The Kentucky Court of Appeals Tackles Religious Property Tax Exemptions

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Religious institutions received a victory this month regarding property tax exemptions under Section 170 of the Kentucky Constitution. In *Dunn v. Solomon Foundation,* the Kentucky Court of Appeals answered a critical question as to the meaning of the language in Section 170 and whether a religious institution owning property must both own *and* occupy the property in order to receive a tax exemption.

In the case before the Kentucky Court of Appeals, the Solomon Foundation ("TSF"), a non-profit entity organized under Colorado law, sought a tax exemption for property owned in Paducah, KY. The property had been used for many years by other religious organizations, and TSF leased the property to The Crossing Church, which then subleased the property to the Restoration Church. The McCracken County Property Valuation Administrator ("PVA") denied the exemption, stating that the property was not both owned and occupied by the same religious institution.

The matter was then reviewed by the Kentucky Board of Tax Appeals ("KBTA"). The KBTA determined that TSF was not entitled to the tax exemption, and TSF timely filed an appeal with the McCracken County Circuit Court. The circuit court agreed with KBTA that TSF was a religious institution but disagreed with the KBTA's conclusion that in order to receive the tax exemption, TSF alone must own and occupy the property. Both PVA and the Kentucky Department of Revenue (the "Revenue Department") appealed to the Kentucky Court of Appeals.

Section 170 of the Kentucky Constitution contains the property tax exemption for various organizations. Specifically, Section 170 says, "There shall be exempt from taxation public property used for public purposes…real property owned and occupied by, and personal property both tangible and intangible owned by, intuitions of religion."[1]

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With no argument about whether TSF served a religious purpose, the appeals court first determined whether TSF qualified as an institution. Quoting *Commonwealth v. Gray's Trustee*,[2] the court held that "[I]nstitution was not simply a building or a plant or a body corporate. It may be all of these, but, more broadly speaking, it is that which is set up, provided, ordained, established or set apart for a particular end, especially of a public character."[3] The court held that TSF's purpose fit the definition set out in *Gray's Trustee*. Thus, TSF is an institution.

The final question the Kentucky Court of Appeals resolved was whether the language of Section 170 required the religious institution to both own and occupy the property. Both PVA and the Revenue Department argued that in order to receive the exemption, TSF had occupy the facility; another religious institution could not. The court, citing both *Freeman v. St. Andrew Orthodox Church, Inc.* [4] and *Crick v. Rash*,[5] said that the plain meaning of the words in Section 170 must be used in interpreting the religious property tax exemption. Reviewing the text of Section 170, the court held that the framers' use of the word "institutions" in its plural form was intentional. The framers used singular nouns in other parts of Section 170, and they explicitly meant to use "institutions" in its plural form. Because of this, the Constitution does not require that one and the same religious institution both own and occupy the property for the tax exemption. Instead, so long as the property is owned by a religious institution and a religious institution occupies it, the property is eligible for the tax exemption.

For more information, contact the author of this article or any member of Frost Brown Todd's Tax Practice. You can also visit our Tax Law Defined® Blog for more insight into the latest developments in federal, state and local tax planning and tax administration.

**Kenny Schwalbert contributed to this article while working as a summer associate at Frost Brown Todd. Kenny is not a licensed attorney.*

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[1] Ky. Const. § 170.

[2] 74 S.W. 702 (Ky. 1903).

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[3] *Id.*

[4] 294 S.W.3d 425 (Ky. 2009).

[5] 229 S.W. 63 (Ky. 1921).

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