



COMMONWEALTH OF VIRGINIA

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August 3, 2009

The Honorable Ken Cuccinelli, II
Member, Senate of Virginia
10560 Main Street, Suite 218
Fairfax, Virginia 22030

Dear Senator Cuccinelli:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask whether certain real property and improvements used and occupied by the NorthStar Church Network qualify for exemption from local taxation under § 58.1-3606(A)(5). You also ask whether a nonprofit property holding company that is organized for religious purposes retains the same property tax exemption as its sole member, an incorporated church.

Response

It is my opinion, based on the information provided, that the certain real property and improvements used and occupied by the NorthStar Church Network do qualify for exemption from local taxation under § 58.1-3606(A)(5). It further is my opinion that a nonprofit property holding company that is organized for religious purposes retains the same property tax exemption as its sole member, an incorporated church.

Background

You relate that NorthStar Church Network (“NorthStar”) is a Southern Baptist association of church congregations in Northern Virginia connected to both the state and national Southern Baptist conventions. Among other ministries and religious support services, you note that NorthStar uses and operates a campus religious ministry program for George Mason University students.

You also relate that the property tax exemption issue relates to the ownership of the property that NorthStar exclusively uses and operates for religious purposes, which is owned in fee simple by the NorthStar Foundation (“Foundation”). The Foundation is an entity whose sole purpose is to provide real estate and other support activities to member congregations and NorthStar. You state that the Foundation has no other purpose or activities and is operated solely on a not-for-profit, charitable basis. Further, you note that the sole member of the Foundation, which is a religious nonprofit property holding company, is NorthStar. You provide us with a key provision of Article II, “Members,” of the Foundation’s bylaws:

The Corporation shall have only one member – “NorthStar Church Network: An Association of Baptist Congregations” ..., a Virginia nonprofit religious corporation which is a newly created organization formed when Mount Vernon Baptist Association and Potomac Baptist Association joined together for a broader and more effective ministry. The sole member shall have the right to elect and remove the directors and approve any amendments to the Articles and Bylaws of this corporation but shall have no voice or rights in the management, operation or day-to-day business of the corporation.

Further, you advise that while the Foundation holds the fee title to the property, NorthStar leases the property and exclusively operates and occupies the property as a campus ministry. The lease between the Foundation and NorthStar insulates the real estate from potential liability and provides centralized real property management support. NorthStar pays rent to the Foundation, which is calculated on the basis of the actual cost of owning the real estate. You relate that the Foundation receives no profit from the use or rental of the property or from any of NorthStar’s activities. You state that the lease is an open-ended lease, and there is a direct connection between the two organizations. The operating nonprofit is the sole member of the holding company nonprofit. Thus, the long-term commitment is assumed since NorthStar controls the board appointments and major decisions of the Foundation under Article II of the Foundation bylaws.

Applicable Law and Discussion

Section 58.1-3606(A)(5) provides an exemption from taxation by classification for:

Property belonging to and actually and exclusively occupied and used by the Young Men’s Christian Associations and similar religious associations, including religious mission boards and associations, orphan or other asylums, reformatories, hospitals and nunneries, conducted not for profit but exclusively as charities (which shall include hospitals operated by nonstock corporations not organized or conducted for profit but which may charge persons able to pay in whole or in part for their care and treatment).

Statutory language is ambiguous when it may be understood in more than one way.¹ An ambiguity also exists when statutory language lacks clarity and precision, or is difficult to comprehend.² “The province of [statutory] construction lies wholly within the domain of ambiguity, and that which is plain needs no interpretation.”³ But when statutory language is clear and unambiguous, the plain meaning and intent of the enactment will be given to it.⁴ It is my opinion that § 58.1-3606(A)(5) is free of any ambiguities.

¹ *Supinger v. Stakes*, 255 Va. 198, 205, 495 S.E.2d 813, 817 (1998); *Va.-Am. Water Co. v. Prince William County Serv. Auth.*, 246 Va. 509, 514, 436 S.E.2d 618, 621 (1993); *Va. Dep’t of Labor & Indus. v. Westmoreland Coal Co.*, 233 Va. 97, 101, 353 S.E.2d 758, 762 (1987).

² *Supinger*, 225 Va. at 205, 495 S.E.2d at 817; *Lee-Warren v. Sch. Bd.*, 241 Va. 442, 445, 403 S.E.2d 691, 692 (1991).

³ *Winston v. City of Richmond*, 196 Va. 403, 408, 83 S.E.2d 728, 731 (1954).

⁴ *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985).

A 1991 opinion of the Attorney General (the “1991 Opinion”) considers whether certain real property and improvements used and occupied by the Northern Virginia Jewish Community Center, Inc., qualified for exemption from location taxation under § 58.1-3606(A)(5).⁵ The 1991 Opinion noted that § 58.1-3606(A)(5) was based upon the exemption contained in Article X, § 6(a)(6) of the Constitution of Virginia.⁶ Since the date of the 1991 Opinion, § 6(a)(6) has been amended to provide:

Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by ~~a three-fourths vote of the members elected to each house of the General Assembly~~ *an ordinance adopted by the local governing body* and subject to such restrictions and conditions as ~~may be prescribed~~ *provided by general law.*^[7]

However, the Virginia Constitution “‘is not a grant of legislative powers to the General Assembly, but is a restraining instrument only, and, except as to matters ceded to the federal government, the legislative powers of the General Assembly are without limit.’”⁸ The General Assembly may enact any law or take any action “not prohibited by express terms, or by necessary implications by the State Constitution or the Constitution of the United States.”⁹ The amendment of § 6(a)(6) does not affect either the validity of § 58.1-3606(A)(5) or the construction of that provision by the Attorney General. Furthermore, the General Assembly has not altered the conclusion of the 1991 Opinion. “The legislature is presumed to have had knowledge of the Attorney General’s interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General’s view.”¹⁰

The 1991 Opinion concludes that the grant to the Jewish Community Center of a right of occupancy under a 99-year lease, renewable for an additional 99-year term, resulted in the property “belonging to” the Jewish Community Center within the meaning of § 58.1-3606(A)(5).¹¹ Therefore, the property qualified for the exemption from local taxation by Fairfax County.¹² In the facts you present, the terms of the lease from the Foundation to the NorthStar is an open-ended lease granting to NorthStar a perpetual right of occupancy. As previously noted, NorthStar pays rent to the Foundation calculated on the basis of the actual cost of owning the real estate. The Foundation receives no profit from the use or rental of the property. Both organizations are nonprofit religious organizations, and the Foundation’s sole function is to hold legal title to the property leased by NorthStar.

⁵ See 1991 Op. Va. Att’y Gen. 303.

⁶ *Id.* at 304-05.

⁷ See 2001 Va. Acts ch. 786, at 1074, 1075 (proposing and agreeing to amend § 6(a)(6)); 2002 Va. Acts chs. 825, 630, at 1999, 2000, 895, 896, respectively (agreeing to amendment and submitting amendment to voters). The amendment was ratified on November 5, 2002, and became effective January 1, 2003. See VA. CONST. art. X, § 6, annot.

⁸ *Harrison v. Day*, 201 Va. 386, 396, 111 S.E.2d 504, 511 (1959) (quoting *Roanoke v. Elliott*, 123 Va. 393, 406, 96 S.E. 819, 824 (1918)).

⁹ *Kirkpatrick v. Bd. of Supvrs.*, 146 Va. 113, 126, 136 S.E. 186, 190 (1926).

¹⁰ *Richard L. Deal & Assocs. v. Commonwealth*, 224 Va. 618, 622, 299 S.E.2d 346, 348 (1983).

¹¹ See 1991 Op. Va. Att’y Gen., *supra* note 5, at 306.

¹² *Id.*

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The facts you present and the issues about which you inquire nearly are identical to the facts and the issue presented in the 1991 Opinion.¹³ Therefore, I must conclude that the certain real property and improvements used and occupied by NorthStar do qualify for exemption from local taxation under § 58.1-3606(A)(5).

Furthermore, a church that was an unincorporated association which subsequently incorporates and transfers all of its real property to a nonprofit, property-holding company with the church corporation as its sole member does not present a situation significantly different from the facts relating to the phrase “belonging to” considered by the 1991 Opinion.¹⁴ Thus, the nonprofit property holding company of its sole member church would retain the same property tax exemption as the church itself.

Conclusion

Accordingly, it is my opinion, based on the information provided, that the certain real property and improvements used and occupied by the NorthStar Church Network do qualify for exemption from local taxation under § 58.1-3606(A)(5). It further is my opinion that a nonprofit property holding company that is organized for religious purposes retains the same property tax exemption as its sole member, an incorporated church.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Mims", with a stylized flourish at the end.

William C. Mims

1:213; 1:941/09-044

¹³ *Id.* at 303-06.

¹⁴ *Id.*