

Appeal No. VA93/1/043

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

The Retirement Planning Council of Ireland Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices (basement) at Map Ref: 7, Pembroke Street Upper, Mansion House Ward, County Borough of Dublin

Exemption - Charitable and public purposes

B E F O R E

Paul Butler

S.C. (Acting Chairman)

Brian O'Farrell

Valuer

Veronica Gates

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF DECEMBER, 1993

By Notice of Appeal dated the 25th day of February, 1993 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £30.00 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the appellant is entitled to charitable exemption from rates by reason of its charitable status. The Commissioner of Valuation erred in fact and in law in refusing to accept the charitable status of the appellant for rating purposes."

In a written submission dated the 23rd June, 1993 Mr. Malachy Oakes, a District Valuer with 19 years experience in the Valuation Office, on behalf of the Commissioner of Valuation, set forth the relevant dates, the grounds of appeal, described the property and set forth the result of the First Appeal. The said written submission is annexed to this judgement at Appendix A.

In a summary of evidence on behalf of the appellant (received by the Tribunal on the 22nd September, 1993) it was indicated that:-

- (1) Evidence would be given of the foundation of the charity under a scheme approved by the Commissioner for Charitable Donations and Bequests.
- (2) Evidence would be given of the incorporation of the charity as a Company.
- (3) Evidence would be given of the issue by the Minister of a licence dispensing with the use of the word 'Limited' in the name of the Company which said exemption was based on the charitable status of the Company.
- (4) Evidence would be given of the Company's tax exemption because of its charitable status.
- (5) Evidence would be given by the Company's Chief Executive of the nature and scope of the Company's activities.
- (6) Reliance would be placed on Legal Submissions.

Annexed to the said 'summary of evidence' the appellant enclosed copies of the following documents namely:-

- (1) Licence of the Minister for Industry and Commerce pursuant to Section 24 of the Companies Act, 1963 dated the 29th August, 1988.
- (2) The Memorandum of Association of the appellant.
- (3) The Scheme of Incorporation of the appellant.

All the said documents are annexed together at Appendix B to this judgement.

Oral Hearing

The oral hearing took place in Dublin on the 27th day of September, 1993. Gerry Ryan, Barrister-at-Law, instructed by Messrs. Gallagher Shatter, Solicitors, appeared on behalf of the appellant and Aindrias O'Caomh, Barrister-at-Law, instructed by the Chief State Solicitor appeared on behalf of the respondent.

Mr. Ryan, in opening, indicated that his principal submission was that the appellant was entitled to exemption under Section 63 of the Poor Relief (Ireland) Act, 1838 in that the appellant was and is a charity and that the buildings are used for the purposes of education of the poor. He further sought to argue that the Tribunal could have regard to the definition contained in Section 2 of the Valuation (Ireland) Act, 1854 and, in support of this argument, he cited the case of **Governor of Campbell College, Belfast -V- Commissioner of Valuation for Northern Ireland** (1964) 2 AER 705.

The only witness called at the hearing was Mr. Shannon, Chief Executive of the Appellant. Mr. Shannon said that the Council was established in 1976 and incorporated under the Charities Act. He said that the charitable nature of the appellant was recognised and that the Minister issued a licence in 1988 to dispense with the use of the word 'Limited'. The work of the Council was twofold. First, it organised courses for people about to retire and, secondly, it counselled people in that situation. Mr. Shannon said that the work of the Council was financed principally by what he called 'Corporate Membership'. Companies paid fees in respect of courses run for its employees. In addition, some individuals attended courses. In the case of individuals the Council were prepared to reduce fees in case of hardship, this has arisen only four times in many thousands of cases. Fees for the courses were £190.00 for Corporate Members with a further £60.00 for spouses, £240.00 for non-Corporate Members with a further £60.00 for spouses. Courses were run two or three times a week for 70 to 80 people. In regard to the counselling, the Council received 10 to 15 calls per day and counselled people free of charge. None of the courses were held in the subject premises but the counselling took place there. In addition the premises were, of course, used to administer the courses.

Mr. Shannon referred to the documents which are at Appendix B. He said that the accounts show reserves under three headings:-

- (1) Book Reserve - These funds arose from the sale of a book called 'What are you Doing for the Rest of Your Life'.

- (2) Building Reserve - This was funded by Corporate Members and amounted to about £28,000.
- (3) General Reserve - This amounted to about £30,000 which was accumulated by surpluses over the last number of years.

He said that the Board is a fully voluntary Board.

Under cross examination, Mr. Shannon said that the Council had 87 individual members and 270 Corporate Members.

Mr. O'Caoimh referred to a long list of authorities in support of his proposition that to be exempt a premises must be used exclusively for charitable purposes and that, in the instant case, they would have to be used for the education of the poor. Mr. Ryan, in addition to his argument on Section 2 of the Valuation (Ireland) Act, 1854, argued that persons about to retire were disadvantaged and could be regarded as 'poor'.

Determination

The Tribunal is most grateful to Mr. Ryan and Mr. O'Caoimh for the work and research they have put in to presenting the law. The Tribunal is further satisfied that the appellant is a laudable organisation fulfilling an essential need in the Community and deriving no private benefit therefrom. It is, however, clear to the Tribunal that, under Irish Law as it stands, the respondent, to succeed, must bring itself within the very narrow, confines of Section 63 of the 1838 Act. The grounds for exemption from rates (as the Supreme Court has held in the cases of **McGahon and Ryan -V- Commissioner of Valuation** (1934) I.R. 76 and **Barrington's Hospital -V- Commissioner of Valuation** (1957) I.R. 299) are to be found in the proviso to S. 63 of the Poor Relief (Ireland) Act, 1838:-

'Provided also, that no church, chapel, or other building exclusively dedicated to religious worship, or exclusively used for the education of the poor, nor any burial ground or cemetery, nor infirmary, hospital, or charity school or other building exclusively used for charitable purposes, nor any building, land, or hereditament dedicated to or used for public purposes, shall be rateable, except where any private profit or use shall be directly derived therefrom in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use.'

O'Dalaigh, J., (as he then was) pointed out in the *Barrington's Hospital Case* (at p. 340) that the proviso is divided into four categories by the use of the conjunction, 'nor'.

The decision of the Supreme Court in the *Barrington's Hospital Case* seems to the Tribunal to establish conclusively that in regard to education it must be read as limited to education of the poor and the poor exclusively.

Mr. Justice Kingsmill-Moore in that case said that the following propositions would appear to be warranted by the Irish authorities on the wording of the proviso to S. 63.

- "1. Apart from specific exceptions to be found in other statutes (such as Marsh's Library, Armagh Observatory, and buildings belonging to certain societies instituted for purposes of science, literature, or fine arts) the grounds for exemption from rates must be found in the proviso to s. 63 of the Act of 1838 (*McGahan and Ryan's Case*).
2. "Charitable purposes" in S. 63 has a meaning less extensive than the meaning given to those words in *Pemsel's Case*. How much less extensive has never been decided, but at least there must be excluded from the denotation of "charitable purposes" in the section, any charitable purpose which is mentioned expressly elsewhere in the section (*O'Neill's Case* and *Scott's Case* as applied to s. 63).
3. Neither the wording of S. 63 nor any authority leads to the conclusion that "charitable purposes" means, or is confined to, "charitable purposes devoted exclusively to the benefit of the poor."
4. The word "exclusively," in no way alters or modifies the meaning of "charitable purpose." It does ensure that, in order to qualify for exemption, a building must be used for charitable purposes only. Where a building is used for mixed purposes, some charitable, some non-charitable, it is not exempt, though if the purposes are carried on in different buildings or in different parts of the same building S. 2 of the Valuation Act, 1854, gives power to the Commissioner to distinguish as exempt the buildings or portions of buildings which are exclusively used for charitable purposes. (*O'Connell's Case*, *Clancy's Case*, case of the *Good Shepherd Nuns*).

5. Although, where a building is used for education, in order to secure exemption, it must, on the express wording of S. 63 be used "exclusively for the education of the poor," yet, even in the case of educational charities, the receipt of fees or income is not necessarily a bar to exemption if the fees are incidental to such user (Gibson J. in O'Neill's Case). When the fees or income are subject to a trust which requires them to be applied for the charitable purpose their receipt does not make the user any the less "exclusively for charitable purposes." (Suggested by Palles C.B. in the Waterford Case adopted by all members of the Court in the Pembroke Case and two members of the Court in University College, Cork Case and further endorsed by Palles C.B. in Clancy's Case.

6. By parity of reasoning, even if the section required hospitals to be used exclusively for the treatment of the poor, the receipt of fees would not be a bar to exemption if such fees were subject to a trust to be applied to the use of the hospital and such hospital predominantly treated poor patients. As there is no such limitation to the treatment of poor patients in the section, the charging of fees in a hospital, whereby the nature of the trust such fees must be applied to the use of the hospital, cannot affect the right to exemption.

7. Neither schools (O'Neill's Case) nor hospitals (Royal Victoria Hospital Case) are used for charitable purposes if they are carried on exclusively, or predominantly, for the well-to-do.

8. The payment of masters or doctors to carry on the charitable work does not prevent the building in which the work is carried on from being used exclusively for charitable purposes.
 And as Mr. Justice O'Dalaigh said:-
 'I accept that the charitable purposes referred to in s. 63 should in regard to education be read as limited to the education of the poor.'

Having come to the foregoing conclusion as a matter of Law in this case, the Tribunal must consider whether or not the appellant can come within this narrow definition. The people who benefit from the service offered by the appellant are, in the main, employees of companies who, as part of their terms of employment, benefit from the courses which are fully paid for by the companies. Even if these individual beneficiaries could come within the definition 'poor' it

seems that the immediate beneficiaries are those who pay for the service, namely the companies and that the companies, rather than the appellant, effectively provide this service for their employees.

The Tribunal is, therefore, satisfied that the appellants are not entitled to exemption as claimed and affirms the decision of the Commissioner of Valuation.