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GOVERNING COUNCIL OF SALVATION ARMY, CANADA WEST

v.

ASSESSOR OF AREA 09 - VANCOUVER

Supreme Court of B.C. (A870254) Vancouver Registry

Before the MR. JUSTICE HINDS

Vancouver, September 11, 1987

B. A. Mason appearing for the Appellant, Salvation Army

C. A. Kinahan appearing for the Respondent, Assessor of Area 9, Vancouver

Reasons for Judgment (Oral)

September 21, 1987

THE COURT: (Oral) This is an appeal by way of stated case in respect to a decision reached by the Assessment Appeal Board.

Before dealing with the substance of the appeal I consider the comments of Mr. Justice Thorson in *Martindale v. The Queen* [1956-1960] Ex. C.R. page 153 to be apt with respect to this particular application. The comment is as follows:

"The question whether the Governor in Council could validly give the Order in Council the retroactive effect claimed for it raises an issue that transcends the personal interests of the suppliant and the other civil servants whose positions are similar to his and in resolving it considerations of personal sentiment must not be allowed to intrude on the important legal principle involved."

By section 396 (c) subsection (i) and subsection (v) of the *Vancouver Charter* it is provided in effect that a charitable institution in occupation of real property which is used for charitable purposes is exempt from taxation; however, the exemption is not permitted for real property in respect of which a grant has been made after the 31st day of March 1974 under the *Elderly Citizens' Housing Aid Act*.

The Lieutenant Governor in Council on the 17th of April, 1973 authorized a grant in aid of construction of a special care home in Vancouver located on the property which is the subject matter of this litigation, and which, of course, is owned by the Governing Council of Salvation Army Canada west, pursuant to the provisions of the *Elderly Citizens' Housing Aid Act*. I shall call that the "first grant." Clearly that grant was made prior to March 31st, 1974; however, by a further Order in Council which was passed on July 17th, 1975 the Lieutenant Governor in Council made an additional grant to the Salvation Army for the subject property under the same Act, that is to say the *Elderly Citizens' Housing Aid Act*, and in an amount of \$76,457.18. I shall call that the "second grant." It is readily apparent that the second grant was made subsequent to the cut-off date of March 31st, 1974.

An exemption for the Salvation Army pursuant to Section 396 of the *Vancouver Charter* was denied with respect to the subject property by reason of the allocation of what I have described to be the second grant. That denial was appealed to the Assessment Appeal Board and it held that

the second grant was not a new grant and in its opinion it was a grant in addition to the original grant.

In my respectful opinion the second grant was clearly a grant within the words "a grant" in Section 396 subsection (c) (v) of the *Vancouver Charter*, and the Order in Council authorizing that grant clearly stipulates that is a separate grant under the provisions of the *Elderly Citizens' Housing Aid Act*.

There is nothing in the enabling legislation or in the Order in Council itself which indicated the intention of the Legislature to enable a grant to be made on a retrospective basis.

Section 4, subsection 1, of the *Interpretation Act* which appears to have been relied upon by the Assessment Appeal Board does not in my view permit the characterization of the second grant to have been made retroactively and prior to the cut off date of March 31st, 1974.

For the foregoing reasons I conclude that the four questions set forth in the stated case for the opinion of this court should be answered "yes" in each instance.

I am prepared to hear counsel with respect to the appropriate direction to be made for my consideration and submissions upon whether or not the matter should now be remitted to the Board or what if anything of any other nature should be directed to be done.

MS. KINAHAN; My lord, I am afraid it occurred to me during your submissions that it isn't a normal order and I am afraid I don't know what court it is other than to send a response to the questions to the Assessment Appeal Board. The matter had already been decided by them, it is not like it is in the middle of being heard right now. I suppose it would have to go back to them at this point but I am afraid I didn't address my mind to that.

THE COURT; All right, I direct that unless counsel wish to make further submissions to me in a relatively short time, that this matter should then be remitted to the Board with the answers that I have given to the four questions posed for determination.

Is there a problem here with respect to costs?

MS. KINAHAN; My lord, the City is not seeking costs.

THE COURT; I take it Mr. Mason, you are not seeking costs?

MR. MASON; Not in the circumstances, of course not.

THE COURT; I am pleased to learn the City is not seeking costs and, therefore, there will be no costs to either party in this application. Is there anything further?

MS. KINAHAN; No, my lord.