A Look at Charitable Tax Exemptions in Pennsylvania, Part Three.

This will wrap up my discussion of *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals,* No 16 MAP 2011, (Pa. Apr. 25, 2012), which held that a camp affiliated with an Orthodox Jewish congregation did not qualify as a "purely public charity" under the Pennsylvania Constitution because it did not meet the definition of that term under the *HUP* test that the Court adopted in *Hospital Utilization Project v. Commonwealth,* 487 A.2d 1306 (Pa. 1985).

In my view, the Supreme Court announced the correct rule on the question that it addressed, but its affirmance of the Commonwealth Court upholds a bad result. Why? Both the Common Pleas Court and the Commonwealth Court concluded that the camp did not provide enough local relief to meet the requirement that it relieve a governmental burden. *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals,* No 16 MAP 2011, slip op. at 3 (Pa. Apr. 25, 2012). Despite acknowledging doubt about the validity of this ruling, the Supreme Court did not reach the issue as it was beyond the scope of the review it had granted. *Id.*, slip op. at 3 n.1.

The result in this case is troubling, as it suggests that a charity focused on providing relief to the poor, sick or injured overseas could never qualify as tax-exempt. Groups such as Doctors Without Borders would not qualify as "institutions of purely public charity," if they have to benefit a local political subdivision to qualify.

The result is not only troubling, it is demonstrably wrong:

- While the Supreme Court had once endorsed a "quid pro quo" theory that appeared to require local benefits to justify a tax exemption, the *HUP* Court expressly indicated that this was not the law, noting that it had rejected the argument that tax exempt status rested upon quid pro quo benefits. *HUP,* 487 A.2d at 1314 n.8.
- And the Supreme Court held in 1957 that the burden that was being relieved could be in *foreign countries*. *Appeal of West Indies Mission,* 128 A. 773, 777-81 (1957) (holding that a missionary society was a "purely public charity" even though the primary beneficiaries of its work resided outside of Pennsylvania).

The notion that only local benefits will justify a tax exemption raises a number of problems:

- *First,* as the Court noted in *West Indies Mission,* such an approach would produce an administrative nightmare in which each local taxing authority would have to limit tax-exempt status for each charitable institution based upon a determination of the extent to which its services benefited local residents and not residents of neighboring counties. *Id.* at 779.
- *Second,* such an approach would effectively treat similarly situated entities in a non-uniform way because the extent of their tax-exempt status would turn on the extent that they served disadvantaged people in the "right" political subdivision.
- *Third,* a requirement that charities demonstrate a localized benefit to justify tax-exempt status would plainly invite selective enforcement with favored charities getting a pass from local authorities. This type of political favoritism is precisely the sort of mischief that resulted in the adoption of the uniformity clause in Article VIII, Section 1 of the Pennsylvania Constitution, along with the restriction on the ability of the General Assembly to grant tax-exempt status in Article VIII, Section 2. *See Mesivtah Eitz Chaim*

of Bobov, Inc. v. Pike County Board of Assessment Appeals, No 16 MAP 2011, slip op. at 6-8 (Pa. Apr. 25, 2012).

Given these potential problems, it is unfortunate that the Supreme Court did not grant review over the question whether the governmental burden prong under the *HUP* test could be satisfied by easing governmental burdens outside of the relevant county or outside of Pennsylvania.

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