

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ANIMAL RESCUE LEAGUE
OF BOSTON, INC.

v.

BOARD OF ASSESSORS
TOWN OF PEMBROKE

Docket No. F246649

Promulgated:
February 25, 2000

This is an appeal under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65 from the refusal of the appellee to abate taxes on certain real estate in the Town of Pembroke owned by and assessed to the appellant for fiscal year 1998.

Commissioner Gorton heard the appeal and was joined in the decision for the appellee by Chairman Gurge and Commissioners Scharaffa, Burns and Egan.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Robert L. Marzelli, Esq., for the appellant.

Ellen M. Hutchinson, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

Based on the evidence submitted at the hearing, the Appellate Tax Board made the following findings of fact. Animal Rescue League ("ARL") was organized in 1899. On February 22, 1994, ARL purchased two parcels of property

located at 593 Washington Street, Pembroke ("subject property").¹ ARL was granted exempt status as a charitable organization for fiscal years 1995 and 1996 based on its stated intention of building an animal shelter on the subject property.² On or about October 8, 1997, the Pembroke Board of Assessors ("Assessors") issued to ARL a property tax bill for fiscal year 1998. ARL paid the taxes assessed without incurring interest and timely filed an application for abatement with the Assessors on November 5, 1997. The application was denied on February 2, 1998 and on April 28, 1998, ARL timely filed its appeal with the Board. On this basis the Board found that it had jurisdiction over this appeal.

The subject property is comprised of approximately 69 acres. A Cape-style home with a driveway and a garage is located on the property. There is a cleared area surrounding the home, approximately one acre in size, improved with a well maintained and landscaped lawn. The home is occupied by Edward Powers, ARL's Director of Operations, and his family. Mr. Powers maintains the cleared area as any typical homeowner cares for his yard. Mr. Powers testified that he does not work at the property. The home is not open to the public.

¹ The property is in actuality four identifiable lots, as indicated on the Assessors' maps, but has been taxed as only one parcel.

² "Real estate purchased by a charitable organization with the purpose of removal thereto, until such removal, but not for more than two years after such purchase" shall be exempt from taxation. G.L. c. 59, § 5, Third.

The remainder of the property is heavily wooded with a large section of wetlands and land located in the flood plain and watershed protection district. This portion of the property is undeveloped and remains in the same state as when ARL acquired it in 1994. At the time of purchase, ARL did not know what types of animals, if any, were located on the subject property.

According to its Agreement of Association, the purpose of ARL's organization was to "[establish] one or more refuges for and the rescue and relief of suffering of homeless animals and any other charitable or benevolent act for the welfare of animals." As noted in its Form PC, filed annually with the Commonwealth's Attorney General, ARL's programs and activities in furtherance of its stated purposes include the operation of a veterinary clinic, four animal shelters, humane education, and law enforcement to ensure the humane treatment of animals.

Although ARL asserted an intent to build a shelter at the subject property, it has taken no steps to do so. The only structure located on the property is the home occupied by Mr. Powers and his family. Moreover, ARL does not conduct educational programs at the subject property, though such activities occur at other ARL properties in Brewster and Squeteague Island. There are no trails for hiking or recreational purposes, and the public is not invited to use the land. In fact, there are posted signs

indicating that the property is owned by ARL and that trespassers will be prosecuted.

ARL holds Wildlife Rehabilitation Permits from both the federal and state governments. These permits authorize ARL "to salvage, possess and transport to other authorized personnel," protected animals found "dead, sick, injured, debilitated or orphaned and taken from the wild in Massachusetts." ARL's annual reports, filed with the appropriate federal and state agencies, list the types of animals that were received and their disposition. However, the reports were prepared according to shelter location and did not indicate where the animals were taken from. There was no evidence to show that any of the animals were taken from, or retired to, the subject property.

Mr. Powers testified that he serves as caretaker for the property. He does not, however, work at the property. He spends 80% of his time in Boston and his remaining work time is spent visiting other ARL properties. His actual involvement with the subject property is limited to walking the property every month or every other month to see what animals are there. He did not, however, indicate that any of these animals were "homeless or suffering" or that ARL offered them any type of assistance.

On this basis, and to the extent it is a finding of fact, the Board found that the ARL did not occupy the subject property primarily for its charitable purposes of (1) operating a veterinary clinic and shelters, (2)

conducting humane education, and (3) performing law enforcement work with regard to the humane treatment of animals. Instead, the Board found that the subject property was occupied primarily for the benefit of Mr. Powers and ARL's members. Accordingly, the Board issued a decision for the appellee in this appeal.

OPINION

All property, real and personal, situated within the Commonwealth is subject to a local tax, unless expressly exempt. G.L. c. 59, § 2. G.L. c. 59, § 5 lists the numerous classes of property which shall be exempt from taxation. Specifically, § 5, Third, exempts from taxation all "personal property of a **charitable organization**, ... and real estate owned by ... and **occupied by it or its officers for the purposes for which it is organized...**" G.L. c. 59, § 5(3)(emphasis added).

Therefore, to qualify for the charitable exemption the taxpayer must (1) be a charitable organization and (2) occupy the property for its charitable purpose. A charitable organization which owns and occupies real estate is "not entitled to tax exemption if the property is occupied by it for a purpose other than that for which it is organized.'" **Lynn Hospital v. Board of Assessors of Lynn**, 383 Mass. 14, 18 (1981), quoting **Milton Hospital &**

Convalescent Home v. Assessors of Milton, 360 Mass. 63, 69 (1971).

The Assessors concede that ARL is a charitable organization because "establishing one or more refuges for suffering or homeless animals and other charitable or benevolent acts for the welfare of animals is charitable." *Animal Rescue League of Boston v. Assessors of Bourne*, 310 Mass. 330, 331 (1941). The Assessors contend, and the Board found, that ARL is not entitled to the exemption because it does not occupy the subject property for its charitable purposes.

To qualify for exemption, the property must be occupied "directly for the fulfillment of [the corporation's] charitable purposes." *Boston Symphony v. Assessors of Boston*, 294 Mass. 248, 255 (1935) citing *Burr v. Boston*, 208 Mass. 537, 543 (1911). Such occupancy means:

something more than that which results from simple ownership and possession. It signifies an **active appropriation to the immediate uses of the charitable cause** for which the owner was organized. ... the nature of the occupation must be such as to contribute immediately to the promotion of the charity and physically to participate in the forwarding of its beneficent object. (Emphasis added).

Board of Assessors of Boston v. The Vincent Club, 351 Mass. 10, 14 (1966), quoting *Babcock v. Leopold Morse Home for Infirm Hebrew & Orphanage*, 225 Mass. 418, 421 (1917). The

nature of the occupation must "contribute immediately to the promotion of the charity." *Babcock*, 225 Mass. at 422.

Use of the property need not be exclusively for charitable purposes. "If the principal occupation is ... for [its] purposes, *occasional and incidental use* for other purposes might not render it liable to taxation." *Salem Lyceum v. City of Salem*, 154 Mass. 15, 17 (1891)(emphasis added). "It is the dominant use of the property which is controlling." *Brockton Knights of Columbus v. Assessors of Brockton*, 321 Mass. 110, 114, citing *Phi Beta Epsilon Corp. v. Boston*, 182 Mass. 457, 460 (1902). See also *Assessors of Boston v. Garland School of Home Making*, 296 Mass. 378, 392 (1937).

ARL acquired the subject property in its natural state and maintains it as such. There is no established animal shelter. Neither the home occupied by Mr. Powers nor the land left in its natural state was open to the public. Indeed, the public was denied access to the property given the prominent display of "No Trespassing" signs.

ARL does not offer educational programs at the site. There is no showing that activities in the nature of rescuing and rehabilitating injured animals occurred on the subject property, nor is there any indication that services are provided to the animals located on the property.

It has long been established that "[a] corporation claiming that its property is exempt under § 5, Third, has the burden of proving that it comes within the exemption,

and that it is in fact operated as a public charity." **Town of Norwood v. Norwood Civic Association**, 340 Mass. 518, 525 (1960); citing **American Inst. for Economic Research v. Assessors of Great Barrington**, 324 Mass. 509, 512-514 (1949). On this basis, the Board found and ruled that the activities conducted on the property were for the benefit of Mr. Powers and ARL's members.

Statutes granting exemptions from taxation are to be strictly construed. **Children's Hospital Medical Center v. Boston Board of Assessors**, 388 Mass. 832, 838 (1983). "A taxpayer is not entitled to an exemption unless he shows that he comes within [] the express words" of the statute granting the exemption. **Animal Rescue League**, 310 Mass. at 332 citing **Milford v. County Commissioners**, 213 Mass. 162 (1912). "Any doubt must operate against the one claiming a tax exemption." **Boston Symphony**, 294 Mass. at 257.

On this basis the Board found that the appellant did not meet its burden of proving that the subject property was used primarily for its charitable purposes even though it qualifies as a charitable organization. Accordingly, the Board issued a decision for the appellee.

APPELLATE TAX BOARD

By: _____

Frank J. Scharaffa, Acting Chairman