

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

BETA THETA PI FRATERNITY OF W.V.U., INC.  
Petitioner

v.

CIVIL ACTION NO. 20-AA-3  
HONORABLE PHILLIP D. GAUJOT

MARK MUSICK, ASSESSOR OF MONONGALIA COUNTY, WEST VIRGINIA, and  
DALE W. STEAGER, WEST VIRGINIA STATE TAX COMMISSIONER  
Respondents.

**FINAL ORDER OF THE COURT**

This matter came on for final consideration by the Court on the 15th day of April, 2021, by teleconference before the Honorable Phillip D. Gaujot, Judge of the Circuit Court of Monongalia County, West Virginia. Petitioner Beta Theta Pi Fraternity of W.V.U., Inc. was present by counsel, C. Page Hamrick, Esq. Respondent Mark Musick, Assessor Monongalia County, West Virginia, was present by counsel Webster J. Arceneaux, Esq. and Perri Jo Dechristopher, the Prosecuting Attorney of Monongalia County, West Virginia. Respondent Dale W. Steager, former West Virginia State Tax Commissioner was present by counsel Andrew L. Ellis, Esq., Office of the Attorney General of the State of West Virginia. After consideration of the pleadings, exhibits, briefs of counsel, and arguments presented, the Court made its findings and decisions as set out herein.

**Findings of Fact**

1. MARK MUSICK, ASSESSOR OF MONONGALIA COUNTY, WEST VIRGINIA, initially instituted a request for an ad valorem real property taxability ruling pursuant to W.Va. Code Section 11-3-24a, with regard to certain real property owned or used by certain organizations and/or property owners, the Petitioner being one of those organizations, which request was made to Respondent DALE W. STEAGER, WEST VIRGINIA STATE TAX COMMISSIONER. A copy of the



Assessor's Request letter dated December 13, 2019, attached to the Petition as Exhibit B. A copy of the Petitioner's Response to the Request for the ruling attached to the Petition as Exhibit C.

2. The State Tax Commissioner's Property Tax Ruling 20-36 is attached to the Petition as Exhibit A, and determined "that the property of Beta Theta Pi Fraternity House, Inc., located at 225 Belmar Avenue, Morgantown, Monongalia County, is not eligible for exemption from ad valorem property taxation under W.Va. Code Section 11-3-9(a)(15) as property owned by a fraternity or sorority organization affiliated with a college or university and used as residential accommodations or as a dormitory for members of the organization", and is adverse to the Petitioner BETA THETA PI FRATERNITY OF W.V.U., INC.

3. This matter was instituted by Petitioner, BETA THETA PI FRATERNITY OF W.V.U., INC., as an appeal from the Administrative Decision, alleging that Petitioner is aggrieved by the Administrative Decision, which is entitled PROPERTY TAX RULING 20-36 ISSUED PURSUANT TO WEST VIRGINIA CODE 11-3-24a, and which was addressed to Respondent MARK MUSICK, ASSESSOR OF MONONGALIA COUNTY, WEST VIRGINIA, and dated FEBRUARY 24, 2020, and which decision is in favor of the Respondent MARK MUSICK, ASSESSOR OF MONONGALIA COUNTY, WEST VIRGINIA, and adverse to the interests of the Petitioner BETA THETA PI FRATERNITY OF W.V.U., INC.

4. Petitioner BETA THETA PI FRATERNITY OF W.V.U., INC. is a non-profit housing corporation which owns a fraternity (dormitory type) house and lot located at 224 Belmar Avenue, Morgantown, Monongalia County, West Virginia.

5. Respondents MARK MUSICK, ASSESSOR OF MONONGALIA COUNTY, WEST VIRGINIA, and DALE W. STEAGER, WEST VIRGINIA STATE TAX COMMISSIONER, of the

State of West Virginia, are governmental agencies of the County of Monongalia, and of the State of West Virginia, respectively.

6. The Circuit Court of Monongalia County, West Virginia, has jurisdiction over this Petition pursuant to the provisions of West Virginia Code Section 29A-5-4, as it is appeal by a party adversely affected by a final decision in a contested case under the West Virginia State Administrative Procedures Act, for which Petitioner is entitled to judicial review thereof, and as the real property in question is located in Monongalia County, West Virginia.

7. Petitioner BETA THETA PI FRATERNITY OF W.V.U., INC. is aggrieved by the Property Tax Ruling 20-36, which is an administrative decision of the of the State of West Virginia, dated February 24, 2020, and postmarked and mailed February 24, 2020, and received by the Petitioner on February 25, 2020, which administrative decision is adverse to the Petitioner in that it would impose ad valorem real property tax on the real property of the Petitioner, which property is exempt from the tax by statute.

8. Petitioner Beta Theta Pi Fraternity of W.V.U., Inc. is the legal entity which owns the real property located as 225 Belmar Avenue, in Morgantown, West Virginia, and Petitioner is affiliated with the national Beta Theta Pi Fraternity, located at Miami, Ohio on the campus of Miami University of Ohio where it was founded, and with the local fraternal organization Beta Theta Pi Fraternity, which used the property as its fraternity house and dormitory for its student members who attended West Virginia University.

9. The local fraternal organization at West Virginia University Beta Theta Pi Fraternity had a charter from the national fraternity Beta Theta Pi, due to certain student activities which the national organization did not condone, although alumni of the fraternity are seeking to recharter the local

chapter.

10. Petitioner Beta Theta Pi Fraternity of W.V.U., Inc. is a non-profit housing corporation managed by alumni of the national fraternity Beta Theta Pi, who are generally former members of the local fraternal chapter of Beta Theta Pi at West Virginia University. Petitioner is the owner and holds the legal title to the house and lot at 225 Belmar Avenue, Morgantown, West Virginia.

11. As a non-profit housing corporation, Petitioner rented the fraternity house out to members of the local fraternal organization chapter at West Virginia University Beta Theta Pi Fraternity.

12. When the charter of the local fraternal organization at West Virginia University Beta Theta Pi Fraternity was revoked by the national fraternity (not West Virginia University), Petitioner continued to rent the property to other fraternal organization chapters at West Virginia University, including Sigma Pi Epsilon Fraternity, and Pi Kappa Alpha Fraternity, and Alpha Omnia Fraternity, all fraternal organizations on the WVU campus. At all times the property was used as a fraternity dormitory house by local WVU affiliated fraternal organizations. It was never rented out to the public or non-fraternity members or organizations.

#### **Standard of Review**

An administrative decision, such as the Property Tax Ruling 20-36, which is based upon a finding of facts which is contrary to the evidence, or is not supported by the evidence, or is based on a mistake of law, or which is clearly wrong, will be reversed and set aside. See *Gino's Pizza of W. Hamlin, Inc. v. WV Human Rights Comm'n*, 187 W.Va. 312, 418 S.E.2d 758 (1992).

Challenges to findings of fact under a clearly erroneous standard; conclusions of law are reviewed de novo." Syl. pt. 4, *Burgess v. Porterfield*, 196 W.Va. 178, 469 S.E.2d 114 (1996). Accord Syl. pt. 2, *Walker v. West Virginia Ethics Comm'n*, 201 W.Va. 108, 492 S.E.2d 167 (1997) ("In

reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review underlying factual findings under a clearly erroneous standard.. Questions of law are subject to a de novo review."...

#### Conclusions of Law

West Virginia Code Section 11-3-9, "Property exempt from taxation", provides, in pertinent part:

"(a) All property, real and personal, described in this subsection, and to the extent herein limited, is exempt from taxation:

\* \* \*

(15) All real estate not exceeding one acre in extent, and the buildings thereon, used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to property owned by a fraternity or sorority organization affiliated with a university or college, or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or college, when the property is used as residential accommodations, or as a dormitory for members of the organization;"

An administrative decision, such as the Property Tax Ruling 20-36, which is based upon a finding of facts which is contrary to the evidence, or is not supported by the evidence, or is based on a mistake of law, or which is clearly wrong, will be reversed and set aside. See *Gino's Pizza of W. Hamlin, Inc. v. WV Human Rights Comm'n*, 187 W.Va. 312, 418 S.E.2d 758 (1992).

It is clear that the Constitutional and statutory provisions exempting property from taxation

are to be strictly construed. *Central Realty Co. v. Martin*, 126 W.Va. 915, 30 S.E.2d 720 (1944). However, while judicial construction of tax exemptions should be strict, it should be *rational*. *Patterson Memorial Fund v. James*, 120 W.Va. 155, 197 S.E. 302 (1938).

For example, see *State ex rel. Hardesty v. Aracoma - Chief Logan No. 4523, Veterans of Foreign Wars of U.S., Inc.*, 147 W.Va. 645, 129 S.E.2d 921 (1963), which held that a veterans organization was not deprived of its exemption by reason of its practice of permitting member to invite guests into its restaurant facilities. On the other hand *Central Realty Company v. Martin*, 126 W.Va. 915, 30 S.E. 720 (1944), an Odd Fellows property which was completely rented out to a hotel corporation and used as storerooms for commercial purposes was clearly not exempt as being used for profit. Clearly, the concept of "rationality" applies to grant exemption for general compliance with the statute, but not where the situation is clearly adverse to the requirements of the statute.

Property Tax Ruling 20-36, issued by Respondent Tax Commissioner in this case, page 6, states:

"The statute sets forth three criteria for this exemption:

- (1) The property must be owned by a fraternity organization affiliated with the University;
- (2) The property must be used as residential accommodations or as a dormitory;
- (3) That use must be by members of the organization."

The Ruling then states that the Petitioner's property in question fails to meet (1) and (3). This is in clear error. The property is clearly being used by fraternal organizations affiliated with WVU and used by members of the organization renting the facility. The property is not being rented out to the public at large, and it is and always has been used by fraternity members. The Administrative Decision of the State Tax Commissioner is not "rational" in its application. It may be "strict", but

it does not comport completely with the statute. The statute is being followed by the Petitioner in its efforts to keep and maintain the property for the use of fraternities and ultimately for another Beta Theta Pi chapter when recolonized. In the meantime, the statute is clearly being complied with. No doubt that if it was rented out for other purposes, rather than fraternal, it would be taxable, just as in *Central Realty Company v. Martin*, 126 W.Va. 915, 30 S.E. 720 (1944), cited above, where the rental was for purely commercial purposes.

*In re Tax Assessment of Woodlands*, 672 S.E.2d 150 (W. Va. 2008), belies this assertion of three criteria, with the statement: “[T]o be exempt from ad valorem property taxation, a two-prong test must be met: (1) the corporation or other entity must be deemed to be a charitable organization; and (2) the property must be used exclusively for charitable purposes and must not be held or leased out for profit as is provided in W. Va.Code § 11-3-9...”. In the instant Beta Theta Pi case, the word “fraternal” would be substituted for “charitable”, in both places, and the criteria of the statute is met: “the corporation must be deemed to be a fraternal organization and the property must be used exclusively for fraternal purposes and no be held or leased out for profit”.

The Beta Theta Pi property is not being “used” for profit, but for the fraternal purposes of the statute, as it is no more rented out for profit to the local fraternities using it than it was rented out previously to members of the local Beta Theta Pi chapter.

The statute, WVC Section 11-3-9, allows several exemptions, not just one. The property which is exempt under Subsection (15) includes:

- (1) used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom; OR
- (2) including, but not limited to property owned by a fraternity or sorority organization

affiliated with a university or college; OR

(3) property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or college, when the property is used as residential accommodations (dormitory).

Clearly the property of the Petitioner meets the criteria of the statute. The Administrative Decision and Ruling of the Respondent State Tax Commissioner and relied on by the Respondent Assessor is clearly wrong. Under the standard of review, this Court has no other option but to reverse and disapprove that Ruling and hold that the property as now being used is exempt from ad valorem real property taxation.

The Court then gave this final summation. The Court accepts the Petitioner's interpretation of West Virginia Code Section 11-3-9(a)(15). The Code says "All property not exceeding an acre.", and that is the evidence here; "used for a dormitory"; not used for profit; and reading: "but not limited to property owned by a fraternity or sorority, or property by a nonprofit housing corporation affiliated with the University."

And the facts in this case are that Beta Theta Pi Fraternity of W.V.U., Inc. owns property less than an acre, used as a dormitory for a fraternity organization affiliated with the University and that property is exempt irrespective of whatever the Legislature may have intended. The Code Section supports the argument submitted by the Petitioner in this case and therefore, based on the argument and the brief and response, and based on comments of counsel. That is the ruling of the Court. I must follow the strict interpretation of this Code Section. The Betas are the lessee; I would read that in. I do not think it is there. So the ruling of the Court is that the property is exempt for those reasons.

For these reasons, the Property Tax Ruling is incorrect and must be reversed. The real



property of the Petitioner is exempt from the ad valorem real property tax assessed by the Respondent Assessor of Monongalia County, West Virginia.


The objections and exceptions of the Respondents Assessor of Monongalia County, West Virginia, and State Tax Commissioner are reserved for all purposes.

The Clerk shall send certified copies hereof to counsel of record.

IT IS SO ORDERED AND ADJUDGED.

ENTER: 6/1/2021

  
JUDGE

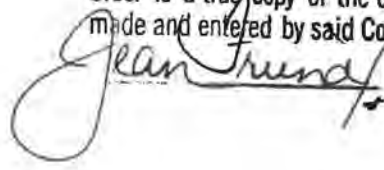
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ENTERED: June 1, 2021  
DOCKET LINE 43, Jean Friend, Clerk

STATE OF WEST VIRGINIA SS:

I, Jean Friend, Clerk of the Circuit Court and Family Court of Monongalia County State aforesaid do hereby certify that the attached Order is a true copy of the original Order made and entered by said Court.

  
Circuit Clerk