

MEMORANDUM OF LAW

I. STATEMENT OF FACTS

The Church of God in Northern Ohio, Inc. (hereinafter “COGNO”) is a not-for-profit entity operating as the administrative body of approximately 126 member churches and congregations. The subject real property is located in Bath Township and is recorded as Parcel Number 0500262. COGNO lawfully acquired the property and erected an office building used solely for purposes of carrying out its administrative duties for its members. Such duties include, general governance of the denomination, ministry training, and supporting member churches to execute the policies and teachings of the denomination. The administrative building contains the executive offices and support staff for various departments of the denomination including the executive, youth ministry, women’s ministry, evangelism and missions. There are no stores or vendor booths in the building and there is no sanctuary for formal worship. In fact, the building is not used to generate any profitable income from any source in any medium and is not used for traditional corporate worship services. The building is purely an administrative office building used by regional church officials to oversee and assist its member congregations in carrying out their charitable purposes.

On or about November 3, 2003, the COGNO filed an application for exemption of the assessment of taxes upon real property used exclusively for the organization’s charitable purposes. The basis of COGNO’s application for exemption was the provisions set forth specifically in Ohio Revised Code 5709.12(B) which provides that “real and tangible personal property belonging to institutions that is used exclusively for charitable purposes shall be exempt from taxation.” COGNO did not seek exemption under R.C. 5709.07 (reserved for houses of public worship). However, on December 8, 2006, the Tax Commissioner issued its Final

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Determination denying COGNO's application for exemption. Without any supporting legal authority, the Tax Commissioner simply stated that "[w]hether the applicant seeks exemption pursuant to R.C. 5709.07 or R.C. 5709.12, property used as the administrative headquarters for a church or congregation is taxable."

COGNO filed a timely appeal arguing the Tax Commissioner erred in denying the application as COGNO applied, not as a church under R.C. 5709.07, but rather as an institution that uses its property exclusively for charitable purposes pursuant to R.C. 5709.12(B). Furthermore, based on the legal authority discussed below, the Tax Commissioner clearly failed to apply the applicable law in reviewing COGNO's application.

II. LAW/ARGUMENT

As an initial matter, the Commissioner correctly sites the applicable standard that: "In order to be entitled to exemption under this section, two requirements must be met: the property must belong to an institution, and the property must be used exclusively for charitable purposes." *Highland Park Owners, Inc. v. Tracy* (1994), 71 Ohio St.3d 405, 406. As such, the Commissioner concedes that COGNO is an "institution" within the meaning of the Statute and meets the first requirement of this section. Therefore, the only remaining question to decide is whether or not the property is being used exclusively for charitable purposes.

The Tax Commissioner offered no legitimate support to serve as a basis for denying COGNO's application for real property tax exemption but simply the assertion that property used by religious institution's governing body is taxable. The Commissioner's Determination did contain a reference to *Christian Church of Ohio v. Limbach* (1990), 53 Ohio St.3d 270, as its suspected authority for the denial. However, by the very terms of that case as quoted by the Commissioner, it is inapplicable to the matter at hand.

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Christian Church of Ohio dealt with whether a religious denomination’s administrative office was exempt under R.C. 5709.07 since the offices did not host public worship services. The Supreme Court held that to “qualify for exemption from real property taxation as a house used exclusively for public worship under R.C. 5709.07, such property must be used in a principal, primary, and essential way to facilitate the public worship.” *Id.* at 271. The applicability of R.C. 5709.12 to the facts presented was not discussed by the Court and its decision was based solely on the applicability of R.C. 5709.07.

In the case at bar, COGNO’s facility is not used to host public worship services. Hence the application for exemption was filed pursuant to R.C. 5709.12(B) *not* R.C. 5709.07. Therefore, the Court’s holding in *Christian Church of Ohio* is clearly inapplicable and is unresponsive of the Commissioner’s determination. Rather, whether COGNO is using the subject property exclusively for charitable purposes, this Court should consider the holdings of following three essential cases: *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St. 3d 117, *Community Health Professionals, Inc. v. Levin* (2007), 113 Ohio St.3d 432, and *Girl Scouts-Great Trail Council v. Levin* (2007), 113 Ohio St.3d 24.

A. The relevant factor for determining exemption under R.C. 5709.12 is whether the institution is using the property exclusively for charitable purposes.

First, in *True Christianity Evangelism v. Zaino*, a religious organization owned a two-story house which was used by the organization’s president to evangelize and promote its view of the Christian faith. There were no public worship services held at the property but rather it was a place used to assemble and distribute evangelistic Christian literature. The organization sought a property tax exemption pursuant to R.C. 5709.12 and same was denied by the Tax

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Commissioner with the Board of Tax Appeals affirming the denial. The Ohio Supreme Court reversed, holding:

Thus, for purposes of exemption under R.C. 5709.12 whether the institution is religious or charitable is not a relevant factor. The relevant factor for determining exemption under R.C. 5709.12 is whether the institution is using the property exclusively for charitable purposes. In *Am. Commt of Rabbinical College of Telshe, Inc. v. Bd of Tax Appeals* (1951), 156 Ohio St. 376, 46 O.O. 217, 102 N.E.2d 589, paragraph one of the syllabus, we held “*If operated without any view to profit, an institution used exclusively for the lawful advancement of education and of religion is an institution used exclusively for charitable purposes, within the meaning of ... Section 5353, General Code [now R.C. 5709.12].*” *True Christianity Evangelism v. Zaino* (2001), 91 Ohio St. 3d 117 at 118-19 (*emphasis added*).

Furthermore, when the primary purpose of the property is “an evangelistic one” and “for the preparation and dissemination of a religious message”, the property is exempt from taxation under R.C. 5709.12. *Id.* at 119. Acknowledging that the real property was being used primarily “to encourage people to read the Bible and live up to its moral standards”, the Supreme Court stated that these efforts were “a good-faith attempt to disseminate information to spiritually advance and benefit mankind in general”, and “under the definition of charity followed by this court, applicant’s activities constitute charitable purposes.” *Id.* at 120.

The sole function of COGNO is to provide governance over its’ member congregations as well as to equip and supply said congregations with religious training and materials necessary to promote the Christian faith. COGNO’s conduct and function is similar to the organization in *True Christianity Evangelism*. COGNO seeks to promote the Christian faith by evangelism which, according the holding of the Ohio Supreme Court, is a charitable purpose. See also, *Cleveland Bible College v. Bd. Of Tax Appeals* (1949), 151 Ohio St. 258, paragraph one of the syllabus (holding that if operated without any view to profit, an institution used exclusively for

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the lawful advancement of education *and of religion* is an institution used exclusively for charitable purposes, within the meaning of [now R.C. 5709.12]).

There are no public worship services held at the COGNO offices (hence the application having been filed pursuant to R.C. 5709.12(B) rather than R.C. 5709.07). In addition, COGNO does not sell any materials or paraphernalia of any type, rent or lease any part of its facility, or operate any program or business in any fashion with a view toward profit. As such, the use of the subject property by COGNO is exclusively for charitable purposes and exempt from real property taxation pursuant to R.C. 5709.12.

B. If the institution is charitable, its property may be exempt if it uses the property exclusively for charitable purposes.

The second case, *Community Health Professionals, Inc. v. Levin*, the applicant was a non-profit healthcare organization which owned a parcel of land improved with a small office building. The applicant occupied a portion of the building's office space and leased the remaining portions to two other non-profit organizations. All three of the non-profit organizations used their respective space solely as administrative offices for their particular organizations. The applicant sought property tax exemption under R.C. 5709.12 and R.C. 5709.121. The Tax Commissioner denied the application for exemption citing that the applicant "failed to show that it uses the property either exclusively for charitable purpose, pursuant to R.C. 5709.12, or in furtherance of its charitable purpose and without the view to profit, pursuant to 5709.121." *Community Health Professionals, Inc., v. Levin*, supra, at 433-34. The Board of Tax Appeals agreed with the Commissioner that the applicant did not use the property exclusively for charitable purposes (5709.12) as it leased available office space to other organizations. *Id.* at 434. However, the Board reversed the Commissioner's decision with

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respect to R.C. 5709.121 and the Commissioner subsequently appealed. The Ohio Supreme Court affirmed the decision of the Board of Tax Appeals finding that the rent payments received by the applicant were incidental as the intended operation of the organization, which was deemed charitable, is the controlling factor. *Id.* at 438. See also, *Vick v. Cleveland Mem. Med. Found.*, 2 Ohio St.2d 30 ("It is the use of property rather than the fact that revenues are collected and received from property which is controlling...").

The Court further commented that:

"in deciding whether property is exempt under the charitable use provisions of R.C. 5709.12 and 5709.121, tax authorities must first determine whether the institution seeking exemption is a charitable or noncharitable institution. * * * If the institution is charitable, its property may be exempt if it uses the property exclusively for charitable purposes or it uses the property under the terms set forth in R.C. 5709.121." *Community Health Professionals, Inc., v. Levin*, supra, at 436, ¶18, quoting, *Olmsted Falls Bd. of Edn. v. Tracy* (1997), 77 Ohio St.3d 393, 396.

In the instant matter, COGNO sought tax exemption under R.C. 5709.12 and not 5709.121. *Community Health Professionals* is significant in that the sole reason the application was denied was due to the applicant's leasing office space to other organizations. This is not the situation with COGNO. There are no other entities subleasing COGNO's facilities located at the subject property. COGNO's property is used exclusively in furtherance of its charitable purposes and not with a view toward profit.

Furthermore, R.C. 5709.12 applies to *any* institution that uses its property exclusively for charitable purposes. *White Cross Hosp. Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, (discussing R.C. 5709.12: "any institution, irrespective of its charitable or noncharitable character, may take advantage of a tax exemption if it is making exclusive charitable use of its property."). The Commissioner correctly cites *Planned Parenthood Assn of Columbus, Inc. v. Tax Commissioner* (1966), 5 Ohio St. 2d 117, paragraph one of the syllabus, for the proposition

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that “[i]n the absence of a legislative definition, ‘charity’, in a legal sense is the attempt in good faith, *spiritually*, physically, intellectually, socially, and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular”. Cited in *True Christianity*, supra, at 119 (emphasis by the court). See also, *Cleveland Bible College*, supra. COGNO exclusively uses the subject property for a charitable purpose by promoting and enhancing, in good faith, the spiritual welfare of the residents of Northern Ohio.

C. When the primary use of the property is to fulfill the charitable function served by the charitable institution, the administrative offices for the institution meet the statutory requirement of Revised Code §5709.12 that it be used exclusively for charitable purposes.

The third case of significance is *Girl Scouts-Great Trail Council v. Levin* in which a regional Girl Scout administrative office was initially denied real property tax exemption for a small portion of its square footage due to the presence of a small Girl Scout store located within the premises. The entire office building was approximately 12,000 square feet, with the store occupying a mere 256 square feet (less than 3% of the entire building). *Girl Scouts-Great Trail Council v. Levin*, 113 Ohio St.3d 24-25. The store only sold items specific to the Girl Scout organization including, books, pins, badges, uniforms, and clothing bearing the Girl Scout logo. *Id.* The items could not be purchased elsewhere and the store did not advertise to the general public. *Id.* The store realized a profit of less than \$2,800 in 2003 and did not realize any profits for the prior 11 years. *Id.* at 25.

The Girl Scouts had applied for exemption pursuant to R.C. 5709.12(B), however, due to the operation of the store and the 2003 profits, the Tax Commissioner denied the application *for the 3% of the building used by the store*, on the grounds that the store was operated with a view to profit. More noteworthy to the instant appeal is that the Tax Commissioner *approved (without*

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question) the application for the 97% of the building used as administrative offices! Upon appeal by the Girl Scouts, the Board of Tax Appeals reversed the denial and the Commissioner appealed to the Ohio Supreme Court.

The Supreme Court affirmed the Board of Tax Appeals and held that the Girl Scouts were an institution and owners of the subject property. *Id* at 26. In determining whether the Girl Scouts were using the property exclusively for charitable purposes and without a view to profit, the Court commented that the “fact that an institution generates revenue from its use of property does not necessarily defeat the claim for tax exemption...” referring to *Bowers v. Akron City Hosp.* (1968), 16 Ohio St.2d 94. In *Bowers*, a nonprofit charitable hospital did not lose its property tax exemption despite owning and operating parking lot that charged parking fees which were used to offset its operating costs. *Id.*

The Court further affirmed the holding of *True Christianity*, *supra*, in that the term “exclusively” is synonymous with “primary”. *Girl Scouts-Great Trail Council*, *supra*, at 26. Specifically the Court stated:

Based on the facts presented in this case, we conclude that the primary use of the property is to fulfill the charitable function served by the Girl Scouts and, therefore, the property meets the statutory requirement that it be used exclusively for charitable purposes and not with a view to profit. *Id.* at 27.

The significance of *Girl Scouts* to the instant matter is two-fold. First, in contrast to the Girls Scouts, COGNO does not operate any store nor sell any products nor charge any fees for its services with any view to profit. Thus, there is no portion of the COGNO building that could possibly be split-listed as taxable. Second, the Supreme Court noted that the Girl Scouts serves a “charitable function,” and consequently, the property which serves as its administrative offices served to facilitate and promote the charitable purposes of their organization. The functional use

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of the Girl Scouts property for administrative offices is identical to COGNO's use of its property, albeit with a religious, rather than secular, focus. As the Supreme Court has previously held, if operated without any view to profit, an institution used exclusively for the lawful advancement of education *and of religion* is an institution used exclusively for charitable purposes, within the meaning of [now R.C. 5709.12]. *Cleveland Bible College*, supra, paragraph one of the syllabus (emphasis added). Therefore, since the Girl Scouts were granted exemption under 5709.12(B) so too must COGNO.

Moreover, the granting of a secular institution like the Girl Scouts' application for real property tax exemption and the denial of a religious institution like COGNO's application raises serious Constitutional issues. The Girl Scouts is a non-profit institution and use its administrative offices to facilitate its charitable work. *Girl Scouts-Great Trail Council*, supra at 24. COGNO is a non-profit institution and uses its administrative offices to facilitate its charitable work (e.g. facilitate, advance and enhance an individual's acceptance and practice of the Christian faith). Both properties are approximately the same sized and use their respective administrative offices in furtherance of their respective charitable purposes and without a view toward profit.

The law is clear that promoting a spiritual and religious message and belief serves a charitable purpose. *True Christianity Evangelism*, supra at 120; *Planned Parenthood Assn of Columbus, Inc*, supra. And whether the institution is religious or charitable is not a relevant factor; the relevant factor for determining exemption is whether the institution is using the property exclusively for charitable purposes. *True Christianity Evangelism*, supra at 118. The approval to the Girl Scouts and the denial to COGNO raises the presumption of disparate

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treatment and unconstitutional viewpoint discrimination against COGNO solely based on a religious message despite the fact that COGNO is serving a legitimate charitable purpose.

III. CONCLUSION

COGNO applied for tax exemption under R.C. 5709.12(B). The Tax Commissioner concedes that COGNO meets the criteria and is in fact an “institution” as contemplated by R.C. 5709.12(B). COGNO does not operate any type of profit seeking business on the subject property, does not lease or rent any part of the subject property, and derives no income from the use of the subject property. As such, COGNO does not operate with a view toward profit. COGNO does not use the property to host public worship services. Rather, the purpose of COGNO is to facilitate, advance, instruct and support its member congregation’s worship (including services) and promotion of the Christian faith in compliance with the Church of God’s denominational tenets and mission. The advancement of a spiritual message has been repeatedly held by Ohio Courts to be a legitimate charitable purpose. COGNO simply and unequivocally uses the subject property exclusively for the regional administrative offices of its religious denomination which serves the charitable purpose of advancing the spiritual welfare of the residents in Northern Ohio.

The Tax Commissioner’s denial of COGNO application for real property tax exemption was without merit and contrary to the clear and binding law of this State. Therefore, COGNO respectfully requests the Board of Tax Appeals reverse the final determination of the Tax Commissioner.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was served via hand delivery this 8th day of July 2008 to:

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