 10¢ per page for letter or legal size documents or, in the case of other documents, the actual cost of producing

the copy. In the case of electronic records, the agency may charge the actual cost of the media on which the records or data are produced.

(3) Whenever any person has requested to inspect or copy a public record and does not pay the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully estimated and agreed to pursuant to this article, and the agency has incurred the agreed-upon costs to make the records available, regardless of whether the requester inspects or accepts copies of the records, the agency shall be authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments by such agency.

(d) In any instance in which an agency is required to or has decided to withhold all or part of a requested record, the agency shall notify the requester of the specific legal authority exempting the requested record or records from disclosure by Code section, subsection, and paragraph within a reasonable amount of time not to exceed three business days or in the event the search and retrieval of records is delayed pursuant to this paragraph or pursuant to subparagraph (b)(1)(A) of this Code section, then no later than three business days after the records have been retrieved. In any instance in which an agency will seek costs in excess of $25.00 for responding to a request, the agency shall notify the requester within a reasonable amount of time not to exceed three business days and inform the requester of the estimate of the costs, and the agency may defer search and retrieval of the records until the requester agrees to pay the estimated costs unless the requester has stated in his or her request a willingness to pay an amount that exceeds the search and retrieval costs. In any instance in which the estimated costs for production of the records exceeds $500.00, an agency may insist on prepayment of the costs prior to beginning search, retrieval, review, or production of the records. Whenever any person who has requested to inspect or copy a public record has not paid the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully incurred, an agency may require prepayment for compliance with all future requests for production of records from that person until the costs for the prior production of records have been paid or the dispute regarding payment resolved. ~~In addition, a reasonable charge may be collected for search, retrieval, and other direct administrative costs for complying with a request under this Code section. The hourly charge shall not exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour.~~

(e) Requests by civil litigants for records that are sought as part of or for use in any ongoing civil or administrative litigation against an agency shall be made in writing and copied to counsel of record for that agency contemporaneously with their submission to that agency. The agency shall provide, at no cost, duplicate sets of all records produced

in response to the request to counsel of record for that agency unless the counsel of record for that agency elects not to receive the records. ~~An agency shall utilize the most economical means available for providing copies of public records.~~

(f) As provided in this subsection, an agency's use of electronic record-keeping systems must not erode the public's right of access to records under this article. Agencies shall produce electronic copies of or, if the requester prefers, printouts of electronic records or data from data base fields that the agency maintains using the computer programs that the agency has in its possession. An agency shall not refuse to produce such electronic records, data, or data fields on the grounds that exporting data or redaction of exempted information will require inputting range, search, filter, report parameters, or similar commands or instructions into an agency's computer system so long as such commands or instructions can be executed using existing computer programs that the agency uses in the ordinary course of business to access, support, or otherwise manage the records or data. A requester may request that electronic records, data, or data fields be produced in the format in which such data or electronic records are kept by the agency, or in a standard export format such as a flat file electronic American Standard Code for Information Interchange (ASCII) format, if the agency's existing computer programs support such an export format. In such instance, the data or electronic records shall be downloaded in such format onto suitable electronic media by the agency. ~~Where information requested is maintained by computer, an agency may charge the public its actual cost of a computer disk or tape onto which the information is transferred and may charge for the administrative time involved as set forth in subsection (d) of this Code section.~~

(g) Requests to inspect or copy electronic messages, whether in the form of e-mail, text message, or other format, should contain information about the messages that is reasonably calculated to allow the recipient of the request to locate the messages sought, including, if known, the name, title, or office of the specific person or persons whose electronic messages are sought and, to the extent possible, the specific data bases to be searched for such messages. ~~Whenever any person has requested one or more copies of a public record and such person does not pay the copying charges and charges for search, retrieval, or other direct administrative costs in accordance with the provisions of this Code section:~~

~~(1) A county or a department, agency, board, bureau, commission, authority, or similar body of a county is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the county;~~

~~(2) A municipal corporation or a department, agency, board, bureau, commission, authority, or similar body of a municipal corporation is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the municipal corporation;~~

~~(3) A consolidated government or a department, agency, board, bureau, commission, authority, or similar body of a consolidated government is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the consolidated government;~~

~~(4) A county school board or a department, agency, board, bureau, commission, authority, or similar body of a county school board is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the county;~~

~~(5) An independent school board or a department, agency, board, bureau, commission, authority, or similar body of an independent school board is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the municipal corporation; and~~

~~(6) A joint or regional authority or instrumentality which serves one or more counties and one or more municipal corporations, two or more counties, or two or more municipal corporations is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the county if a county is involved with the authority or instrumentality or in any manner authorized by law for the collection of taxes, fees, or assessments owed to the municipal corporation if a municipal corporation is involved with the authority or instrumentality.~~

~~This subsection shall apply whether or not the person requesting the copies has appeared to receive the copies.~~

(h) In lieu of providing separate printouts or copies of records or data, an agency may provide access to records through a website accessible by the public. However, if an agency receives a request for data fields, an agency shall not refuse to provide the responsive data on the grounds that the data is available in whole or in its constituent parts through a website if the requester seeks the data in the electronic format in which it is kept. Additionally, if an agency contracts with a private vendor to collect or maintain public records, the agency shall ensure that the arrangement does not limit public access to those records and that the vendor does not impede public record access and method of delivery as established by the agency or as otherwise provided for in this Code section.

(i) Any computerized index of county real estate deed records shall be printed for purposes of public inspection no less than every 30 days, and any correction made on such index shall be made a part of the printout and shall reflect the time and date that such index was corrected.

(j) No public officer or agency shall be required to prepare new reports, summaries, or compilations not in existence at the time of the request.

~~50-18-71.1.~~

~~(a) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case or, if no judge has been assigned, approval of the chief judge or, if no judge has been designated chief judge, approval of the judge most senior in length of service on the court.~~

~~(b) Except as provided in subsection (d) of this Code section, in the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following representations of the exhibit:~~

~~(1) A photograph;~~

~~(2) A photocopy;~~

~~(3) A facsimile; or~~

~~(4) Another reproduction.~~

~~(c) The provisions of subsections (b), (c), (d), and (e) of Code Section 50-18-71 shall apply to fees, costs, and charges for providing a photocopy of such an exhibit. Fees for providing a photograph, facsimile, or other reproduction of such an exhibit shall not exceed the cost of materials or supplies and a reasonable charge for time spent producing the photograph, facsimile, or other reproduction, in accordance with subsections (d) and (e) of Code Section 50-18-71.~~

~~(d) Any physical evidence that is evidence of a violation of Part 2 of Article 3 of Chapter 12 of Title 16, that is used as an exhibit in a criminal or civil trial, shall not be open to public inspection except as provided in subsection (a) of this Code section. If the judge approves inspection of such physical evidence, the judge shall designate, in writing, the location where such physical evidence may be inspected, which location shall be in a facility owned or operated by an agency of state or local government. If the judge permits inspection, such property or material shall not be photographed, copied, or reproduced by any means. Any person who violates the provisions of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years and by a fine of not more than $100,000.00, or both.~~

~~50-18-71.2.~~

~~Any agency receiving a request for public records shall be required to notify the party making the request of the estimated cost of the copying, search, retrieval, and other administrative fees authorized by Code Section 50-18-71 as a condition of compliance with the provisions of this article prior to fulfilling the request as a condition for the assessment~~

~~of any fee; provided, however, that no new fees other than those directly attributable to providing access shall be assessed where records are made available by electronic means.~~

50-18-72.

(a) Public disclosure shall not be required for records that are:

(1) Specifically required by federal statute or regulation to be kept confidential;

(2) Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy;

(3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records ~~would~~ is reasonably likely to disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation;

(4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving ~~said~~ such investigation and prosecution has become final or otherwise terminated; and provided, further, that this paragraph shall not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution;

~~(4.1)~~(5) Individual Georgia Uniform Motor Vehicle Accident Reports, except upon the submission of a written statement of need by the requesting party~~, such statement~~ to be provided to the custodian of records and to set forth the need for the report pursuant to this Code section; provided, however, that any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report shall be entitled, either personally or through a lawyer or other representative, to receive a copy of such report; and provided, further, that Georgia Uniform Motor Vehicle Accident Reports shall not be available in bulk for inspection or copying by any person absent a written statement showing the need for each such report pursuant to the requirements of this Code section. For the purposes of this subsection, the term 'need' means that the natural person or legal entity who is requesting in person or by representative to inspect or copy the Georgia Uniform Motor Vehicle Accident Report:

(A) Has a personal, professional, or business connection with a party to the accident;

(B) Owns or leases an interest in property allegedly or actually damaged in the accident;

(C) Was allegedly or actually injured by the accident;

(D) Was a witness to the accident;

(E) Is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;

(F) Is a prosecutor or a publicly employed law enforcement officer;

(G) Is alleged to be liable to another party as a result of the accident;

(H) Is an attorney stating that he or she needs the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe;

(I) Is gathering information as a representative of a news media organization;

(J) Is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes; provided, however, that this subparagraph ~~will~~ shall apply only to accident reports on accidents that occurred more than 30 days prior to the request and which shall have the name, street address, telephone number, and driver's license number redacted; or

(K) Is a governmental official, entity, or agency, or an authorized agent thereof, requesting reports for the purpose of carrying out governmental functions or legitimate governmental duties;

~~(4.2)~~(6) Jury list data, including, but not limited to, persons' names, dates of birth, addresses, ages, race, gender, telephone numbers, social security numbers, and when it is available, the person's ethnicity, and other confidential identifying information that is collected and used by the Council of Superior Court Clerks of Georgia for creating, compiling, and maintaining state-wide master jury lists and county master jury lists for the purpose of establishing and maintaining county jury source lists pursuant to the provisions of Chapter 12 of Title 15; provided, however, that when ordered by the judge of a court having jurisdiction over a case in which a challenge to the array of the grand or trial jury has been filed, the Council of Superior Court Clerks of Georgia or the clerk of the county board of jury commissioners of any county shall provide data within the time limit established by the court for the limited purpose of such challenge. Neither the Council of Superior Court Clerks of Georgia nor the clerk of a county board of jury commissioners shall be liable for any use or misuse of such data;

~~(5)~~(7) Records ~~that consist~~ consisting of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee; ~~and records~~

(8) Records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the

investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged;

~~(6)(A)~~(9) Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned; ~~and~~

~~(B)~~(10) Pending ~~Engineers' cost estimates and pending~~, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until such time as the final award of the contract is made, ~~or~~ the project is terminated or abandoned~~. The provisions of this subparagraph shall apply whether the bid or proposal is received or prepared by the Department of Transportation pursuant to Article 4 of Chapter 2 of Title 32, by a county pursuant to Article 3 of Chapter 4 of Title 32, by a municipality pursuant to Article 4 of Chapter 4 of Title 32, or by a governmental entity pursuant to Article 2 of Chapter 91 of Title 36~~, or the agency in possession of the records takes a public vote regarding the sealed bid or sealed proposal, whichever comes first;

~~(7)~~(11) Records which ~~Notwithstanding any other provision of this article, an agency shall not be required to release those portions of records which would~~ identify persons applying for or under consideration for employment or appointment as executive head of an agency ~~as that term is defined in paragraph (1) of subsection (a) of Code Section 50-14-1,~~ or of a unit of the University System of Georgia; provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position ~~the agency shall release~~ of executive head of an agency or five business days prior to the meeting at which final action or vote is to be taken on the position of president of a unit of the University System of Georgia, all documents ~~which came into its possession with respect to as many as~~ concerning as many as three persons under consideration whom the agency has determined to be the best qualified for the position ~~and from among whom the agency intends to fill the position~~ shall be subject to inspection and copying. Prior to the release of these documents, an agency may allow such a person to decline being considered further for the position rather than have documents pertaining to ~~the~~ such person released. In that event, the agency shall release the documents of the next most qualified person under consideration who does not decline the position. If an agency has conducted its hiring or appointment process ~~open to the public~~ without conducting interviews or discussing or deliberating in executive session in a manner otherwise consistent with Chapter 14 of this title, it shall not be required to delay ~~14 days to take~~ final action on the position. The agency shall not be required to release such records ~~with respect to~~ of other applicants or persons under consideration, except at the request of any such person. Upon request, the hiring agency

shall furnish the number of applicants and the composition of the list by such factors as race and sex. The agency shall not be allowed to avoid the provisions of this paragraph by the employment of a private person or agency to assist with the search or application process;

~~(8)~~(12) Related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Budget and Research Office, provided that this exception shall not have any application ~~with respect~~ to records related to the provision of staff services to any committee or subcommittee or to any records which are or have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly;

~~(9)~~(13) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Board of Regents of the University System of Georgia when the owner or donor of such records wishes to place restrictions on access to the records. No restriction on access, however, may extend more than 75 years from the date of donation or sale. This exemption shall not apply to any records prepared in the course of the operation of state or local governments of the State of Georgia;

~~(10)~~(14) Records that contain information from the Department of Natural Resources inventory and register relating to the location and character of a historic property or of historic properties as those terms are defined in Code Sections 12-3-50.1 and 12-3-50.2 if the Department of Natural Resources through its Division of Historic Preservation determines that disclosure will create a substantial risk of harm, theft, or destruction to the property or properties or the area or place where the property or properties are located;

~~(10.1)~~(15) Records of farm water use by individual farms as determined by water-measuring devices installed pursuant to Code Section 12-5-31 or 12-5-105; provided, however, that compilations of such records for the 52 large watershed basins as identified by the eight-digit United States Geologic Survey hydrologic code or an aquifer that do not reveal farm water use by individual farms shall be subject to disclosure under this article;

~~(10.2)~~(16) Agricultural or food system records, data, or information that are considered by the ~~Georgia~~ Department of Agriculture to be a part of the critical infrastructure, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term 'critical infrastructure' shall have the same

meaning as in 42 U.S.C. Section 5195c(e). Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

~~(10.3)~~(17) Records, data, or information collected, recorded, or otherwise obtained that is deemed confidential by the ~~Georgia~~ Department of Agriculture for the purposes of the national animal identification system, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term 'national animal identification program' means a national program intended to identify animals and track them as they come into contact with or commingle with animals other than herdmates from their premises of origin. Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

~~(11)~~(18) Records that contain ~~site specific~~ site-specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural habitats on public or private property if the Department of Natural Resources determines that disclosure will create a substantial risk of harm, theft, or destruction to the species or habitats or the area or place where the species or habitats are located; provided, however, that the owner or owners of private property upon which rare species of plants or animals occur or upon which sensitive natural habitats are located shall be entitled to such information pursuant to this article;

~~(11.1) An individual's social security number and insurance or medical information in personnel records, which may be redacted from such records;~~

~~(11.2)~~(19) Records that ~~would~~ reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by counties or municipalities in connection with neighborhood watch or public safety notification programs or with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems; provided, however, that initial police reports and initial incident reports shall remain subject to disclosure pursuant to paragraph (4) of this subsection;

~~(11.3)~~(20)(A) Records that reveal an ~~An~~ individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, ~~including a~~ utility account number, password used to access his or her account, financial data or information, ~~and~~ insurance or medical information in all records, ~~and~~ unlisted telephone number if so designated in a public record, personal e-mail address or cellular telephone number, ~~if technically feasible at reasonable cost,~~ day and month of birth, ~~which~~ and information regarding public utility, television,

Internet, or telephone accounts held by private customers, provided that nonitemized bills showing amounts owed and amounts paid shall be available. Items exempted by this subparagraph shall be redacted prior to disclosure of any record requested pursuant to this article; provided, however, that such information shall not be redacted from such records if the person or entity requesting such records requests such information in a writing signed under oath by such person or a person legally authorized to represent such entity which states that such person or entity is gathering information as a representative of a news media organization for use in connection with news gathering and reporting; and provided, further, that such access shall be limited to social security numbers and day and month of birth; and provided, further, that ~~this~~ the news media organization exception ~~for access to social security numbers and day and month of birth and the other protected information set forth~~ in this subparagraph shall not apply to ~~teachers, employees of a public school, or public employees as set forth in~~ paragraph ~~(13.1)~~ (21) of this subsection. ~~For purposes of this subparagraph, the term 'public employee' means any nonelected employee of the State of Georgia or its agencies, departments, or commissions or any county or municipality or its agencies, departments, or commissions.~~

(B) This paragraph shall have no application to:

(i) The disclosure of information contained in the records or papers of any court or derived therefrom including without limitation records maintained pursuant to Article 9 of Title 11;

(ii) The disclosure of information to a court, prosecutor, or publicly employed law enforcement officer, or authorized agent thereof, seeking records in an official capacity;

(iii) The disclosure of information to a public employee of this state, its political subdivisions, or the United States who is obtaining such information for administrative purposes, in which case, subject to applicable laws of the United States, further access to such information shall continue to be subject to the provisions of this paragraph;

(iv) The disclosure of information as authorized by the order of a court of competent jurisdiction upon good cause shown to have access to any or all of such information upon such conditions as may be set forth in such order;

(v) The disclosure of information to the individual in respect of whom such information is maintained, with the authorization thereof, or to an authorized agent thereof; provided, however, that the agency maintaining such information shall require proper identification of such individual or such individual's agent, or proof of authorization, as determined by such agency;

(vi) The disclosure of the day and month of birth and mother's birth name of a deceased individual;

(vii) The disclosure by an agency of credit or payment information in connection with a request by a consumer reporting agency as that term is defined under the federal Fair Credit Reporting Act (15 U.S.C. Section 1681, et seq.);

(viii) The disclosure by an agency of information in its records in connection with the agency's discharging or fulfilling of its duties and responsibilities, including, but not limited to, the collection of debts owed to the agency or individuals or entities whom the agency assists in the collection of debts owed to the individual or entity;

(ix) The disclosure of information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes; or

(x) The disclosure of the date of birth within criminal records.

(C) Records and information disseminated pursuant to this paragraph may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains records or information pursuant to the provisions of this paragraph and knowingly and willfully discloses, distributes, or sells such records or information to an unauthorized recipient or for an unauthorized purpose shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished as provided in Code Section 17-10-4. Any person injured thereby shall have a cause of action for invasion of privacy. ~~Any prosecution pursuant to this paragraph shall be in accordance with the procedure in subsection (b) of Code Section 50-18-74.~~

(D) In the event that the custodian of public records protected by this paragraph has good faith reason to believe that a pending request for such records has been made fraudulently, under false pretenses, or by means of false swearing, such custodian shall apply to the superior court of the county in which such records are maintained for a protective order limiting or prohibiting access to such records.

(E) This paragraph shall supplement and shall not supplant, overrule, replace, or otherwise modify or supersede any provision of statute, regulation, or law of the federal government or of this state as now or hereafter amended or enacted requiring, restricting, or prohibiting access to the information identified in subparagraph (A) of this paragraph and shall constitute only a regulation of the methods of such access where not otherwise provided for, restricted, or prohibited;

(21) Records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information other than

compensation by a government agency, unlisted telephone number if so designated in a public record, and the identity of the public employee's immediate family members or dependents. This paragraph shall not apply to public records that do not specifically identify public employees or their jobs, titles, or offices. For the purposes of this paragraph, the term 'public employee' means any officer, employee, or former employee of:

(A) The State of Georgia or its agencies, departments, or commissions;

(B) Any county or municipality or its agencies, departments, or commissions;

(C) Other political subdivisions of this state;

(D) Teachers in public and charter schools and nonpublic schools; or

(E) Early care and education programs administered through the Department of Early Care and Learning;

(22) Records of the Department of Early Care and Learning that contain the:

(A) Names of children and day and month of each child's birth;

(B) Names, addresses, telephone numbers, or e-mail addresses of parents, immediate family members, and emergency contact persons; or

(C) Names or other identifying information of individuals who report violations to the department;

~~(12)~~(23) Public records containing information that would disclose or might lead to the disclosure of any component in the process used to execute or adopt an electronic signature, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it. For purposes of this paragraph, the term 'electronic signature' has the same meaning as that term is defined in Code Section 10-12-2;

~~(13) Records that would reveal the home address or telephone number, social security number, or insurance or medical information of employees of the Department of Revenue, law enforcement officers, firefighters as defined in Code Section 25-4-2, judges, emergency medical technicians and paramedics, scientists employed by the Division of Forensic Sciences of the Georgia Bureau of Investigation, correctional employees, and prosecutors or identification of immediate family members or dependents thereof;~~

~~(13.1) Records that reveal the home address, the home telephone number, the e-mail address, or the social security number of or insurance or medical information about public employees or teachers and employees of a public school. For the purposes of this paragraph, the term 'public school' means any school which is conducted within this state and which is under the authority and supervision of a duly elected county or independent board of education. Public disclosure shall also not be required for records that reveal the~~

~~home address, the home telephone number, the e-mail address, or the social security number of or insurance or medical information about employees or teachers of a nonpublic school;~~

~~(13.2) Records that are kept by the probate court pertaining to guardianships and conservatorships except as provided in Code Section 29-9-18;~~

~~(14)~~(24) Records acquired ~~Acquired~~ by an agency for the purpose of establishing or implementing, or assisting in the establishment or implementation of, a carpooling or ridesharing program, ~~to the extent such records would reveal the name, home address, employment address, home telephone number, employment telephone number, or hours of employment of any individual or would otherwise identify any individual who is participating in, or who has expressed an interest in participating in, any such program. As used in this paragraph, the term 'carpooling or ridesharing program' means and includes~~ including, but ~~is~~ not limited to, the formation of carpools, vanpools, or buspools, the provision of transit routes, rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting;

~~(15)~~(25)(A) Records~~,~~ the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, or public property, which shall be limited to the following:

(i) Security plans and vulnerability assessments for any public utility, technology infrastructure, building, facility, function, or activity in effect at the time of the request for disclosure or pertaining to a plan or assessment in effect at such time;

(ii) Any plan for protection against terrorist or other attacks~~, which plan~~ that depends for its effectiveness in whole or in part upon a lack of general public knowledge of its details;

(iii) Any document relating to the existence, nature, location, or function of security devices designed to protect against terrorist or other attacks~~, which devices~~ that depend for their effectiveness in whole or in part upon a lack of general public knowledge;

(iv) Any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts; and

(v) Records of any government sponsored programs concerning training relative to governmental security measures which would identify persons being trained or instructors or would reveal information described in divisions (i) through (iv) of this subparagraph.

(B) In the event of litigation challenging nondisclosure pursuant to this paragraph by an agency of a document covered by this paragraph, the court may review the documents in question in camera and may condition, in writing, any disclosure upon

such measures as the court may find to be necessary to protect against endangerment of life, safety, or public property.

(C) As used in ~~divisions~~ division (i) ~~and (iv)~~ of subparagraph (A) of this paragraph, the term 'activity' means deployment or surveillance strategies, actions mandated by changes in the federal threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protection, planned responses to criminal or terrorist actions, after-action reports still in use, proposed or actual plans and responses to bioterrorism, and proposed or actual plans and responses to requesting and receiving the National Pharmacy Stockpile;

~~(16)~~(26) Unless the request is made by the accused in a criminal case or by his or her attorney, public records of an emergency 9-1-1 system, as defined in paragraph (3) of Code Section 46-5-122, containing information which would reveal the name, address, or telephone number of a person placing a call to a public safety answering point~~, which~~. Such information may be redacted from such records if necessary to prevent the disclosure of the identity of a confidential source, to prevent disclosure of material which would endanger the life or physical safety of any person or persons, or to prevent the disclosure of the existence of a confidential surveillance or investigation;

~~(17)~~(27) Records of athletic or recreational programs, available through the state or a political subdivision of the state, that include information identifying a child or children 12 years of age or under by name, address, telephone number, or emergency contact, unless such identifying information has been redacted;

~~(18)~~(28) Records of the State Road and Tollway Authority which would reveal the financial accounts or travel history of any individual who is a motorist upon ~~such~~ any toll project~~. Such financial records shall include but not be limited to social security number, home address, home telephone number, e-mail address, credit or debit card information, and bank account information but shall not include the user's name~~;

~~(19)~~(29) Records maintained by public postsecondary educational institutions in this state and associated foundations of such institutions that contain personal information concerning donors or potential donors to such institutions or foundations; provided, however, that the name of any donor and the amount of donation made by such donor shall be subject to disclosure if such donor or any entity in which such donor has a substantial interest transacts business with the public postsecondary educational institution to which the donation is made within three years of the date of such donation. As used in this paragraph, the term 'transact business' means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative in an amount in excess of $10,000.00 in the

aggregate in a calendar year; and the term 'substantial interest' means the direct or indirect ownership of more than 25 percent of the assets or stock of an entity;

~~(20)~~(30) Records of the Metropolitan Atlanta Rapid Transit Authority or of any other transit system that is connected to that system's TransCard, ~~or~~ SmartCard, or successor or similar system which would reveal the financial records or travel history of any individual who is a purchaser of a TransCard, ~~or~~ SmartCard, or successor or similar fare medium. Such financial records shall include, but not be limited to, social security number, home address, home telephone number, e-mail address, credit or debit card information, and bank account information but shall not include the user's name;

~~(21)~~(31) Building mapping information produced and maintained pursuant to Article 10 of Chapter 3 of Title 38;

~~(22)~~(32) Notwithstanding the provisions of paragraph (4) of this subsection, any physical evidence or investigatory materials that are evidence of an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16~~, which~~ and are in the possession, custody, or control of law enforcement, prosecution, or regulatory agencies; ~~or~~

~~(23)~~(33) Records that are expressly exempt from public inspection pursuant to Code Sections 47-1-14 and 47-7-127~~.~~;

(34) Any trade secrets obtained from a person or business entity that are required by law, regulation, bid, or request for proposal to be submitted to an agency. An entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10. If such entity attaches such an affidavit, before producing such records in response to a request under this article, the agency shall notify the entity of its intention to produce such records as set forth in this paragraph. If the agency makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify the entity submitting the affidavit of its intent to disclose the information within ten days unless prohibited from doing so by an appropriate court order. In the event the entity wishes to prevent disclosure of the requested records, the entity may file an action in superior court to obtain an order that the requested records are trade secrets exempt from disclosure. The entity filing such action shall serve the requestor with a copy of its court filing. If the agency makes a determination that the specifically identified information does constitute a trade secret, the agency shall withhold the records, and the requester may file an action in superior court to obtain an order that the requested records are not trade secrets and are subject to disclosure;

~~(b) This article shall not be applicable to:~~

~~(1)~~(35) Data ~~Any trade secrets obtained from a person or business entity which are of a privileged or confidential nature and required by law to be submitted to a government agency or to data~~, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of, or as a result of, study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented;

~~(2)~~(36) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education or any public or private entity supporting or participating in the activities of an institution of higher education in the conduct of, or as a result of, study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity, until such information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This ~~subsection applies~~ paragraph shall apply to, but ~~is~~ shall not be limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works; ~~or~~

(37) Any record that would not be subject to disclosure, or the disclosure of which would jeopardize the receipt of federal funds, under 20 U.S.C. Section 1232g or its implementing regulations;

~~(3)~~(38) Unless otherwise provided by law, ~~contract, bid, or proposal,~~ records consisting of questions, scoring keys, and other materials~~,~~ constituting a test that derives value from being unknown to the test taker prior to administration~~,~~ which is to be administered by an agency, including, but not limited to, any public school, any unit of the Board of Regents of the University System of Georgia, any public technical school, the State Board of Education, the Office of Student Achievement, the Professional Standards Commission, or a local school system, if reasonable measures are taken by the owner of the test to protect security and confidentiality; provided, however, that the State Board of Education may establish procedures whereby a person may view, but not copy, such records if viewing will not, in the judgment of the board, affect the result of administration of such test. These limitations shall not be interpreted by any court of law to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics~~.~~;

~~(c)(1) All public records of hospital authorities shall be subject to this article except for those otherwise excepted by this article or any other provision of law.~~

~~(2)~~(39) Records disclosing ~~All state officers and employees shall have a privilege to refuse to disclose~~ the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly, or artistic issues conducted by the Department of Community Health, the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity~~. Personally identifiable information shall mean any information which if disclosed might reasonably reveal the identity of such person including but not limited to the person's name, address, and social security number. The identity of such informant shall not be admissible in evidence in any court of the state unless the court finds that the identity of the informant already has been disclosed otherwise.~~;

~~(d)~~(40) Any ~~This article shall not be applicable to any application submitted to or any~~ permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to weapons carry licenses, or pursuant to any other requirement for maintaining records relative to the possession of firearms~~. This subsection shall not preclude law enforcement agencies from obtaining~~, except to the extent that such records relating to licensing and possession of firearms are sought by law enforcement agencies as provided by law~~.~~;

~~(e) This article shall not be construed to repeal:~~

~~(1)~~(41) Records containing communications subject to the ~~The~~ attorney-client privilege recognized by state law ~~to the extent that a record pertains to the requesting or giving of legal advice or the disclosure of facts concerning or pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; provided, however, attorney-client information~~; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further, that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to the attorney-client privilege. Attorney-client communications, however, may be obtained in a proceeding under Code Section 50-18-73 to prove justification or lack thereof in refusing disclosure of documents under this Code section provided the judge of the court in which ~~said~~ such proceeding is pending shall first determine by an in camera

examination that such disclosure would be relevant on that issue. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

~~(2)~~(42) Confidential ~~The confidentiality of~~ attorney work product; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further, that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to confidentiality as attorney work product. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld; ~~or~~

~~(3)~~(43) Records containing ~~State laws making certain~~ tax matters or tax information that is confidential~~.~~ under state or federal law;

~~(f)(1) As used in this article, the term:~~

~~(A) 'Computer program' means a set of instructions, statements, or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.~~

~~(B) 'Computer software' means one or more computer programs, existing in any form, or any associated operational procedures, manuals, or other documentation.~~

~~(2)~~(44) Records consisting of ~~This article shall not be applicable to~~ any computer program or computer software used or maintained in the course of operation of a public office or agency; provided, however, that data generated, kept, or received by an agency shall be subject to inspection and copying as provided in this article;

(45) Records pertaining to the rating plans, rating systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide or administer liability insurance or self-insurance coverage to any agency;

(46) Documents maintained by the Department of Economic Development pertaining to an economic development project until the economic development project is secured by binding commitment, provided that any such documents shall be disclosed upon proper request after a binding commitment has been secured or the project has been terminated.

No later than five business days after the Department of Economic Development secures a binding commitment and the department has committed the use of state funds from the OneGeorgia Authority or funds from Regional Economic Business Assistance for the project pursuant to Code Section 50-8-8, or other provisions of law, the Department of Economic Development shall give notice that a binding commitment has been reached by posting on its website notice of the project in conjunction with a copy of the Department of Economic Development's records documenting the bidding commitment made in connection with the project and the negotiation relating thereto and by publishing notice of the project and participating parties in the legal organ of each county in which the economic development project is to be located. As used in this paragraph, the term 'economic development project' means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than $25 million by the business or the hiring of more than 50 employees by the business; or

(47) Records related to a training program operated under the authority of Article 3 of Chapter 4 of Title 20 disclosing an economic development project prior to a binding commitment having been secured, relating to job applicants, or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity. As used in this paragraph, the term 'economic development project' means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than $25 million by the business or the hiring of more than 50 employees by the business.

~~(g)~~(b) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.

~~(h) Within the three business days applicable to response to a request for access to records under this article, the public officer or agency having control of such record or records, if access to such record or records is denied in whole or in part, shall specify in writing the specific legal authority exempting such record or records from disclosure, by Code section, subsection, and paragraph. No addition to or amendment of such designation shall be permitted thereafter or in any proceeding to enforce the terms of this article; provided, however, that such designation may be amended or supplemented one time within five days of discovery of an error in such designation or within five days of the institution of an action to enforce this article, whichever is sooner; provided, further, that the right to amend or supplement based upon discovery of an error may be exercised on only one occasion. In the event that such designation includes provisions not relevant to the subject matter of~~

~~the request, costs and reasonable attorney's fees may be awarded pursuant to Code Section 50-18-73.~~

(c)(1) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case.

(2) Except as provided in subsection (d) of this Code section, in the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following:

(A) A photograph;

(B) A photocopy;

(C) A facsimile; or

(D) Another reproduction.

(3) The provisions of this article regarding fees for production of a record, including, but not limited to, subsections (c) and (d) of Code Section 50-18-71, shall apply to exhibits produced according to this subsection.

(d) Any physical evidence that is used as an exhibit in a criminal or civil trial to show or support an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 shall not be open to public inspection except by court order. If the judge approves inspection of such physical evidence, the judge shall designate, in writing, the facility owned or operated by an agency of the state or local government where such physical evidence may be inspected. If the judge permits inspection, such property or material shall not be photographed, copied, or reproduced by any means. Any person who violates the provisions of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years, a fine of not more than $100,000.00, or both.

50-18-73.

(a) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity. In addition, the Attorney General shall have authority to bring such actions~~, either civil or criminal,~~ in his or her discretion as may be appropriate to enforce compliance with this article and to seek either civil or criminal penalties or both.

(b) In any action brought to enforce the provisions of this chapter in which the court determines that either party acted without substantial justification either in not complying with this chapter or in instituting the litigation, the court shall, unless it finds that special

circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of ~~having provided access to such information~~ such decision.

50-18-74.

(a) Any person or entity knowingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article, ~~or~~ by knowingly and willingly failing or refusing to provide access to such records within the time limits set forth in this article, or by knowingly and willingly frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $1,000.00 for the first violation. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this article against any person who negligently violates the terms of this article in an amount not to exceed ~~$100.00~~ $1,000.00 for the first violation. A civil penalty or criminal fine not to exceed $2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions. In addition, persons or entities that destroy records for the purpose of preventing their disclosure under this article may be subject to prosecution under Code Section 45-11-1.

(b) A prosecution under this Code section may only be commenced by issuance of a citation in the same manner as an arrest warrant for a peace officer pursuant to Code Section 17-4-40~~, which~~; such citation shall be personally served upon the accused. The defendant shall not be arrested prior to the time of trial, except that a defendant who fails to appear for arraignment or trial may thereafter be arrested pursuant to a bench warrant and required to post a bond for his or her future appearance.

50-18-75.

Communications between the Office of Legislative Counsel and the following persons shall be privileged and confidential: members of the General Assembly, the Lieutenant Governor, and persons acting on behalf of such public officers; and such communications, and records and work product relating to such communications, shall not be subject to

inspection or disclosure under this article or any other law or under judicial process; provided, however, that this privilege shall not apply where it is waived by the affected public officer or officers. The privilege established under this Code section is in addition to any other constitutional, statutory, or common law privilege.

50-18-76.

No form, document, or other written matter which is required by law or rule or regulation to be filed as a vital record under the provisions of Chapter 10 of Title 31, which contains information which is exempt from disclosure under Code Section 31-10-25, and which is temporarily kept or maintained in any file or with any other documents in the office of the judge or clerk of any court prior to filing with the Department of Public Health shall be open to inspection by the general public, even though the other papers or documents in such file may be open to inspection.

50-18-77.

The procedures and fees provided for in this article shall not apply to public records, including records that are exempt from disclosure pursuant to Code Section 50-18-72, which are requested in writing by a state or federal grand jury, taxing authority, law enforcement agency, or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation. The lawful custodian shall provide copies of such records to the requesting agency unless such records are privileged or disclosure to such agencies is specifically restricted by law.″

SECTION 3.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising subsection (c) of Code Section 15-12-11, relating to appointment of court personnel in certain counties, juror questionnaires, and construction with other laws, as follows:

″(c) Juror questionnaires shall be confidential and shall be exempt from public disclosure pursuant to ~~Code Section 50-18-70~~ Article 4 of Chapter 18 of Title 50; provided, however, that jury questionnaires shall be provided to the court and to the parties at any stage of the proceedings, including pretrial, trial, appellate, or post-conviction proceedings, and shall be made a part of the record under seal. The information disclosed to a party pursuant to this subsection shall only be used by the parties for purposes of pursuing a claim, defense, or other issue in the case.″

SECTION 4.

Said title is further amended by revising paragraph (10) of subsection (a) of Code Section 15-16-10 of the Official Code of Georgia Annotated, relating to duties of sheriffs, as follows:

"(10) To develop and implement a comprehensive plan for the security of the county courthouse and any courthouse annex. Prior to the implementation of any security plan, the plan shall be submitted to the chief judge of the superior court of the circuit wherein the courthouse or courthouse annex is located for review. The chief judge shall have 30 days to review the original or any subsequent security plan. The chief judge may make modifications to the original or any subsequent security plan. The sheriff shall provide to the county governing authority the estimated cost of any security plan and a schedule for implementation 30 days prior to adoption of any security plan. A comprehensive plan for courthouse security shall be considered a confidential matter of public security. Review of a proposed security plan by the governing authority shall be excluded from the requirements of Code Section 50-14-1 ~~and any such review shall take place as provided in Code Section 50-14-3~~. Such security plan shall also be excluded from public disclosure pursuant to paragraph ~~(15)~~ (25) of subsection (a) of Code Section 50-18-72. The sheriff shall be the official custodian of the comprehensive courthouse security plan and shall determine who has access to such plan and any such access and review shall occur in the sheriff's office or at a meeting of the county governing authority held as provided in paragraph ~~(9)~~ (4) of subsection (b) of Code Section 50-14-3; provided, however, that the sheriff shall make the original security plan available upon request for temporary, exclusive review by any judge whose courtroom or chambers is located within the courthouse or courthouse annex or by any commissioner of the county in which the courthouse or courthouse annex is located. The sheriff shall be responsible to conduct a formal review of the security plan not less than every four years."

SECTION 5.

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by revising paragraph (2) of subsection (a) of Code Section 20-2-55, relating to per diem, insurance, and expenses of local board members, as follows:

"(2) In any local school system for which no local Act is passed, members of the local board of education shall, when approved by the local board affected, receive a per diem of $50.00 for each day of attendance at a meeting, as defined in paragraph ~~(2)~~ (3) of subsection (a) of Code Section 50-14-1, of the board, plus reimbursement for actual expenses necessarily incurred in connection therewith; provided, however, that in any independent school system with a full-time equivalent (FTE) program count of less than

4,000 students for which no local Act is passed, members of the local board of education may, when approved by the affected local board, receive a per diem of not less than $50.00 and not more than $100.00 for each day of attendance at a meeting, as defined in paragraph ~~(2)~~ (3) of subsection (a) of Code Section 50-14-1, of the board, plus reimbursement for actual expenses. The accounts for such service and expenses shall be submitted for approval to the local school superintendent. In all school districts, the compensation of members of local boards shall be paid only from the local tax funds available to local boards for educational purposes. This paragraph shall apply only to local board of education members elected or appointed on or after July 1, 2010.″

SECTION 6.

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising subsection (b) of Code Section 31-7-402, relating to content and form of notice to Attorney General, retention of experts, and payment of costs and expenses, as follows:

″(b) The Attorney General may prescribe a form of notice to be utilized by the seller or lessor and the acquiring entity and may require information in addition to that specified in this article if the disclosure of such information is determined by the Attorney General to be in the public interest. The notice to the Attorney General required by this article and all documents related thereto shall be considered public records pursuant to ~~Code Section 50-18-70~~ Article 4 of Chapter 18 of Title 50.″

SECTION 7.

Said title is further amended by revising subsection (a) of Code Section 31-7-405, relating to public hearing, expert or consultant required to testify, testimony, and representative of acquiring entity to testify, as follows:

″(a) Within 60 days after receipt of the notice under this article, the Attorney General shall conduct a public hearing regarding the proposed transaction in the county in which the main campus of the hospital is located. At such hearing, the Attorney General shall provide an opportunity for those persons in favor of the transaction, those persons opposed to the transaction, and other interested persons to be heard. The Attorney General shall also receive written comments regarding the transaction from any interested person, and such written comments shall be considered public records pursuant to ~~Code Section 50-18-70~~ Article 4 of Chapter 18 of Title 50.″

SECTION 8.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by revising subsection (c) of Code Section 33-2-8.1, relating to purpose of Code section,

preparation by Commissioner of supplemental report on property and casualty insurance, contents of report, and request for information, as follows:

"(c) The Commissioner shall investigate every licensed property and casualty insurer that is designated by the National Association of Insurance Commissioners as needing immediate or targeted regulatory attention and shall include in his report the number of such insurers which his investigation confirms are in need of immediate or targeted regulatory attention and the names of such insurers which are in formal rehabilitation, liquidation, or conservatorship. The Commissioner shall obtain from the National Association of Insurance Commissioners the necessary information to implement this subsection and, notwithstanding the provisions of ~~Code Section 50-18-70~~ Article 4 of Chapter 18 of Title 50, shall withhold from public inspection any such information received from the National Association of Insurance Commissioners under an expectation of confidentiality."

SECTION 9.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by revising subsection (d) of Code Section 36-76-6, relating to franchise fees, as follows:

"(d) The statements made pursuant to subsection (b) of this Code section and any records or information furnished or disclosed by a cable service provider or video service provider to an affected local governing authority pursuant to subsection (c) of this Code section shall be exempt from public inspection under ~~Code Section 50-18-70~~ Article 4 of Chapter 18 of Title 50."

SECTION 10.

Code Section 38-3-152 of the Official Code of Georgia Annotated, relating to creation and operation of building mapping information system, availability to government agencies, rules and regulations, federal funding sources, exemption of information from public disclosure, recommendations for training guidelines, and limitations, is amended by revising subsection (f) as follows:

"(f) Information provided to the agency under this article shall be exempt from public disclosure to the extent provided in paragraph ~~(21)~~ (31) of subsection (a) of Code Section 50-18-72."

SECTION 11

Code Section 40-5-2 of the Official Code of Georgia Annotated, relating to keeping of records of applications for licenses and information on licensees and furnishing of information, is amended by revising subsection (b) as follows:

"(b) The records maintained by the department on individual drivers are exempt from any law of this state requiring that such records be open for public inspection; provided, however, that initial arrest reports, incident reports, and the records pertaining to investigations or prosecutions of criminal or unlawful activity shall be subject to disclosure pursuant to paragraph (4) of subsection (a) of Code Section 50-18-72 and related provisions. Georgia Uniform Motor Vehicle Accident Reports shall be subject to disclosure pursuant to paragraph ~~(4.1)~~ (5) of subsection (a) of Code Section 50-18-72. The department shall not make records or personal information available on any driver except as otherwise provided in this Code section or as otherwise specifically required by 18 U.S.C. Section 2721."

SECTION 12.

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by revising paragraph (4) of Code Section 43-34-7, relating to maintenance of roster by Georgia Composite Medical Board and confidentiality, as follows:

"(4) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in official board minutes; provided, however, that such deliberations may be released only to another state or federal enforcement agency or lawful licensing authority. Releasing the documents pursuant to this paragraph shall not subject any otherwise privileged documents to the provisions of ~~Code Section 50-18-70~~ Article 4 of Chapter 18 of Title 50."

SECTION 13.

Code Section 45-6-6 of the Official Code of Georgia Annotated, relating to office property kept by officers subject to inspection by citizens, is amended by revising such Code section as follows:

"45-6-6.

All books, papers, and other office property kept by any public officer under the laws of this state ~~shall be subject to the inspection of all the citizens of this state within office hours every day except Sundays and holidays~~ may be copied or inspected subject to the requirements of Article 4 of Chapter 18 of Title 50."

SECTION 14.

Title 46 of the Official Code of Georgia Annotated, relating to public utilities, is amended by revising paragraph (13) of subsection (b) of Code Section 46-5-1, relating to exercise of power of eminent domain by telephone and telegraph companies; placement of posts and

other fixtures; regulation of construction of fixtures, posts, and wires near railroad tracks; liability of telegraph and telephone companies for damages; required information; and due compensation, as follows:

"(13) The information provided pursuant to paragraph (1) of this subsection and any records or information furnished or disclosed by a telegraph or telephone company to an affected municipal authority pursuant to paragraph (12) of this subsection shall be exempt from public inspection under ~~Code Section 50-18-70~~ Article 4 of Chapter 18 of Title 50. It shall be the duty of such telegraph or telephone company to mark all such documents as exempt from ~~Code Section 50-18-70, et seq.~~ Article 4 of Chapter 18 of Title 50, and the telegraph or telephone company shall defend, indemnify, and hold harmless any municipal authority and any municipal officer or employee in any request for, or in any action seeking, access to such records."

SECTION 15.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by revising subsection (b) of Code Section 50-1-5, relating to meetings by teleconference or other similar means, as follows:

"(b) Nothing in this Code section shall eliminate any otherwise applicable requirement for giving notice of any meeting. Likewise, nothing in this Code section shall create a requirement for giving notice of any meeting where it does not otherwise exist. The notice shall list each location where any member of the board, body, or committee plans to participate in the meeting if the meeting is otherwise open to the public; provided, however, it shall not be grounds to contest any actions of the board, body, or committee as provided in Code Section 50-14-1 if a member participates from a location other than the location listed in the notice. At a minimum, the notice shall list one specific location where the public can participate in the meeting if the meeting is otherwise open to the public. The notice shall further conform with the notice provisions of ~~'due notice' as provided in~~ Code Section 50-14-1. Any meeting which is otherwise required by law to be open to the public shall be open to the public at each location listed in the notice or where any member of the board, body, or committee participates in the meeting."

SECTION 16.

Said title is further amended by revising subsection (c) of Code Section 50-17-22, relating to the State Financing and Investment Commission, as follows:

"(c) **Meetings.** The commission shall hold regular meetings as it deems necessary, but, in any event, not less than one meeting shall be held in each calendar quarter. The commission shall meet at the call of the chairperson, vice chairperson, or secretary and

treasurer or a majority of the members of the commission. Meetings of the commission shall be subject to Chapter 14 of this title, and its records shall be subject to ~~Code Sections 50-18-70 and 50-18-71~~ Article 4 of Chapter 18 of Title 50. The commission shall approve the issuance of public debt, as hereinafter provided, adopt and amend bylaws, and establish salaries and wages of employees of the commission only upon the affirmative vote of a majority of its members; all other actions of the commission may be taken upon the affirmative vote of a majority of a quorum present. A quorum shall consist of a majority of the members of the commission. If any vote is less than unanimous, the vote shall be recorded in the minutes of the commission."

SECTION 17.

Said title is further amended by revising subsection (a) of Code Section 50-29-2, relating to authority of public agencies that maintain geographic information systems to contract for the provision of services, fees, and contract provisions, as follows:

"(a) Notwithstanding ~~subsection (f) of Code Section 50-18-71 or Code Section 50-18-71.2~~ the provisions of Article 4 of Chapter 18 of Title 50, a county or municipality of the State of Georgia, a regional commission, or a local authority created by local or general law that has created or maintains a geographic information system in electronic form may contract to distribute, sell, provide access to, or otherwise market records or information maintained in such system and may license or establish fees for providing such records or information or providing access to such system."

SECTION 18.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval, and the provisions of paragraph (47) of subsection (a) of Code Section 50-18-72 as enacted by this Act shall apply to any request for public records made prior to the effective date of this Act. Agencies shall be permitted to assert the provisions of paragraph (47) of subsection (a) of Code Section 50-18-72 as enacted by this Act as a basis for withholding documents covered by that paragraph in any pending or subsequently filed litigation regarding a request that occurred prior to the effective date of this Act.

SECTION 19.

All laws and parts of laws in conflict with this Act are repealed.

In the Supreme Court of Georgia

Decided: November 19, 2012

S12A0700. WE, THE TAXPAYERS, et al. v. BOARD OF TAX ASSESSORS OF EFFINGHAM COUNTY.

S12X0701. BOARD OF TAX ASSESSORS OF EFFINGHAM COUNTY v. WE, THE TAXPAYERS, et al.

HINES, Justice.

In case number S12A0700, We, the Taxpayers, an unincorporated association of individual taxpayer residents of Effingham County ("Taxpayers"), appeals the trial court's order dismissing Taxpayers's complaint against the Board of Tax Assessors of Effingham County ("Board"). In case number S12X0701, the Board appeals the superior court's denial of its motion for summary judgment. For the reasons that follow, we affirm the trial court in case number S12A0700, and vacate the judgment below in case number S12X0701. Former OCGA § 48-5B-1 became law on May 5, 2009, and was effective until January 10, 2011. See Ga. L. 2009, p. 780, § 1. It placed a moratorium on increases in the assessed value of property subject to ad valorem taxation for taxable years beginning on or after January 1, 2009, and continuing through January 9, 2011, but provided an exception from the moratorium for

> any county which performed or had performed on its behalf a comprehensive county-wide revaluation of all properties in the county in 2008 or any county which in 2009 was under contract prior to February 28, 2009, to have performed on its behalf a comprehensive county-wide revaluation of all properties in the county.

Former OCGA § 48-5B-1 (c).

The Board, believing that Effingham County met the exception set forth in former OCGA § 48-5B-1 (c), did not impose a moratorium on increases in assessed values in the 2009 tax year, but in fact, increased assessed values of certain property. Taxpayers, believing that the exception did not apply and that the moratorium should have been imposed, filed a complaint under OCGA § 48-5-296 seeking the removal of Board members. Taxpayers amended the complaint to include the equitable relief of eliminating the 2009 assessed values and imposing instead the 2008 tax year figures; by later amendment, Taxpayers dropped the request to remove Board members, and added a request for a writ of mandamus to compel the Board to act in accordance with Taxpayers's interpretation of OCGA § 48-5B-1.[1] Taxpayers moved for summary judgment,

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[1] Although Taxpayers stated in its pleadings that it was pursuing a declaratory judgment in addition to a writ of mandamus and equitable relief, examination of the pleading reveals that Taxpayers sought orders directing the Board to take action and precluding it from taking other action, and not a declaratory judgment. See *Magistrate Court v. Fleming*, 284 Ga. 457, 458 (667

contending that the undisputed evidence showed that the exception to the moratorium did not apply; the Board also moved for summary judgment, asserting that OCGA § 48-5B-1was unconstitutional, and, alternatively, that the undisputed facts showed that the statutory exception applied. The trial court denied both motions. The Board then filed the instant motion to dismiss, asserting that the Taxpayers property owners were obligated to appeal their 2009 ad valorem assessments to the county Board of Equalization, or otherwise in the manner set forth in OCGA § 48-5-311, and that the failure to do so precluded the trial court's addressing the equitable and mandamus claims.

Case No. S12A0700.

1. OCGA § 48-5-311 sets forth a system of county boards of equalization to hear appeals from property tax assessments and denials of homestead exemptions, adverse decisions from which can then be appealed to the superior

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SE2d 356) (2008); *Kirkland v. Morris*, 233 Ga. 597, 598 (212 SE2d 781) (1975).

courts.[2] "This Court has consistently held that as long as there is an effective

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[2] In pertinent part, OCGA § 48-5-311 reads:

(d) *Duties and powers*.

(1) The county board of equalization shall hear and determine appeals from assessments and denials of homestead exemptions as provided in subsection (e) of this Code section. . . .

(e) *Appeal*.

(1) (A) Any taxpayer or property owner as of the last date for filing an appeal may elect to file an appeal from an assessment by the county board of tax assessors to either:

(i) The county board of equalization as to matters of taxability, uniformity of assessment, and value, and, for residents, as to denials of homestead exemptions pursuant to paragraph (2) of this subsection;

(ii) An arbitrator as to matters of value pursuant to subsection (f) of this Code section; or

(iii) A hearing officer as to matters of value and uniformity for a parcel of nonhomestead real property with a fair market value in excess of $1 million pursuant to subsection (e.1) of this Code section.

The commissioner shall establish by rule and regulation a uniform appeal form that the taxpayer may use.

. . .

(g) *Appeals to the superior court*.

(1) The taxpayer or the county board of tax assessors may appeal decisions of the county board of equalization or hearing officer, as applicable, to the superior court of the county in which the property lies. By mutual written agreement, the taxpayer and the county board of tax assessors may waive an appeal to the county board of equalization and initiate an appeal under this subsection. A county board of tax assessors shall not appeal a decision of the county board of equalization or hearing officer, as applicable, changing an assessment by 20 percent or less unless the board of tax assessors gives the county governing authority a written notice of its intention to appeal, and, within ten days of receipt of the notice, the county governing authority by majority vote does not prohibit the appeal. In the case of a joint city-county board of tax assessors, such notice shall be given to the city and county governing authorities, either of which may prohibit the appeal by majority vote within the allowed period of time. . . .

and available administrative remedy, a party is required to pursue that remedy before seeking equitable relief in superior court." *Fulton County Taxpayers Foundation v. Ga. Public Service Comm.*, 287 Ga. 876, 878-879 (2) (700 SE2d 554) (2010). OCGA § 48-5-311 provides just such a remedy for a challenge to a "property tax assessment based on the issues of taxability, uniformity, and value." *Glynn County Bd. of Tax Assessors v. Haller*, 273 Ga. 649, 650 (3) (543 SE2d 699) (2001). Further, the proceeding before the board of equalization is "the appropriate forum for deciding the taxpayer's constitutional and procedural issues as well as questions of uniformity, valuation and taxability." *Wilkes v. Redding*, 242 Ga. 78, 79 (247 SE2d 872) (1978). Accordingly, the failure to pursue the administrative remedy afforded by OCGA § 48-5-311 regarding any such issues precludes a suit in superior court for equitable relief. *Glynn County*, supra. Similarly, failure to pursue the administrative remedy precludes the issuance of a writ of mandamus. *Foxworthy, Inc. v. Ferdinand*, 288 Ga. 271, 273 (3) (704 SE2d 171) (2010). This is in keeping with the general principle that "as a matter of policy and judicial economy ad valorem tax disputes should be resolved first at the local level through the appeal procedures created

specifically for that purpose." *City of Atlanta v. North by Northwest Civic Assn.*, 262 Ga. 531, 536 (3) (422 SE2d 651) (1992).

Nonetheless, Taxpayers asserts that OCGA § 48-5-311 has no application, contending that determining whether OCGA § 48-5B-1 applies does not constitute a challenge to the assessments on the issues of taxability, uniformity, and value, and does not present a constitutional or procedural issue. Although Taxpayers asserts that it is challenging the authority of the Board to operate in a manner that it contends is contrary to that set forth in OCGA § 48-5B-1, compliance with statutory requirements is within the ambit of administrative review provided in OCGA § 48-5-311. See, e.g., *Hooten v. Thomas*, 297 Ga. App. 487, 490-492 (677 SE2d 670) (2009). And, the question of whether the exception to the moratorium set forth in OCGA § 48-5B-1 applies unquestionably impacts the assessed values of the property at issue. See *National Health Network, Inc. v. Fulton Cnty.*, 270 Ga. 724, 725 (1) (514 SE2d 422) (1999). Indeed, the impact on value is seen by the specific relief Taxpayers requested in its complaint – the rollback of the 2009 assessed values to the 2008 assessed values. Accordingly, the applicability of OCGA § 48-5B-1 could, and

should, have been raised in an appeal under OCGA § 48-5-311. Consequently, Taxpayers, and its constituent property owners, were obligated to pursue that remedy.[3]

Taxpayers also claims that the trial court erred in dismissing its complaint because it had standing to challenge an ultra vires act of the Board. See *Rothschild v. Columbus Consol. Gov't.*, 285 Ga. 477 (678 SE2d 76) (2009). As noted above, a litigant must exhaust administrative remedies before seeking mandamus or injunctive relief. But, "[t]his Court has recognized that the exhaustion doctrine does not apply where the defect urged by the complaining party goes to the jurisdiction or power of the involved agency." *Georgia Dept. of Community Health v. Ga. Soc. of Ambulatory Surgery Centers*, 290 Ga. 628, 630 (2) (724 SE2d 386) (2012) (Citations and punctuation omitted.) However, under this "jurisdiction" exception to the exhaustion doctrine

> the mere claim that an administrative agency acted ultra vires does not authorize litigation before administrative remedies are

[3] Although Taxpayers also cites *Fulton Cnty. Bd. of Tax Assessors v. Jones*, 264 Ga. 828, 828-829 (2) (452 SE2d 99) (1995), as authority for a right to pursue a writ of mandamus without proceeding under OCGA § 48-5-311, this is not a situation in which the Board has refused to perform the duties required of it by OCGA § 48-5-311, for which a writ of mandamus is an appropriate remedy. Id.

> exhausted . . . . [T]he plaintiff is required to allege that the agency had acted wholly outside its jurisdiction, not merely that it had failed to meet certain statutory procedural requirements.

Id. at 630 (Citations and punctuation omitted.) This case does not present a threshold issue of the Board's jurisdiction; there is no question that the properties for which the Board has issued tax assessments are subject to the Board's authority to do so. Compare *City of Atlanta v. Hotels.com, L.P.*, 285 Ga. 231, 233-234 (1) (674 SE2d 898) (2009). Rather, the question is whether the Board has properly exercised its authority to do so with respect to the challenged properties. Accordingly, Taxpayers's claim that the Board acted ultra vires does not relieve it of the obligation to exhaust the administrative remedy provided by OCGA § 48-5-311 before seeking relief in the superior court. Thus, the trial court correctly dismissed the action. *Georgia Dept. of Community Health*, supra.

Case No. S12X0701.

2. Taxpayers's failure to exhaust administrative remedies deprived the

trial court of subject matter jurisdiction over the complaint. See *Hooten*, supra at 489-490.[4] Accordingly, the trial court's order denying summary judgment to the Board, which is the subject of the cross-appeal, must be vacated. See *Davis v. Harpagon Co.*, LLC, 281 Ga. 250, 253 (8) (637 SE2d 1) (2006).

Judgment affirmed in Case No. S12A0700. Judgment vacated in Case No. S12X0701. All the Justices concur.

[4] We note that no exception to the exhaustion doctrine applies in this case. See *Georgia Dept. of Community Health*, supra.

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In the Supreme Court of Georgia

Decided: November 19, 2012

S12A1435. FITZPATRICK et al. v. MADISON COUNTY BOARD OF TAX ASSESSORS et al.

MELTON, Justice.

Norma Fitzpatrick, Barry Fitzpatrick and George Elrod, hereafter "the taxpayers," own parcels of land in Madison County. Following a valuation of those properties for tax purposes by the Madison County Board of Assessors, the taxpayers appealed the valuation to the Madison County Board of Equalization. See OCGA § 48-5-311.[1] The Board of Equalization denied the appeal. Subsequently, the taxpayers filed an appeal in superior court, but the Board of Assessors refused to certify the appeal to the superior court unless the taxpayers first paid the filing fee to the superior court clerk.

Thereafter, the taxpayers contended that, except for appeals to an

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[1] The statute provides three avenues of appeal: the Board of Equalization (OCGA § 48-5-311(e) (1) (A) (i)), a hearing officer in circumstances not applicable here (OCGA § 48-5-311(e) (1) (A) (iii)), or to an arbitrator (OCGA § 48-5-311(e) (1) (A) (ii) and (f)).

arbitrator pursuant to OCGA § 48-5-311(f),[2] a taxpayer is not required to pay any fee at all for an appeal. Based on this argument, the taxpayers filed a declaratory action seeking a ruling to this effect. On February 16, 2012, the trial court issued an order finding that the taxpayers are responsible for paying the filing fee, which prompted the taxpayers to appeal to this Court. For the reasons set forth below, we affirm.

OCGA § 48-5-311 (g) provides the means by which an aggrieved taxpayer may appeal to the superior court from a property tax ruling made by a county board of equalization. Within this provision, however, there is no discussion of whether a party must pay the superior court's filing fees at the time an appeal is

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[2] Pursuant to this subsection:

> Within ten days of receipt of a taxpayer's notice of arbitration appeal, the board of tax assessors shall send to the taxpayer an acknowledgment of receipt of the appeal; a notice that the taxpayer must, within 45 days of the filing of the notice, provide to the board of assessors for consideration a copy of a certified appraisal; and a confirmation of the amount of the filing fees, if any, required under Code Section 15-6-77 and notice that within 45 days the taxpayer shall pay to the clerk of the superior court the fees. Failure of the taxpayer to provide such certified appraisal and filing fees within such 45 days shall terminate the appeal unless the taxpayer within such 45 day period elects to have the appeal forwarded to the board of equalization.

filed. This information, however, is provided in other sections of the Georgia Code. OCGA § 9-15-4 (a) provides:

> A clerk of the superior court shall not be required to file any civil case or proceeding until the fee required by Code Section 15-6-77 and Code Section 15-6-77.2, relating to fees of clerks of the superior courts, has been paid to the clerk. The fee shall not be required if the party desiring to file the case or proceeding is unable because of his indigence to pay the fee and the party files with the clerk an affidavit to such effect.

The payment of fees, therefore, is generally required in all civil cases filed in the superior court, unless the filing party is indigent, and, indeed, the taxpayers have pointed to no exception to this rule in our Code. Furthermore, nothing in OCGA § 48-5-311 (g) indicates any intent by the Legislature to create a filing fee exemption, unique in all of Georgia law, for property tax appeals from a board of equalization ruling.

In this regard, the Attorney General has previously recognized the infirmities in the taxpayers' argument. He opined:

> [T]he taxpayer instigating an appeal from the county board of equalization to superior court should bear the advance cost deposit required by . . . OCGA §§ 15-6-77 and 9-15-4. . . . [B]ecause . . . OCGA § 48-5-311 (c), provides that an appeal from the county board of equalization shall constitute 'a de novo action,' the appeal would constitute 'any civil case or proceeding' as the terms are used in [OCGA § 9-15-4], and thus be subject to the cost deposit

requirement.

1985 Ga. Op. Atty. Gen. 171 (a). Although the statutes quoted have been revised since this Attorney General Opinion was issued, its rationale remains applicable. Accordingly, a taxpayer instigating an appeal from a county board of equalization to the superior court pursuant to OCGA § 48-5-311 (g) must first pay the filing fee of the superior court clerk.

Judgment affirmed. All the Justices concur.