

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART TWO

CHRIST CHURCH PENTECOSTAL,)
)
Petitioner,)
)
vs.)
)
TENNESSEE STATE BOARD OF)
EQUALIZATION; TENNESSEE ASSESSMENT)
APPEALS COMMISSION; GEORGE L.)
ROOKER, JR., in his official capacity as the)
DAVIDSON COUNTY ASSESSOR OF)
PROPERTY; and ROBERT E. COOPER, JR., in)
his official capacity as Attorney General and)
Reporter for the State of Tennessee)
)
Respondents.)

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MEMORANDUM AND ORDER

This case involves a challenge to a property tax assessment on real and personal property owned by Christ Church Pentecostal.

Statement of Facts

Christ Church Pentecostal (“CCP”) was founded in 1949 by Pastor L.H. Hardwick. The church was chartered as a nonprofit corporation in Tennessee on March 7, 1979 and presently has several thousand members. In 1977, the church moved to its present home at 15354 Old Hickory Boulevard, between the exclusive Brentwood and less affluent Antioch areas. According to Pastor Hardwick, this midway location facilitates the connection between CCP’s well-to-do members with needier persons - many of whom are Hispanic or Asian immigrants faced with the hurdle of assimilating into American culture. The Church views the 39.93-acre parcel in question as “the hub of a spiritual wheel from which the people and programs, like spokes, reach out to

sustain its rim - the ministries and services to our city and state.” Heretofore, all of the land and buildings on this parcel were tax-exempt. In September of 2004, CCP completed construction of a multi-million-dollar addition known as the Hardwick Family Life Center. This 4-level (plus basement), 194,000 square-foot wing has a separate entrance from the main sanctuary. It houses a chapel, fellowship hall, classrooms and offices. In addition, the facility contained¹ the “For His Glory” bookstore and adjoining “CC Café” on Level 1, and a fitness center complex named the Hardwick Activity Center (“HAC”) on Level 3.

State Board staff attorney Mark Aaron prepared a “Site Visit Report” (“the Aaron Report”) to document his escorted tour of the facility on January 23, 2007. According to the Aaron Report, the For His Glory bookstore offered for sale a wide variety of books, periodicals, greeting cards, gifts, sermon tapes, and music recordings, in addition to impulse purchase items at the cash register. The book inventory included sections devoted to “Pastor Recommendations,” “Women’s Interest,” “Cooking/Health/Diet,” “Teen Scene,” “Classics” and “Fiction.” Also for sale was artwork, such as a portrait of President George W. Bush, and an assortment of religious-themed bumper stickers. The church did not use television or newspaper advertisements to promote the bookstore and coffee shop, relying instead on word-of-mouth and the church’s website.

Katy Mashburn, a salaried employee of CCP and Pastor Hardwick’s granddaughter, managed the bookstore. She was assisted by two part-time hourly workers and some volunteers. Though guided by the manufacturer’s suggested retail prices, Ms. Mashburn and her staff have

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The bookstore/café ceased operating on June 26, 2010, and the space was converted to meeting space and classroom Bible study.

discounted or given away merchandise to financially strapped customers. Ms. Mashburn stated that the bookstore was “not just a place to buy books,” but was also a casual setting for Bible studies, staff meetings, and other Church-related events.

Michael Briggs, a consultant to Christian bookstores and a member of CCP, stated that the store was a “pharmacy for life issues,” where a carefully selected book could help to save a marriage or put a lost soul on the right track. He contrasted this enclave with larger chain stores that are dependent on high sales volume and turnover. Books on religion, Mr. Briggs observed, represent a small segment of the industry; and much of For His Glory’s stock consists of “niche” titles unavailable elsewhere.

The Aaron Report described the church coffee shop, the CC Café, as spacious and used by many church activity groups, as well as other customers from the general public. The café was supplied by vendors such as Bongo Java and Sysco.² Wayne Dismuke, CCP’s “Coffee Shop Pastor,” brewed the coffee and other (non-alcoholic) beverages served at the CC Café. There was a display case and a price list for a number of muffins and other food items. According to Pastor Dismuke, the menu items were secondary to the church’s goal of promoting fellowship among its members and visitors. He felt that the coffee shop’s informal atmosphere was conducive to the family counseling which he and other CCP pastors sometimes administered there. The CC Café was equipped with a big-screen television, so that patrons could watch simulcasts of the church’s worship services, televised sports, or other network programming. The CC Café staff included part-time employees and such volunteers as legally blind Trevecca Nazarene junior Ryan Jolly,

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According to the Aaron Report, the church was not able to work out a satisfactory arrangement with Starbuck’s, a supplier in the past.

who stated that he was trying to instill confidence in other visually impaired students by teaching them how to be of assistance in the shop.

The HAC, a gymnasium/fitness center, consists of a central administrative area, three adjacent rooms, and a large indoor basketball court area with a suspended walking path. The HAC was managed by full-time CCP employee Scott Hurd, who doubled as Director of the Church's Men's Ministry. Although the HAC was open seven days a week, access to the fitness center was restricted to members on Tuesdays, Thursdays and Saturdays. The annual membership fees were \$100 for individuals and \$175 for families; and a one-day guest pass (when the facility was open to the public) was available for \$4. However, "scholarships" were available and according to Mr. Hord, no one was turned away because of inability to pay. The church estimated that 50% of the members of the fitness center were church members and 50% of the members of the fitness center were not church members. There was no written HAC membership agreement.

As described on CCP's website, the HAC features a gymnasium, indoor track, fitness center and dance room. A hip-hop dance troupe meets once a week over a seven-to-eight-month period in the dance room. The gymnasium is the site of *Upward Basketball* - a faith-based program in which several hundred children participate as players or cheerleaders for a small fee.³ At every weekly practice, and at halftime of the games on Saturday, there was a devotional service. The gymnasium, which had become a popular teen hangout, was also used occasionally to accommodate overflow crowds at larger-scale, Church-related events, e.g., Easter.

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According to the Aaron Report, the church was not able to work out a satisfactory arrangement with Starbuck's, a supplier in the past.

The Aaron Report states that

[t]here is also an outside professional personal trainer who is available for members of the fitness center. This personal trainer has his own full-time personal training business. He also conducts this business outside of the church property. The personal trainer charges \$35 per session. \$25 of each fee goes to the trainer, and \$10 of each fee goes to the church.

...

[A]djoining the central check-in area is a room for ballet, Pilates, kickboxing, and other class-oriented fitness activities. The fees for the classes are \$4 per class. \$3 of the each [sic] class fee goes to the instructor, The church retains \$1 of each class fee.

According to the Aaron Report, fitness center members frequently used the basketball area and the suspended walking path above it.

Procedural History

On November 17, 2004, CCP submitted an application for Property Tax Exemption to the Tennessee State Board of Equalization, claiming a religious exemption from taxation for its new addition. On January 23, 2007, Mark Aaron, a staff attorney for the State Board of Equalization, conducted his site visit of the new facility. On March 20, 2007, the Board made an Initial Determination partially granting and partially denying CCP's Application for Property Tax Exemption. The Board denied a tax exemption for those areas in CCP's facilities denoted as the "fitness center" and the "café/bookstore" area on the grounds that the activities in these areas were "put to non-exempt commercial uses." CCP appealed the assessments and the Initial Determination to the State Board of Equalization, which directed that the appeal be referred to a hearing on the merits before an administrative law judge. A hearing was held before Administrative Law Judge ("ALJ") Pete Loesch on August 19, 2009. On November 20, 2009, in his Initial Decision and Order, the ALJ held that in addition to those portions of the property granted tax-exempt status, 50% of the gymnasium would be held tax-exempt. On December 11,

2009, CCP appealed the ALJ's decision to the Assessment Appeals Commission. A hearing was held before the Commission on August 5, 2010. The Commission entered a Final Decision and Order on October 8, 2010 upholding the ALJ's determination. The Official Certificate of the Commission was recorded on November 21, 2010. The present action was filed in Davidson County Chancery Court on January 13, 2011, and the Court heard oral arguments on September 2, 2011. Having reviewed the entire record, the relevant caselaw and arguments of counsel, the Court is now ready to rule.

Issues

The Petitioners have framed the issues in this case as follows:

1. **Whether CCP is Entitled to a Tax Exemption Because it Established that the Bookstore/Café and the Fitness Center Are Used Purely and Exclusively for Carrying Out the Purposes of the Church.**
2. **Whether Denying Christ Church a Tax Exemption for the Bookstore/Café and the Fitness Center Violates the Establishment Clause of the First Amendment of the United States Constitution Because it Excessively Entangles the State in Church Doctrine.**
3. **Whether Denying Christ Church a Tax Exemption But Statutorily Granting Similarly-Situated Entities a Tax Exemption Violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution Because it Treats Similarly-Situated Entities Differently Without a Sufficient Basis for the Differential Treatment.**
4. **Whether the Tax Exemption Statutes Violate the Free Exercise Clause of the First Amendment to the United States Constitution.**
5. **Whether the Exemption Statutes Violate Tennessee's Religious Freedom Restoration Act.**

Analysis

Pursuant to Tenn. Code Ann. § 67-5-1511, review of this matter is *de novo* on the administrative record. Findings of fact may not be disturbed unless the board has acted

fraudulently, illegally, arbitrarily, or in excess of its jurisdiction. *Book Agents of the Methodist Episcopal Church, South v. State Board of Equalization*, 513 S.W.2d 514, 520 (Tenn. 1974) (citing *Hoover v. Motor Express Co. v. Railroad and Public Utilities Commission*, 195 Tenn. 593, 261 S.W.2d 233 (1952)). Fact conclusions will not be overturned unless they are unsupported by material evidence in the record. *Id.* (citing *Tennessee Cartage Co., Inc. v. Pharr*, 184 Tenn. 414, 199 S.W.2d 119 (1947)).

The Tennessee Constitution subjects all real and personal property in the State to taxation, but it permits the legislature to create exceptions for property held and used for purposes purely religious, charitable, scientific, literary or educational. TENN. CONST. ART. II, §28. The legislative exception for such property states, in pertinent part:

[t]here shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific or nonprofit educational institution that is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists. . . [N]o property shall be totally exempted, nor shall any portion thereof be *pro rata* exempted, unless such property or portion thereof is actually used purely and exclusively for religious, charitable, scientific or educational purposes.

Tenn. Code Ann. §67-5-212(a)(1). To qualify as exempt under the statute, a property's use must be "directly incidental to or an integral part of" one of the exempt institution's recognized purposes. Tenn. Code Ann. § 67-5-212 (a)(1); *Methodist Hosps. v. Assessment Appeals Comm'n.* 669 S.W.2d 305, 307 (Tenn. 1984). It is the use of the property, and not the charitable nature of its owner, which determines the property's exempt status. *Mid-State Baptist Hosp., Inc. v. City of Nashville*, 366 S.W.2d 769, 772.

In the present case, CCP contends that its bookstore/café and fitness center comply with

the dictates of the above statute. In addition, it argues that a denial of a tax exemption on these facilities violates its rights under both the U.S. and Tennessee constitutions. The Court will address each of the issues raised by CCP in turn:

1. **Whether CCP is Entitled to a Tax Exemption Because it Established that the Bookstore/Café and the Fitness Center Are Used Purely and Exclusively for Carrying Out the Purposes of the Church.**

The question of whether property qualifies for an exemption is a question for the courts. *Book Agents of the Methodist Episcopal Church, South v. State Board of Equalization*, 513 S.W.2d 514, 521 (Tenn. 1974)(citing *Oak Ridge Hospital v. City of Oak Ridge*, 57 Tenn. App. 487, 420 S.W.2d 583 (1967); *Rosewood, Inc. v. Garner*, 476 S.W.2d 273 (1971)). The Tennessee Supreme Court has stated that

[i]t is a fundamental rule that all property shall be taxed and bear its just share of the cost of government, and no property shall escape this common burden unless it has been duly exempted by organic or statute law; and that one claiming such exemption has the burden of showing his right to it.

Book Agents, 513 S.W.2d at 521 (citing *Nashville v. State Board of Equalization*, 210 Tenn. 587, 594, 360 S.W.2d 458, 461 (1962)). At the same time, tax exemption statutes in Tennessee are to be construed liberally in favor of religious, charitable and educational institutions. *Id.* (citing *Peabody College v. State Board of Equalization*, 219 Tenn. 123, 407 S.W.2d 443 (1966)). The rationale for this seemingly contradictory policy is that these institutions confer a benefit on the public by relieving the state, to some extent, of the burden of caring for and advancing the interests of its citizens. *Id.* (citing *M.E. Church, South v. Hinton*, 92 Tenn. 188, 190, 21 S.W. 321, 322 (1893)).

CCP contends that it has presented undisputed evidence showing that its property was being used purely and exclusively for carrying out church purposes, in accordance with the

statutory requirement. The characterization of CCP's purpose is a key element in determining whether the new facility is used purely and exclusively to those ends. Pastor Hardwick contends that the entire purpose of the church is "to preach the good news of Jesus Christ" and "to do everything we could to attract the people, the young people, the older people, and minister to them." CCP asserts that as long as the use of the facility touches on one of the broad purposes stated in its charter, the use is exempt. It quotes plaintiff's Statement of Purpose to demonstrate how its buildings and activities fulfill its mission:

The Christ Church Corporation exists in order to proclaim in word and deed the gospel of Jesus Christ as this church understands it. Theologically, this involves the teachings of both the Old and New Testaments and the application of those teachings to the entirety of individual, family, and community life.

...

In order to facilitate these aims, this Corporation shall secure certain organizational and material tools. These shall include, but are not limited to a bookstore (where materials for study may be purchased at reasonable cost by those who attend our church), places for refreshment and fellowship (such as a coffee shop), a gymnasium for training our members and neighbors in physical fitness, and a cemetery where we can bury our dead and give visible witness to our belief in "the communion of saints." All such ministries will grow from our purpose statement and shall be organized and operated in such a way that facilitates this purpose statement.

The fact that CCP has crafted a mission statement representing its potentially taxable endeavors as key elements in its religious purpose does not result in an automatic exemption for these endeavors.⁴ Tennessee courts have held that the language of an entity's charter does not control, and attenuated connections to stated purposes do not qualify a use for exemption. *Book Agents*, 513 S.W.2d at 524 (holding, *inter alia*, that publishing secular literature and commercial

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The Petitioner states that "[b]elieving that the new addition to its building was completely in alignment with its stated mission of proclaiming the Gospel and ministering to the community, Christ Church applied for a tax exemption for the new building on November 17, 2004." The sincerity of CCP is not at issue in this proceeding; neither is the standard by which the Court is to be guided in applying the law to the facts of this case.

printing of religious literature are not uses exclusively for religious purposes as described in the charters and contemplated by the exemption statute and the constitution).

In his analysis, the ALJ noted that

neither Pastor Hardwick nor Senior Pastor Dan Scott envisioned the bookstore/café or HAC as a potentially lucrative venture. From their perspective, without road frontage, signage, or advertising (other than word of mouth), these income-producing portions of the Hardwick Family Life Center could not realistically compete with commercial businesses in the vicinity. Moreover, For His Glory was not big enough to attract most book vendors; and the HAC lacked state-of-the-art equipment and amenities. Pastors Hardwick and Scott characterized these portions of the new wing as “ministries” for the benefit of CCP members and the community alike. Many persons, Hardwick and Scott sensed, felt uncomfortable or “threatened” in a traditional church environment.

Further, according to CCP’s Youth Pastor Mike Alfred, “gone are the days” when young people would willingly attend church just for a conventional worship service. But a bookstore/café, fitness center, and other safe “third spaces” away from home and the workplace might bring outsiders and even non-believers into the fold. Both 21-year-old Carlos Alvarez and his friend James Tomlin - a youthful offender and HAC scholarship recipient - credited the gymnasium and Mr. Hord with helping to keep them out of trouble and leading them toward Christ.

In a thoughtfully-prepared written statement, Pastor Scott implored the State Board to:

realize that what we do in these “third space” facilities are natural outgrowths of our ancient faith. We have simply retooled them for post-modern urban culture. They are the natural fruit of our faith and should not be taxed.

Under the above line of reasoning, almost *any* use of CCP’s new facility that was geared towards attracting members of the public could be deemed a part of CCP’s purpose, since those activities create an opportunity for the church to proselytize and recruit new members. However, Tennessee caselaw does not define the tax exemption so broadly, and the scope of the exemption for property owned by religious institutions has been steadily narrowed by Tennessee courts. *Book Agents*, 513 S.W.2d at 521 (citing *Nashville v. State Board of Equalization*, 210

Tenn. at 594, 360 S.W.2d at 461). While the “third space” philosophy espoused by the church may be a very effective way for the church to increase its membership, the exemption is not intended to aid the church in such efforts.

The purported lack of profitability of the coffee shop/bookstore may be relevant, but not a determinative factor in this case. Many non-religious businesses are not profitable, but do not qualify for tax exempt status. The degree of retail competition present may also be relevant, but likewise is not determinative. *Youth Programs, Inc. v. Tennessee State Bd. of Equalization*, 170 S.W.3d 92, 101 (Tenn. Ct. App. 2004).

As already set forth, a property’s use must be “directly incidental to or an integral part of” one of the exempt institution’s recognized purposes to qualify as exempt under Tennessee law. *Methodist Hosps.*, 669 S.W.2d at 307. In applying the “directly incidental” or “integral” standard, the Tennessee Court of Appeals has held that the provision of rent-free housing to missionaries who are undergoing training between church missionary assignments was not reasonably necessary for the church to accomplish its outreach ministry work, nor was it directly incidental to that work. *First Presbyterian Church v. Tennessee Board of Equalization*, 127 S.W.3d 742 (Tenn. Ct. App. 2003) *perm. app. denied* (Feb. 2, 2004).

In a case particularly relevant to the present case, a non-profit hospital corporation sought the exemption of its hospital gift shop and exercise/wellness facility. *Middle Tennessee Medical Center v. Assessment Appeals Commission*, No. 01A01-9307-CH-00324, 1994 WL 32584 (Tenn. Ct. App. Feb. 4, 1994) *perm. app. denied* (May 9, 1994). The wellness facility catered to the general public and employees of the hospital, as well as to patients referred by their doctors. The hospital’s gift shop was staffed solely by volunteers, and offered for sale personal toiletry items, magazines, greeting cards, snacks, plants, flowers and balloons. Similar items, at comparable

prices, could be purchased from local retail centers, but these centers were located 3/4 miles away from the hospital and there was no public transportation available. Although the gift shop was open to the public, “the overwhelming majority of its customers [were] hospital visitors, doctors, hospital employees and ambulatory patients.” In holding that the operation of the gift shop was “directly incidental to or an integral part of” the charitable function of the medical center, the Court of Appeals stated:

We believe that no expert testimony is required to establish that hospital patients benefit emotionally from the presence and support of loved ones, and that the emotional well-being of a patient can have an important influence on the course of recovery. Hospitals recognize this fact by establishing visiting hours and waiting room facilities for the relatives and friends of their patients. Waiting room facilities, when on the hospital premises, are accorded the same tax-exempt status as an operating theater or patient room.

We also recognize that the exigencies of surgery and medical treatment sometimes involve long periods of uncertainty for the physician, the patient, and the patient's family. Most people are familiar, either by direct experience or otherwise, with the stressful situation of hospital visitors who must wait for an undeterminable amount of time, to learn that a family member's operation has been successfully completed, and that a visit will be permitted following the patient's discharge from the recovery room.

In such a situation, the existence of a facility at hand to supply comfort items for patients and products for the immediate needs of visitors makes the wait more bearable, and relieves the feelings of helplessness that the hospital experience engenders. It would be putting hospital visitors to a cruel choice, if they had to decide between leaving the hospital to purchase such items, and taking the chance that they might miss the all-important announcement. The existence of the gift shop promotes peace of mind in hospital visitors, thereby increasing the value of their presence to the patients they come to see.

Id. at *3 - *4.

While some patrons of the For His Glory gift shop might well be in need of comfort and counseling, they do not constitute the captive audience of patients, family members and medical providers found in a hospital.

The appellate court next addressed the hospital's gym or "wellness center," which the hospital characterized as part of a growing trend towards disease prevention and holistic health, and thus worthy of a tax exemption as part of the hospital's overall purpose. In holding that only 15% of the hospital's exercise facility was exempt from taxation (that portion corresponding to the proportion of visits to the center made by hospital patients who were sent there by their doctors), the court stated:

While we find this trend towards healthful activity and prevention a promising development, we note that tax-paying enterprises in the ... area offer many of the same programs that the [hospital's wellness facility] does. Competition with for-profit businesses is not dispositive of a petition for a charitable tax exemption, but the presence of such competition is a relevant factor. The privileged position of charitable institutions creates an inequitable advantage that may enable them to drive tax-paying businesses out, thus reducing the choices available to the citizenry, and further eroding the tax base.

To better understand the [hospital wellness facility's] relation to the for-profit sector, it may be helpful to compare its situation with that of the hospital gift shop. Because it sells products comparable to those found in nearby retail stores, the gift shop may also be considered to be in competition with private business. But the clientele of the gift shop is made up of those who need to be in the hospital for one reason or another, and its existence is more of a service to those individuals than an attempt to capture the business of nearby discount and department stores.

The [hospital wellness facility], to the contrary, advertises its programs to the general public, who are free to choose between the center and other exercise facilities in the same area . . . [T]he great majority of those who use the [wellness center] are not under a doctor's care. They have chosen the Center over competing health spas for reasons of their own, and it is not the role of this court to encourage that choice by according the . . . Center a more favorable tax treatment than that permitted to its competitors.

Id. at *4 - *5 (internal citations omitted).

CCP points out that, unlike the owner of the health facility in the above case, it does not actively advertise the HAC to the general public. Yet the church's website does invite anyone to join the HAC, and about one half the members of the HAC are not church members. Moreover,

members and non-members are both expected to pay the HAC membership fees. The fact that the church allows outside instructors to utilize the HAC for their own pecuniary gain makes the case for an exemption even less compelling.

More central to the analysis is the ALJ's observation, based on *Middle Tennessee Medical Center, supra*, that "it is difficult to conceive that the construction and operation of a physical fitness center for the general public could be directly incidental to or an integral part of an exempt purpose of a *church*, but not of a nonprofit *hospital*." This Court agrees. CCP has not established that its fitness center is reasonably necessary for the church to accomplish its religious purpose and is therefore not entitled to an exemption.

Having so stated, it is also true that real property *not* used purely and exclusively for carrying out the purposes for which the institution was created may still receive a partial exemption for that portion of any lot or building used purely and exclusively for such purposes "to the extent of the value of the portion so used." Tenn. Code Ann. §67-5-212(a)(3)(B). In the present case, CCP's *Upward Basketball League*, youth fellowship, and other gymnasium activities were found by the ALJ and the Commission to be directly related to the CCP's religious mission, resulting in a 50% exemption of the gymnasium component of the HAC. The Court will not disturb this finding.

2. Whether Denying Christ Church a Tax Exemption for the Bookstore/Café and the Fitness Center Violates the Establishment Clause of the First Amendment of the United States Constitution Because it Excessively Entangles the State in Church Doctrine.

The First Amendment to the United States Constitution provides, in relevant part, that "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. AMEND. I. "The First Amendment's Free Exercise and Establishment Clauses have been made applicable to the states by incorporation into the

Fourteenth Amendment.” *State ex rel. Comm’r of Transp. v. Med. Bird Black Bear White Eagle*, 63 S.W.3d 734, 760 n. 41 (Tenn. Ct. App. 2001) (citing *Everson v. Bd. of Educ.*, 330 U.S. 1, 8, 67 S.Ct. 504, 91 L.Ed. 711 (1947); *Cantwell v. Conn.*, 310 U.S. 296, 303, 60 S.Ct. 900, 84 L.Ed. 1213 (1940)).

CCP contends that the ALJ, and subsequently the Board, were guilty of “second guessing” the church’s mission and doctrine in violation of the Establishment Clause and “crossed the line” when they did not accept CCP’s own characterization of its use of the disputed portions of its property as religious. As stated previously, the decision as to whether an exemption is justified under Tenn. Code Ann. § 67-5-212 is not made based solely on the sincerity level of a claimant or on its good faith belief that the property in question affords it “a means of carrying out its mission.”

An analysis under Tenn. Code Ann. § 67-5-212 necessitates a determination of the scope of the religious use exemption as applied to the facts of the case. The Court finds that neither the ALJ nor the Board attempted to redefine CCP’s mission or impermissibly interfere with the church’s doctrine, but that they accepted CCP’s witnesses’ testimony as to the role of the subject property in the church’s ministry. Instead, both the ALJ and the Board relied upon Tennessee legal precedent in arriving at their decisions.

In *City of Nashville v. State Board of Equalization*, 360 S.W.2d 458, 468 (1962), the Tennessee Supreme Court held that a religious institution was not entitled to a property tax exemption on property that was used to operate a secular business. In that case, the Sunday School Board of the Southern Baptist Convention operated a religious publishing house and bookstore in Nashville. In connection with this exempt use, the Board operated a restaurant, snack bar, and parking lots for the use of its employees. The Board contended that “its operation of the parking lots, restaurant, and snack bar, [was] for its employees only, not for profit, and not commercial.”

However, the Supreme Court held that these portions of the Board's property were not tax exempt, stating that "such operations are not religious activities, but are secular business enterprises, carried on in competition with other like businesses that pay taxes to the state, the county and the city; and such businesses are taxed as a privilege." *Id.* This rule has been extended to charitable institutions as well. See *Mid-State Baptist Hospital, Inc. v. City of Nashville*, 366 S.W.2d 769, 772 (1963).

Similarly, in the present case, the café/bookstore and HAC may have assisted the church in its goal of attracting members of the public so as to create opportunities for recruitment and ministry. That does not alter the basic nature of these facilities. The evidence showed that they operated very much like retail establishments, open to both church members and the public at large. Customers paid fees for use of the HAC and generally paid retail prices for books, beverages, music, gifts, etc. at the bookstore/café.⁵ Whether CCP made a profit from these activities is not determinative. *City of Nashville*, 360 S.W.2d at 467.

The Commission observed that other churches provided coffee areas, book tables and gymnasiums without charging for their use or operating them as retail establishments. CCP failed to show that its fees to use the bookstore/café and fitness center were reasonably necessary for the fulfillment of a recognized function of the church, or that its use of its premises to operate retail establishments was directly incidental to or an integral part of its mission of sharing the Gospel with others. Accordingly, the Court finds that the Board's decision did not impermissibly

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At the hearing before the Appeals Commission, Gregg Allison, an expert witness called by CCP, testified that the church's motivation in offering the services at issue is to attract people in order to evangelize. When asked if there was a line drawn as to what kind of activities the church would not conduct to attract people, he opined that the line would probably be drawn at immoral activity. When asked whether the church should receive a tax exemption if it opened a Sam's Club type discount store with low prices in order to draw people for evangelical purposes, he could not answer.

interfere with CCP's doctrinal practices or substantially burden its free exercise of religion.

3. Whether Denying Christ Church a Tax Exemption But Statutorily Granting Similarly-Situated Entities a Tax Exemption Violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution Because it Treats Similarly-Situated Entities Differently Without a Sufficient Basis for the Differential Treatment

The Equal Protection Clause of the United States Constitution provides that "No state shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. AMEND. XIV, § 1. Likewise, article I, section 8 and article XI, section 8 of the Tennessee Constitution "guarantee equal privileges and immunities for all those similarly situated." *Tenn. Small Sch. Sys. v. McWherther*, 851 S.W.2d 139, 152 (Tenn. 1993). The Tennessee Supreme Court has "consistently held that the state equal protection guarantee is co-extensive with the equal protection provisions of the . . . U.S. Constitution." *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509, 518 (Tenn. 2005) (citing *Tenn. Small Sch. Sys.*, 851 S.W.2d at 152).

As a threshold matter, the court considers whether classes are "similarly situated so as to warrant application of the protection of the equal protection clause." *Posey v. City of Memphis*, 165 S.W.3d 575, 579 (Tenn. Ct. App. 2004). If similarly situated, but treated differently, the court must then determine whether a rational basis exists for such differential treatment. *Id.* Under a rational basis analysis, "[i]f any possible reason can be conceived to justify the classification, or if the reasonableness be fairly debatable, then the legislation will not be struck down." *Admiralty Suites and Inns, LLC v. Shelby County*, 138 S.W.3d 233, 240 (Tenn. Ct. App. 2003) (noting that the constitutionality of a tax statute is analyzed using the rational basis standard) (quoting *Estrin v. Moss*, 430 S.W.2d 345, 349 (Tenn. 1968)).

In the present case, CCP contends that there are similarly situated entities that receive a tax exemption for bookstores, coffee shops, and fitness facilities, whereas CCP does not. It contends

that Tenn. Code Ann. § 67-5-212(a), Tenn. Code Ann. § 67-5-213(d)(1), Tenn. Code Ann. § 67-5-223(a) and Tenn. Code Ann. § 67-5-225 violate the Equal Protection Clause because they treat similarly situated entities differently without any sufficient rationale for the differential treatment. This Court disagrees.

Tenn. Code Ann. § 67-5-225 grants a property tax exemption for real and personal property used as a “nonprofit family wellness center,” provided that ownership and operation of the center meet certain statutory criteria. The charitable institution operating the center must have “as its historic sole purpose the provision of programs promoting physical, mental, and spiritual health, on a holistic basis without emphasizing one over the other.” Tenn. Code Ann. § 67-5-225(a). The institution must also provide a minimum number of specific programs “dedicated to the improvement of conditions in the community and to support for families.” Tenn. Code Ann. § 67-5-225(a)(2). The corporation must be exempt under federal tax laws, and it must provide all programs and services under a fee structure that “ensures the ability to pay is not a consideration.” Tenn. Code Ann. § 67-5-225(a)(3). The General Assembly enacted this legislation under the authority of Article II, Section 28, of the Tennessee Constitution, which authorizes, but does not require, the legislature to exempt from taxation property used for charitable purposes. This “family wellness center” exemption has been upheld by the Tennessee Court of Appeals in a case brought by for-profit health clubs under the Class Legislation Clause of the Tennessee Constitution, found at article I, section 8, which has been construed to provide the same protections as the U.S. Equal Protection Clause. *Club Systems v. YMCA*, No. M2004-01966-COA-R3-CV, 2005 WL 3479628, at *10-11 (Tenn. Ct. App. Dec.19, 2005) *perm. app. denied* (June 26, 2006). In upholding the statute, the court observed that “the physical fitness of its citizens is . . . a legitimate state interest.” *Id.* at *10. The Court held that article II, section

28 gave the legislature power to create a charitable use exemption for “real and personal property dedicated to providing physical exercise opportunities to children and adults without regard to the ability to pay.” *Id.* at *11.

Under the Tennessee Constitution and state laws, the YMCA and similar organizations have been granted a charitable use exemption for a specific use of property and are subject to very specific organizational requirements. CCP has been granted an exemption for its religious uses of its property. The legislature is not obliged to accord the same property tax exemptions to these different types of nonprofit organizations, and neither is the Board. As long as all religious institutions are treated uniformly as a class, the exemption does not violate the Equal Protection Clause.

In its brief, the Board argues that

[i]f Christ Church’s argument in this case is accepted, then Christ Church would be entitled to operate a family wellness center, a non-profit hospital, an education institution, and any number of facilities tax-free without meeting the specific requirements of those exemptions just because it is a church. While Christ Church’s activities are entitled to certain constitutional protections, those protections do not extend to requiring Tennessee to grant the Church the identical property tax exemptions that are given to different types of entities that are not similarly situated to religious institutions. As the Tennessee Supreme Court has observed,

things which are different in fact or opinion are not required by either [the United States or the Tennessee] Constitution to be treated the same... In this regard:

The initial discretion to determine what is ‘different’ and what is ‘the same’ resides in the legislatures of the States, and legislatures are given considerable latitude in determining what groups are different and what groups are the same.

Riggs v. Burson, 941 S.W.2d 44, 52 (Tenn. 1997) (quoting *Tennessee Small School Systems*, 851 S.W.2d 139, 153 (Tenn. 1993)).

Just as the HAC did not merit the same statutory treatment as a YMCA wellness center, CCP's bookstore/café was not entitled to the statutory exemption afforded to on-campus, non-profit bookstores that furnish students with "textbooks and other ancillary required materials." Tenn. Code Ann. § 67-5-213(d)(1). This is because the two entities are not similarly situated - the *raison d'être* of a college being different from that of a religious organization. The bookstore exemption is designed to make required textbooks available to a college's students, a goal clearly encompassed by the college's educational purpose. *See also George Peabody College v. State Bd. of Equalization*, 407 S.W.2d 443, 446 (1966) (extending property tax exemption to student housing facilities because they were directly incidental to and an integral part of the process of obtaining a college and university education.).

The hospital gift shop exemption recognized by the Court of Appeals in *Middle Tennessee Medical Center, supra*, noted that hospital patients, visitors and medical personnel are often required to spend long periods of time waiting for treatment, waiting to give treatment, or waiting to see loved ones undergoing medical procedures. CCP's For His Glory bookstore/coffee shop did not serve the same function, as its patrons were not forced by the nature of the facility or the circumstances to remain tethered to the immediate area.

Last, CCP contends that exemption standard that is applied to museums, art galleries, and theaters under Tenn. Code Ann. § 67-5-213, which exempts uses "necessary and incidental" to the organization's purpose, is more lenient than the standard by which it must abide, thus violating its Equal Protection rights. The Court finds that a religious organization is distinctly different by virtue of the 1st Amendment to the U.S. Constitution and thus, does not share the same overriding purpose as a cultural or entertainment facility, and that these two entities cannot be considered comparable for Equal Protection purposes.

For the above reasons, CCP's argument that it is similarly situated to a performing arts center, non-profit hospital, college or the YMCA, and should therefore be afforded the same tax exemptions given to such entities, is not well taken. As CCP is not a similarly situated entity, a claim that the Board has violated its right to Equal Protection must fail.

4. Whether the Tax Exemption Statutes Violate the Free Exercise Clause of the First Amendment to the United States Constitution.

As set forth above, the First Amendment to the United States Constitution provides that "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. AMEND. I. In support of its contention that it has been prohibited from the free exercise of its religion, CCP has cited to cases in which a church's religious practices were discriminated against by the government, e.g., *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993) (striking down city ordinances that prohibited the practice of religious animal sacrifice while allowing most other animal killings); *Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3rd Cir. 1999) (striking down police policy that prohibited officers from wearing beards and provided exemption for medical but not religious reasons); *Blackhawk v. Pennsylvania*, 381 F.3d 202 (3d Cir. 2004)(striking down a law requiring a paid permit for privately keeping wild animals which was applied to a Lakota Indian keeping two bears on his property for religious ceremonies, but exempted zoos and nationally recognized circuses).

In the present case, CCP has not been prohibited from conducting the outreach programs of its choice. It is simply not entitled to an exemption for those portions of its property that are used to conduct retail businesses. The Court finds that the cases cited by CCP are inapposite and its argument fails.

5. Whether the Exemption Statutes Violate Tennessee's Religious Freedom Restoration Act.

CCP alleges that the denial of its request for a tax exemption violates its rights under the Tennessee Religious Freedom Restoration Act, Tenn. Code Ann. § 4-1-407. The Act provides that "no government entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability." Tenn. Code Ann. § 4-1-407(b).

The statute defines the phrase "substantially burden" as "to inhibit or curtail religiously motivated practice." Tenn. Code Ann. § 4-1-407(b)(7). CCP has not shown how the denial of a tax exemption can be so characterized. Further, paragraph (d) of the statute refutes such an interpretation, stating

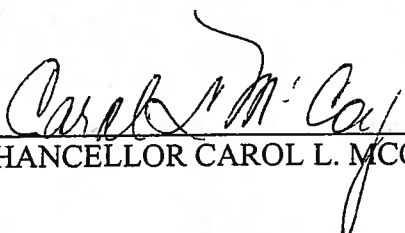
[n]othing in this section shall create or preclude a right of any religious organization to receive funding or other assistance from a government or of any person to receive government funding for a religious activity.

Tenn. Code Ann. § 4-1-407(d)(2). CCP's argument that this statute applies to its current circumstance is therefore unpersuasive.

Conclusion

CCP has failed to meet its burden of proof that the Board's decision was in error and that it was entitled to the tax exemption it seeks. Accordingly, and for the above-stated reasons, the decision of the Board is affirmed. Costs are taxed to CCP.

It is so ORDERED.


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RULE 58 CERTIFICATION

A copy of this order has been served by U.S. Mail upon all parties or their counsel named above.

TL-

Deputy Clerk and Master
Chancery Court

2-23-12

Date