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RELIGIOUS SUMMER CAMP IS NOT A CHARITY

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A panel of the Commonwealth Court held that a Jewish religious camp located in Pike County was not entitled to exemption as a purely public charity because it did not meet one of the case law requirements that an institution relieve the government of some of its burden. *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals,* No. 2343 C.D. 2008 (Pa. Cmwlth. Dec. 29, 2009) (unreported).

The court first overruled the finding of the lower court that Mesivtah did not benefit a substantial and indefinite class of persons that are the legitimate subjects of charity. The Commonwealth Court stated that Mesivtah demonstrated that the cost of the camp was generally subsidized and that extra subsidies benefited those of little or no means. Quoting other case law, the court held that a charity need not benefit exclusively persons of little means; the benefits can extend to all persons generally.

However, the court held that Mesivtah did not meet the case law criterion that it relieve the government of some of its burden. The court stated that there was little use by the general public of the facilities. The court did not disagree that Mesivtah met the requirements of section 5(f) of the Charity Act regarding government service. 10 P.S. § 375(f). The Charity Act provides that an institution can meet the government service requirement if, among other criteria, the institution lessens the burden of government for the advancement of social, moral, educational or physical objectives, or if it is owned and operated by an entity for generally religious purposes. Nonetheless, the court concluded that Mesivtah had not met the requirements of *Alliance Home of Carlisle v. Board of Assessment Appeals,* 919 A.2d 206 (Pa. 2007). The court stated that *Alliance Home* required that an institution first meet the case law requirements and then must meet the requirements of the Charity Act.

The Commonwealth Court ignored a lengthy and detailed discussion directly on point in *Alliance Home.* There, the Supreme Court found that there was no conflict between case law and the Charity Act, but proceeded to discuss at length the considerations that must be addressed if such a conflict were at issue. The court repeated the obvious point that the judiciary, not the General Assembly, are the final interpreters of the Constitution. However, the court went on to quote, with apparent approval, the legislative findings in Act 1997-55, including the legislative intention "to eliminate inconsistent application of eligibility standards for charitable exemptions, reduce confusion and confrontation among traditionally tax exempt institutions and political subdivision and insure that charitable and public funds are unnecessarily diverted from the public good to litigate eligibility for tax exempt status." Most important, the court stated that any such conflict would raise the questions (1) whether the judicial test for a purely public charity adopted in *Hospital Utilization Project v. Commonwealth,* 487 A.2d 1306 (Pa. 1985) *(HUP)* – which the court pointed out was adopted in the absence of legislation addressing the constitutional term – occupied the field, or left room for the General Assembly to address the matter; (2) whether the legislative scheme in Act 1997-55 comported with the constitutional command and displaced *HUP;* or (3) whether, if *HUP* is authoritative and comprehensive, the legislative findings on scheme in Act 1007-55 gave reason to reconsider the contours of the test in *HUP* that distilled judicial experience with individual cases. The panel of the Commonwealth Court ignored this entire discussion in *Alliance Home.*