



## COMMUNITY CENTER WAS NOT A CHARITY

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An en banc decision of the Commonwealth Court held that a community center that provided free services for all its programs was not a purely public charity entitled to an exemption for real estate tax purposes. *Church of the Overcomer v. Delaware County Board of Assessment Appeals*, No. 269 C.D. 2010 (Pa. Commw. Mar. 17, 2011). The decision appears to be incorrectly decided.

The taxpayer was a church that owned a parcel containing a church building and a community center. The lower court held that the portion of the property used for religious worship was exempt, but that the portion of the property used for the community center was not because it failed to meet certain requirements of the Institutions of Purely Public Charity Act, 10 P.S. §§ 5371-5385. The Commonwealth Court first held that the lower court correctly analyzed the portion of the property used for a church separately from the portion used as a community center, citing prior case law that it is primarily the use to which an institution puts a property that counts. The first portion was exempt as a house of worship; the second was examined to see if it met the statutory requirements for a Pennsylvania purely public charity.

The Commonwealth Court agreed with the lower court that the taxpayer had not met the government service requirement in § 5(b) of the Charity Act. Section 5 (b) states

several alternative requirements to meet the government service requirement. One of them provides that the requirement is met if wholly gratuitous goods and services to at least 5 percent of those receiving similar goods and services from the institution are provided. The pastor of the church, who managed the community center, stated that all of its programs were free and open to the public and to anyone wanting to participate in them. The programs offered included a program to help children of prisoners, a program to help prisoners maintain family contact and prepare for release, a summer camp, a food bank, an addictions ministry, a youth ministry, and a cyber school. No witnesses testified in opposition. The Commonwealth Court further agreed with the lower court that the taxpayer had not met the requirement of § 5(e) of the Act that an institution must benefit a substantial and indefinite class of persons who are legitimate subjects of charity. Evidently, the pastor's testimony was not detailed. However, it does not seem fair or reasonable to conclude that programs with such obviously beneficial social purposes that were provided free to everybody in the neighborhood did not meet government service and legitimate subject requirements. Longstanding case law provides that anything provided free to the public is charitable. *Episcopal Academy v. Philadelphia*, 25 A. 55 (1892).