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MARPOLE CURLING CLUB

v.

ASSESSOR OF AREA 9 - VANCOUVER

Supreme Court of British Columbia (A880999) Vancouver Registry

Before MADAM JUSTICE SOUTHIN

Vancouver, June 17, 1988

J. R. Lakes for the appellant
D. O. Marley for the respondent

Reasons for Judgment June 27, 1988

This is an appeal by the Marpole Curling Club (the Club), the owner of land and improvements at 8730 Heather Street in Vancouver, from the decision of the Assessment Appeal Board (the Board) dismissing the Club's appeal from the classification of its land for assessment purposes.

Pursuant to s. 26 of the Assessment Act, R.S.B.C. 1979, c. 21, s. 74, and B.C. Reg. 438/81, the assessor classified the land as Class 6. The appellant says the land should be Class 8. Section 26 (8) says this:

The Lieutenant Governor in Council shall prescribe classes of property for the purpose of administering property taxes and shall define the types or uses of land or improvements, or both, to be included in each class. The regulation says this:

Class 6 - business and other

6. Class 6 property shall include all land and improvements not included in Classes 1 to 5 and 7 to 9.

Class 8 - seasonal resort, recreational property and fraternal organization

8. Class 8 property shall include only:

* * *

(c) that part of any land improvements used or set aside for use as a meeting hall for a nonprofit fraternal organization of persons either or both sexes, together with the facilities necessarily incidental to that use, for at least 150 days in the year ending on September 30, of the calendar year preceding the calendar year for which the assessment roll is being prepared, not counting any day in which the land and improvements so used or set aside are also used for (i) any purpose by a person or organization that is not a nonprofit fraternal organization,

(ii) entertainment where there is an admission charge, or

(iii) the sale or consumption, or both, of alcoholic beverages.

The appellant does not assert that its land falls within any of classes 1 to 5, 7 or 9.

This general classification provision owes its existence to the Assessment (No. 2) (Amendment) Act, S.B.C. 1977, s. 18, The first regulation passed pursuant to the 1977 amendments was B.C. Reg. 437/77. From my perusal of the various regulations, the first reference to non-profit fraternal organizations was in B.C. Reg. 463/79 which was to apply to 1980 assessments.

Classification affects the rate of taxation under many statutes. See the Property Tax Reform (No. 2) Act, S.B.C. 1983, c. 24. In this case, the Assessment Appeal Board found:

(1) That the Marpole Curling Club was a "non-profit fraternal" organization.

(2) That the appellant's curling rink qualifies as a "meeting hall" within the meaning of those words in the regulation.

(3) That because there was a bar on the premises the lands did not qualify under subclause (c). The evidence before the Board was that curling took place between the 15th September and the 4th April in each year, a period of two hundred and three days. The premises were used for occasional meetings outside the curling season. On four of the one hundred and sixty-two days in 1986 when the curling rink was not in use, alcoholic beverages were served on the premises in which there is a bar.

There is nothing in the stated case to indicate that the bar was used as a place for the consumption of alcoholic beverages during what might be called the closed season except on those four days.

According to the Board, Mr. Bradshaw appearing for the appellant said:

The facility was used for occasional meetings during the one hundred sixty-two days out of each year that it was not actively used for curling, however, he was unable to say where in the facility the meetings took place.

The questions which have been put by the Board are these:

1. Did the Assessment Appeal Board err in law in finding that the land and improvements should be classified as "Business & Other"?

2. Did the Assessment Appeal Board misinterpret Class 8 as it applies to the land and improvements under appeal?

The simple thrust of Mr. Lake's case is that when the Board came to consider the words:

"used or set aside for use . . . for at least one hundred fifty days in the year ending on September 30 . . . not counting any day in which the land and improvements so used or set aside are also used for

3. The sale or consumption or both of alcoholic beverages . . .

it made an error of law. That error was its failure to address the issue of whether the bar was actually in use. The mere existence of a physical facility for serving alcohol does not constitute use for the sale or consumption or both of alcoholic beverages.

I agree that the classification section goes to the question of use and not merely the existence of a certain kind of facility. Mr. Bradshaw's evidence as quoted by the Board indicates that only three or four times out of that one hundred and sixty-two days was the bar actually used. It is use, not being set aside for use which is the crux of the matter.

Thus, the Board misdirected itself on the meaning of the words "used for . . . the sale or consumption, or both, of alcoholic beverages".

My difficulty with this case is that I am also of the opinion that the Board misdirected itself on the words "used or set aside for use as a meeting hall for a non-profit fraternal organization".

That this curling club is a non-profit organization, there is no reason to doubt. But the Board never seems to have directed itself to the significance of the word "fraternal" in the context. I appreciate that it did not do so because the Assessor did not take issue with the assertion that the appellant is a "non-profit fraternal organization" but that seems to me to be a failure on the Board's part to address an issue which it was obliged by law to address.

The word "fraternal" must have some meaning in the context. The word "fraternal " in its ordinary meaning denotes "of pertaining to or involving brethren" (Webster's New International Dictionary, 2nd Edition 1934, page 1002) or as the Shorter Oxford Dictionary puts it: "of or pertaining to brothers or a brother; brotherly". It carries with it the notion of mutual help.

That same edition of Webster's defines "fraternal society, association, or order" thus:

A society organized for the pursuit of some common object by working together in brotherly union; specif., a benefit society organized with a representative form of government and not carried on for profit, and, often, consisting of members of the same trade or occupation or allied ones.

One thinks for instance of such organizations as the Masons, the Benevolent and Protective Order of Elks, the Knights of Columbus and similar bodies.

I do not recall ever hearing anyone describe the Vancouver Lawn Tennis and Badminton Club or the Jericho Tennis Club -- even in the days when their premises were modest and their members assembled purely for playing badminton and tennis -- as "fraternal organizations".

Nor do I think that in common speech anyone would refer to a building, the chief purpose of which was the provision of curling ice, as a "meeting hall".

I think that is a reference to a building -- and there are many of them throughout British Columbia -- which is owned by a fraternal organization and used for its meetings which usually take place on a regular basis but which is frequently rented to or lent to others sometimes for functions, such as weddings, at which liquor is served.

Thus, although in my view, the answer to the second question posed by the Board is "yes", the answer to the first question posed by the Board is "no".

In other words, the Board came to the right result for the wrong reasons.

In accordance with the statute, this opinion is remitted to the Board.

No costs.