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## The Texas Legislature Has No Authority to Exempt from Ad Valorem Taxation a Fraternal Organization's Property Which Is Being Used for Non-Charitable Activities, Unless Such Use Is in Furtherance of a Charitable Purpose.

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essarily complicated procedure.<sup>73</sup>

In the 25 calendar years from 1944 through 1968, only 89 government civil antitrust cases were heard by the Supreme Court and of these, 30 received per curiam opinions.<sup>74</sup> Therefore, criticism that the Expediting Act imposes a tremendous burden on the Court is somewhat unfounded. It is true, however, that this appeal of right does require the Supreme Court to frequently review cases of little significance<sup>75</sup> and precludes a litigant's right to a full review of the trial court's decision in an intermediate appellate court. "Antitrust laws . . . are the Magna Charta [*sic*] of free enterprise"<sup>76</sup> and remedial legislation must insure that federal appellate procedure effectively aids in the determination of economic issues arising under such laws. The Expediting Act is an anachronism that works contrary to its purpose.

*Donald C. McCleary*

TAXATION—FRATERNAL ORGANIZATIONS—THE TEXAS LEGISLATURE HAS NO AUTHORITY TO EXEMPT FROM AD VALOREM TAXATION A FRATERNAL ORGANIZATION'S PROPERTY WHICH IS BEING USED FOR NON-CHARITABLE ACTIVITIES, UNLESS SUCH USE IS IN *Furtherance* OF A CHARITABLE PURPOSE. *City of Amarillo v. Amarillo Lodge No. 731*, 488 S.W.2d 69 (Tex. Sup. 1972).

The City of Amarillo and three Amarillo taxing units filed suit against Amarillo Lodge No. 731, Ancient Free and Accepted Masons, and three other lodges, to collect delinquent ad valorem taxes assessed on three lots located

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ments or interlocutory orders be taken to the courts of appeals except where the Attorney General states "that such direct appeal is necessary for . . . effective administration . . . [or where the defendant declares] that such a direct appeal is necessary in the interest of justice." S. 2808, 90th Cong., 1st Sess. (1967). Representative Celler proposed to amend § 1 of the Expediting Act by providing the chief judge of the court of appeals with authority to reassign a case to a single judge district court which had been assigned to the three-judge district court by the Attorney General. H.R. 6451, 81st Cong., 1st Sess. (1949).

73. Representative Toll proposed that the Chief Justice of the Supreme Court appoint a national panel of antitrust judges to be selected from the mass of federal district judges. When a government antitrust suit was initiated, the district court or the Attorney General could certify that the particular case was of great importance. The chief judge of the court of appeals would then choose an antitrust judge from the national panel to rule on the case. H.R. 6766, 87th Cong., 1st Sess. (1961).

74. Kirkpatrick, *Antitrust to the Supreme Court: The Expediting Act*, 37 GEO. WASH. L. REV. 746, 762 (1969).

75. Solomon, *Repeal of the Expediting Act—A Negative View*, 1961 N.Y.S.B.A. ANTITRUST LAW SYMPOSIUM 94, 96.

76. *United States v. Topco Associates, Inc.*, — U.S. —, —, 92 S. Ct. 1126, 1135, 31 L. Ed. 2d 515, 527 (1972).

in that city. This property and the building erected thereon are owned jointly, although not equally, by the lodges. The building is used by each of the defendants to conduct lodge meetings, initiations and ceremonies incidental to the practice of Masonry. Each lodge is chartered by and subordinate to a grand lodge which is incorporated under the laws of Texas,<sup>1</sup> and the purposes for which each was organized are substantially the same.<sup>2</sup> All of the defendants contribute a certain percentage of the money they receive from dues and initiation fees to their respective grand lodges,<sup>3</sup> and the grand lodges use these funds to operate or support various charitable enterprises.<sup>4</sup> The remainder of the money received by the defendant lodges is used to pay for the operating and maintenance expenses of the premises, with any balance being devoted to various charitable and educational endeavors as the defendant lodges deem proper.

The plaintiffs (taxing units) argued that the utilization of the property for meetings, initiations and ceremonies incidental to the practice of Masonry was not a charitable use, thus the defendants were not entitled to exemption from ad valorem taxes under sections 7 and 22 of article 7150.<sup>5</sup> The

1. TEX. REV. CIV. STAT. ANN. arts. 1399, 1400 (1962). Art. 1399:

The Grand Lodge of Texas, Ancient, Free and Accepted Masons, the Grand Royal Arch Chapter of Texas, the Grand Commandery of Knights Templars of Texas (Masonic); the grand lodge of the Independent Order of Odd Fellows of Texas, and other like institutions and orders, organized for charitable or benevolent purposes may, by the consent of their respective bodies expressed by a resolution or otherwise, become bodies corporate under this title.

Art. 1400:

The incorporation of any such grand body shall include all of its subordinate lodges, or bodies holding warrant or charter under such grand body, and each of such subordinate bodies shall have all the rights of other corporations under and by the name given it in such warrant or charter issued by the grand body to which it is attached, such rights being provided for in the charter of the grand body.

2. Corporate Charters of the Grand Lodge (1900); Charter of the Grand Royal Arch Chapter of Texas (1900); Charter of the Grand Council of Royal and Select Masters of Texas (1953); Charter of the Grand Commandery Knights Templar of Texas (1924). The Corporate Charters of the Grand Lodge (1900) provides:

The said Grand Lodge and this corporation is formed for charitable and benevolent purposes, and to cement bonds of good fellowship and brotherly love among its members and adherents, and to practice the art of Ancient Free and Accepted Masonry as has been done from time immemorial.

All subordinate Lodges of Masons in Texas now working under and holding charter from and by said The Grand Lodge of Texas, or that may hereafter be instituted under such charter, are hereby incorporated, and do by virtue hereof become bodies corporate under and in the name given them respectively in the charters heretofore issued to them, or that may hereafter be so issued.

3. "These proportions range from 12 to 40 per cent in the case of initiation fees and from 34 to 43 per cent in the case of dues . . ." *City of Amarillo v. Amarillo Lodge No. 731*, 488 S.W.2d 69, 71 (Tex. Sup. 1972). It should further be noted that this money is the only income received by the lodges. *Id.* at 71.

4. These charitable activities were listed in *Amarillo Lodge No. 731 v. City of Amarillo*, 473 S.W.2d 264, 267 (Tex. Civ. App.—Amarillo 1971), *rev'd*, 488 S.W.2d 69 (Tex. Sup. 1972).

5. TEX. REV. CIV. STAT. ANN. art. 7150, §§ 7, 22 (Supp. 1972). Section 7 pro-

trial court denied defendants' claim. In reversing that decision, the court of civil appeals held that the use of the property for meetings, initiations and ceremonies was merely an incidental use of the property and would not defeat the defendants' right to the tax exemption.<sup>6</sup> From this decision the taxing units appealed. Held—*Reversed*. The legislature had no authority to exempt from ad valorem taxation a fraternal organization's property which is being used for noncharitable activities, unless such use is in *furtherance* of a charitable purpose. The use of the premises by the defendants for meetings, initiations and ceremonies does not constitute a use in *furtherance* of a charitable purpose. Such use of the premises does not relieve the community or the state of any burden or duty which they might otherwise be obligated to assume. In addition, this use of the premises cannot be assumed to be an incidental use, and the defendants have failed to prove that they come within the statutory provisions which will entitle them to the tax exemption.<sup>7</sup>

The authority of the Texas Legislature to exempt certain property from taxation is granted by Article VIII, Section 2, of the Texas Constitution.<sup>8</sup> Under the provisions of section 2, the legislature is authorized to enact general laws which exempt from taxation the property belonging to an "institution of purely public charity."<sup>9</sup> Pursuant to this authority, article 7150<sup>10</sup> was enacted providing exemption of property belonging to institutions of purely public charity (section 7),<sup>11</sup> and for the property of fraternal organizations,

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vides for the tax exemptions of property belonging to institutions of purely public charity, while section 22 provides for the tax exemption of property belonging to fraternal organizations, so long as it is used for charitable purposes.

6. *Amarillo Lodge No. 731 v. City of Amarillo*, 473 S.W.2d 264 (Tex. Civ. App.—Amarillo 1971), *rev'd*, 488 S.W.2d 69 (Tex. Sup. 1972).

7. *City of Amarillo v. Amarillo Lodge NO. 731*, 488 S.W.2d 69 (Tex. Sup. 1972). Section 22 was enacted in 1967. Prior to this time, all cases dealing with tax exemption of property belonging to fraternal organizations were decided under the provisions of section 7. Similar cases to the one in question, where lodge property was involved, likewise denied the exemption. *See* *Masonic Temple Ass'n v. Amarillo Ind. School Dist.*, 14 S.W.2d 128 (Tex. Civ. App.—Amarillo 1928, writ ref'd). This case involved the same defendant lodges as in the present case. The court held that the purpose of conducting lodge meetings, etc., rendered the use of the property only partly charitable, thus the lodges were not entitled to tax exemption under section 7. *See* *City of Houston v. Scottish Rite Benevolent Ass'n*, 111 Tex. 191, 230 S.W. 978 (1921); *Benevolent & Protective Order of Elks, Lodge No. 151 v. City of Houston*, 44 S.W.2d 488 (Tex. Civ. App.—Beaumont 1931, writ ref'd).

8. TEX. CONST. art. VIII, § 2:

[T]he legislature may, by general laws, exempt from taxation public property used for public purposes . . . and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void.

9. *Id.*

10. TEX. REV. CIV. STAT. ANN. art. 7150 (Supp. 1972).

11. *Id.* § 7:

The following property shall be exempt from taxation, to-wit:

. . . .

so long as it is *used for charitable purposes* (section 22).<sup>12</sup>

In an attempt to render justice among the state's citizens,<sup>13</sup> and because tax exemptions are the "antithesis of equality and uniformity,"<sup>14</sup> Texas courts have subjected all provisions exempting property from taxation to rigid construction.<sup>15</sup> As early as 1918, this strict construction rule established that any claimed exemption was confined to the very terms of the provision which granted it.<sup>16</sup>

Through the application of these rules strictly construing the legislative enactments, the burden has been placed upon the one seeking an exemption to bring himself clearly within the terms of the provision under which an exemption is claimed.<sup>17</sup> Further, should reasonable doubt arise as to

7. Public Charities. All buildings and personal property belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions . . . not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not.

12. *Id.* § 22.

The following property shall be exempt from taxation, to-wit:

Sec. 22. The property of all fraternal organizations shall be exempt from taxation for so long as the property is owned and used for charitable, benevolent, religious, and educational purposes, and is not in whole or in part leased out to others, or otherwise used with a view to profit.

13. See *Morris v. Lone Star Chapter No. 6*, 68 Tex. 698, 702, 5 S.W. 519, 520 (1887): "[I]t is but just and equitable that the property of all persons and associations of persons should bear the burdens of government in equal proportion . . . ." *Benevolent & Protective Order of Elks, Lodge No. 151 v. City of Houston*, 44 S.W.2d 488, 494 (Tex. Civ. App.—Beaumont 1931, writ ref'd): "It is the policy of the state, and but justice between its citizens, that all property should be taxed, and that no property shall escape this common burden . . . ."

14. *Hilltop Village, Inc. v. Kerrville Ind. School Dist.*, 426 S.W.2d 943, 948 (Tex. Sup. 1968) (dissenting opinion): "All of the courts appear to pay homage to the rule that tax exemptions are subject to strict construction since they are the antithesis of equality and uniformity." See 18 Sw. L.J. 703, 703 (1964).

15. *Hilltop Village, Inc. v. Kerrville Ind. School Dist.*, 426 S.W.2d 943, 948 (Tex. Sup. 1968); *Morris v. Lone Star Chapter No. 6*, 68 Tex. 698, 702, 5 S.W. 519, 520 (1887); *Challenge Homes, Inc. v. County of Lubbock*, 474 S.W.2d 746, 748 (Tex. Civ. App.—Eastland 1971, writ ref'd n.r.e.); *Raymondville Memorial Hosp. v. State*, 253 S.W.2d 1012, 1014 (Tex. Civ. App.—San Antonio 1952, writ ref'd n.r.e.); *Markham Hosp. v. City of Longview*, 191 S.W.2d 695, 697 (Tex. Civ. App.—Texarkana 1945, writ ref'd); *City of Wichita Falls v. Cooper*, 170 S.W.2d 777, 780 (Tex. Civ. App.—Fort Worth 1943, writ ref'd); *Benevolent & Protective Order of Elks, Lodge No. 151 v. City of Houston*, 44 S.W.2d 488, 494 (Tex. Civ. App.—Beaumont 1931, writ ref'd); *Trinity Methodist Episcopal Church v. City of San Antonio*, 201 S.W. 669, 670 (Tex. Civ. App.—San Antonio 1918, writ ref'd).

16. *Trinity Methodist Episcopal Church v. City of San Antonio*, 201 S.W. 669, 670 (Tex. Civ. App.—San Antonio 1918, writ ref'd); *accord*, *Most Worshipful Prince Hall v. City of Fort Worth*, 435 S.W.2d 274, 279 (Tex. Civ. App.—Fort Worth 1968, writ ref'd).

17. *Stein v. Lewisville Ind. School Dist.*, 481 S.W.2d 436, 439 (Tex. Civ. App.—Fort Worth 1972, writ ref'd n.r.e.); *Plantation Foods, Inc. v. City of Dallas*, 437

whether the claimant is entitled to the exemption, the doubt must be resolved in favor of the taxing units.<sup>18</sup> By requiring the claimant to clearly establish that he is entitled to the tax exemption, the courts have emphasized the fact that tax exemptions cannot be granted on the basis of inference or implication.<sup>19</sup> In the instant case, the Texas Supreme Court applied the above mentioned rules in determining whether the defendant lodges were entitled to an exemption under the provisions of either sections 7 or 22 of article 7150.<sup>20</sup>

Section 7 both defines a "purely public charity"<sup>21</sup> and provides for the tax exemption of property owned and used by an institution which comes within that definition.<sup>22</sup> Decisions have been rendered holding that the institution must be one of purely charity not only in the purpose for which it is formed, but also in the means used to accomplish such purposes.<sup>23</sup> In addition, the Texas courts have established certain "other" requirements

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S.W.2d 396, 398 (Tex. Civ. App.—Dallas 1969, writ ref'd n.r.e.); Radio Bible Hour, Inc. v. Hurst-Euleless Ind. School Dist., 341 S.W.2d 467, 468 (Tex. Civ. App.—Fort Worth 1960, writ ref'd n.r.e.); Malone-Hogan Hosp. Clinic Foundation v. City of Big Spring, 288 S.W.2d 550, 554 (Tex. Civ. App.—Eastland 1956, writ ref'd n.r.e.); Benevolent & Protective Order of Elks, Lodge No. 151 v. City of Houston, 44 S.W.2d 488, 494 (Tex. Civ. App.—Beaumont 1931, writ ref'd); Trinity Methodist Episcopal Church v. City of San Antonio, 201 S.W. 669, 670 (Tex. Civ. App.—San Antonio 1918, writ ref'd).

18. Santa Rosa Infirmary v. City of San Antonio, 259 S.W. 926, 931 (Tex. Comm'n App. 1924, jdgmt adopted); Malone-Hogan Hosp. Clinic Foundation v. City of Big Spring, 288 S.W.2d 550, 554 (Tex. Civ. App.—Eastland 1956, writ ref'd n.r.e.); Markham Hosp. v. City of Longview, 191 S.W.2d 695, 697 (Tex. Civ. App.—Texarkana 1945, writ ref'd); Trinity Methodist Episcopal Church v. City of San Antonio, 201 S.W. 669, 670 (Tex. Civ. App.—San Antonio 1918, writ ref'd); City of Dallas v. Cochran, 166 S.W. 32, 34 (Tex. Civ. App.—Texarkana 1914, writ ref'd).

19. Daughters of St. Paul, Inc. v. City of San Antonio, 387 S.W.2d 709, 713 (Tex. Civ. App.—San Antonio 1965, writ ref'd n.r.e.); Raymondville Memorial Hosp. v. State, 253 S.W.2d 1012, 1014 (Tex. Civ. App.—San Antonio 1952, writ ref'd n.r.e.).

20. City of Amarillo v. Amarillo Lodge NO. 731, 488 S.W.2d 69 (Tex. Sup. 1972); TEX. REV. CIV. STAT. ANN. art. 7150, §§ 7, 22 (Supp. 1972).

21. TEX. REV. CIV. STAT. ANN. art. 7150, § 7 (Supp. 1972):

An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when funds, property and assets of such institutions are placed and bound by its law to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons . . . .

22. *Id.* § 7:

The following property shall be exempt from taxation, to-wit:

7. Public Charities. All buildings and personal property belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions . . . .

23. Hilltop Village, Inc. v. Kerrville Ind. School Dist., 426 S.W.2d 943, 946 (Tex. Sup. 1968); City of Houston v. Scottish Rite Benevolent Ass'n, 111 Tex. 191, 198, 230 S.W. 978, 980 (1921); Benevolent & Protective Order of Elks, Lodge No. 151 v. City of Houston, 44 S.W.2d 488, 493 (Tex. Civ. App.—Beaumont 1931, writ ref'd).

which must be met before an institution may qualify under the provisions of section 7.

In our opinion, the Legislature might reasonably conclude that an institution was one of "purely public charity" where: First, it made no gain or profit; second, it accomplished ends wholly benevolent; and, third, it benefited persons, indefinite in numbers and in personalities [*sic*] by preventing them, through absolute gratuity, from becoming burdens to society and to the state.<sup>24</sup>

Although the third requirement does not specifically mention the "use" of the property, it has become one of the main criteria in determining whether a charitable purpose has been accomplished.<sup>25</sup>

By reasoning that the use of the property for lodge meetings, initiations and ceremonies was not a use contemplated under the provisions of section 7, and that the lodges were not "purely public charities," it *appears* that the lodges failed to qualify for the exemption under that section. As Justice Walker pointed out, "Neither the community nor the state is under any duty to provide or support lodge meetings, initiations and ceremonies for private fraternal organizations. . . . [T]he activities in themselves do not lighten any public burden."<sup>26</sup> It should be further noted that section 7 deals with the tax exemption of property of "purely public charities," whereas section 22 deals solely with the tax exemption of property of fraternal organizations. Since section 22 is the more specific statute, its provisions will govern in the present situation, and section 7 is inapplicable.<sup>27</sup>

Section 22 was enacted by the Texas Legislature in 1967, to provide specifically for the exemption of property belonging to "fraternal organizations."<sup>28</sup> Under this section, a "fraternal organization" is defined as "[a]

24. *City of Houston v. Scottish Rite Benevolent Ass'n*, 111 Tex. 191, 198, 230 S.W. 978, 981 (1921).

25. The importance of this requirement was pointed out by the court in the instant case when it stated: "[I]t is essential that the organization assume, to a material extent, that which otherwise might become the obligation or duty of the community or state." *City of Amarillo v. Amarillo Lodge NO. 731*, 488 S.W.2d 69, 71 (Tex. Sup. 1972); *see San Antonio Conserv. Soc'y, Inc. v. City of San Antonio*, 455 S.W.2d 743, 746 (Tex. Sup. 1970); *River Oaks Garden Club v. City of Houston*, 370 S.W.2d 851 (Tex. Sup. 1963); *Challenge Homes, Inc. v. County of Lubbock*, 474 S.W.2d 746, 748 (Tex. Civ. App.—Eastland 1971, writ ref'd n.r.e.).

26. *City of Amarillo v. Amarillo Lodge NO. 731*, 488 S.W.2d 69, 72 (Tex. Sup. 1972).

27. *Id.* at 73. The court appears to have adopted this approach in determining that section 7 was inapplicable. They point out that the legislature had no power to exempt this property from taxation under the provisions of section 7 and that it was unnecessary to consider this section in determining whether the property should be exempt.

28. TEX. REV. CIV. STAT. ANN. art. 7150, § 22 (Supp. 1972):

The following property shall be exempt from taxation, to-wit:

Sec. 22. The property of all fraternal organizations shall be exempt from taxation for so long as the property is owned and used for charitable, benevolent,

lodge, or lodges, engaged in charitable, benevolent, religious, and educational work.”<sup>29</sup> An exemption, to be allowed under section 22, must be based upon the provision allowing for the exemption of a fraternal organization’s property which is “owned and used for charitable . . . purposes.”<sup>30</sup> Many court decisions initially reasoned that in order to constitute a *use of property for charitable purposes*, the property must be wholly owned by the claimant, and in addition, it must be used *exclusively* for the charitable purpose upon which the exemption is claimed.<sup>31</sup> An important extension has evolved in later cases. The “use” need no longer be exclusively charitable, so long as such noncharitable use is *in furtherance* of the charitable purpose for which the exemption is allowed.<sup>32</sup> This is the proposition in *Hilltop Village, Inc. v. Kerrville Independent School District*,<sup>33</sup> in which the court

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religious, and educational purposes, and is not in whole or in part leased out to others, or otherwise used with a view to profit.

29. *Id.* § 22. Section 22 further states:

However, this Act shall not apply to any fraternal organization or lodge which pays to its members, either directly or indirectly, any type of insurance benefit, be it life, health, accident or death benefit, or any other type of insurance; neither shall any organization which shall directly or indirectly participate or engage in any political activity, either in support of or in opposition to any candidate seeking any public office, have or be entitled to benefits as provided under this Act.

30. Under the facts stipulated in the case, it plainly appears that the only question for determination was whether or not a charitable purpose had been served by the use of the property for conducting meetings, initiations and ceremonies incident to the practice of Masonry. *City of Amarillo v. Amarillo Lodge NO. 731*, 488 S.W.2d 69, 70 (Tex. Sup. 1972). This case is the first to construe the provisions of section 22. It should be noted at the outset that there is no constitutional provision specifically authorizing the legislature to exempt property of “fraternal organizations;” therefore, if an exemption is allowed, it not only depends on whether the claimed exemption comes within the provisions of section 22, but also depends on whether or not section 22 is constitutional. *See* TEX. CONST. art. VIII, § 2.

31. *Daughters of St. Paul, Inc. v. City of San Antonio*, 387 S.W.2d 709, 713 (Tex. Civ. App.—San Antonio 1965, writ ref’d n.r.e.): “The claimed exempt charity must be wholly such, it cannot be partially exempt. The property must be used exclusively for charity, unmixed with any other purpose or object.” *Accord*, *Benevolent & Protective Order of Elks, Lodge No. 151 v. City of Houston*, 44 S.W.2d 488, 493 (Tex. Civ. App.—Beaumont 1931, writ ref’d): “Therefore, for an institution to be one of ‘purely public charity,’ it must be one whose property is used wholly and exclusively for charitable purposes.” *Masonic Temple Ass’n v. Amarillo Ind. School Dist.*, 14 S.W.2d 128, 131 (Tex. Civ. App.—Amarillo 1928, writ ref’d): “The agreed statement shows that the ‘lodge work is only partly charitable and the lodges do other work besides dispensing charity.’ Therefore their activities include other fields than charity, and to that extent the property is not used exclusively an an institution of purely public charity.”

32. *Santa Rosa Infirmary v. City of San Antonio*, 259 S.W. 926, 931 (Tex. Comm’n App. 1924, jdgmt adopted):

If this language is to be given effect, it seems the Legislature contemplated that in aid and *furtherance* of their work charitable institutions might derive as an incident of the administration of their charities rents and profits where they were devoted directly and solely to those very charities. [Emphasis added.]

This case represents the initial decision determining that a noncharitable activity would still support the exemption, so long as it was used exclusively to further the charitable activity.

33. 426 S.W.2d 943 (Tex. Sup. 1968).



stated that "the properties which are the subject of the claimed exemption must be owned and used exclusively by the institution in furthering its charitable activities."<sup>34</sup> Section 22 follows this later reasoning as it does not demand that the property be used for charitable purposes exclusively.<sup>35</sup>

Incidental noncharitable uses of the property under which an exemption is claimed will not defeat the exemption, so long as the *incidental uses* are actually in *furtherance* of a charitable purpose,<sup>36</sup> unmixed with any other purposes.<sup>37</sup> Thus, there can be no partial exemptions,<sup>38</sup> and the fact that an organization has some charitable purposes or does some charitable activity is not enough to qualify it for a claimed exemption.<sup>39</sup>

In the instant case, defendant lodges are organized under essentially the same charters.<sup>40</sup> Each charter reveals that the lodges were formed not only for charitable and benevolent purposes, but also to cement the bonds of good fellowship and brotherly love among their members and to practice the art of Masonry.<sup>41</sup> Although it acknowledged that the Masonic organization is engaged in many charitable and worthwhile activities, the Supreme Court

34. *Id.* at 946.

35. TEX. REV. CIV. STAT. ANN. art. 7150, § 22 (Supp. 1972). The wording used in section 22 indicates that so long as there is no profit motive, a noncharitable use of the property may still be entitled to the tax exemption, where the property is used in furthering the charitable purposes for which the exemption is claimed.

36. *See Santa Rosa Infirmary v. City of San Antonio*, 259 S.W. 926, 931 (Tex. Comm'n App. 1924, jdgmt adopted).

37. *Daughters of St. Paul, Inc. v. City of San Antonio*, 387 S.W.2d 709, 713 (Tex. Civ. App.—San Antonio 1965, writ ref'd n.r.e.): "The claimed exempt charity must be wholly such, it cannot be partially exempt. The property must be used exclusively for charity, unmixed with any other purpose or object." *Malone-Hogan Hosp. Clinic Foundation v. City of Big Spring*, 288 S.W.2d 550, 554 (Tex. Civ. App.—Eastland 1956, writ ref'd n.r.e.): "[T]o be a purely public charity its property must be used exclusively for charitable purposes, free from mixture or combination, and unalloyed with any other purposes or objects." (Citations omitted.)

38. *Daughters of St. Paul, Inc. v. City of San Antonio*, 387 S.W.2d 709, 713 (Tex. Civ. App.—San Antonio 1965, writ ref'd n.r.e.). In holding that the one claiming the exemption must be wholly charitable, the court concluded that there can be no partial exemptions. *Accord, Masonic Temple Ass'n v. Amarillo Ind. School Dist.*, 14 S.W.2d 128 (Tex. Civ. App.—Amarillo 1928, writ ref'd). The court held that the use of the property to carry on Masonic work was only partly charitable. Therefore, the exemption was denied.

39. *River Oaks Garden Club v. City of Houston*, 370 S.W.2d 851, 856 (Tex. Sup. 1963).

40. *Corporate Charters of the Grand Lodge (1900)*; *Charter of the Grand Royal Arch Chapter of Texas (1900)*; *Charter of the Grand Council of Royal and Select Masters of Texas (1953)*; *Charter of the Grand Commandery Knights Templar of Texas (1924)*.

41. *Id.* All of the purpose clauses of each defendant lodge are essentially identical. Therefore, only one is presented here. The *Corporate Charters of the Grand Lodge (1900)*, provides:

The said Grand Lodge and this corporation is formed for charitable and benevolent purposes, and to cement bonds of good fellowship and brotherly love among its members and adherents, and to practice the art of Ancient Free and Accepted Masonry as has been done from time immemorial.

of Texas concluded that the defendants' use of the property to conduct meetings, initiations and ceremonies is, in fact, to further the practices of the Masonic organization and that such activity does not constitute a charitable purpose.

The Texas Constitution provides the legislature authority to exempt certain property from taxation; however, if an exemption is provided, it cannot go beyond established constitutional limitations.<sup>42</sup> For this reason, the court declared that the legislature had no power under section 22 to exempt the property of a fraternal organization which was used for furthering a non-charitable purpose. As applied to a fraternal organization's property used for furthering a noncharitable purpose, the court declared the tax exemption under section 22 to be unconstitutional. The narrowness of the holding is specifically pointed out in the opinion, that the unconstitutionality of section 22 applies only to the type of property involved in this suit.<sup>43</sup>

Viewing earlier court decisions, it appears on the surface, that the court was too harsh in denying the defendant lodges their claimed tax exemption. In *Santa Rosa Infirmary v. City of San Antonio*,<sup>44</sup> the Sisters of Charity of the Incarnate Word claimed that a hospital and the property upon which it was built were exempt from taxation because they constituted an institution of purely public charity. The hospital was organized to grant medical assistance to all in need of treatment, regardless of financial status. Only 12 percent of the total number of patients in the hospital were actually charitable, while the remaining patients paid for the treatment they received.<sup>45</sup> The money received from the paying patients was the hospital's only profit,<sup>46</sup> and it was used solely to pay operating and other hospital expenses, including the costs of treating the charity patients. In granting the tax ex-

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42. It is specifically provided in the constitution that the legislature can only enact laws providing for the exemption of property specifically named, and that any law which attempts to exempt other than the property so named will be null and void. TEX. CONST. art. VIII, § 2.

43. *City of Amarillo v. Amarillo Lodge NO. 731*, 488 S.W.2d 69, 73 (Tex. Sup. 1972).

44. 259 S.W. 926 (Tex. Comm'n App. 1924, jdgmt adopted).

45. *Id.* at 930:

[D]uring 1919 . . . 2,919 patients were received in the hospital for . . . treatment, of which 2,590 were full pay patients, 123 part pay patients and 206 were charity cases. . . .

With respect to the admission of charity patients no obstacle appears to have been placed in the way of their reception other than a requirement that statements of the applicants, or of other trustworthy persons, be furnished at the time of their admission, to fairly indicate that they were objects of charity and unable to pay for the services rendered them, and . . . the infirmary was available and open to those who applied for free treatment.

46. *Id.* The hospital had other activities; e.g., drug store, which produced income because paying patients were required to pay for the medicines they received, but the drug store, for example, operated at a net loss due to the fact that the charity patients received all of their medicines free of charge. Thus, the income was set-off by the loss, and no profits were actually made.

emption, the court pointed out that profits, in a case such as this, would not defeat the hospital's right to the exemption because all the income received from the paying patients was appropriated solely to further the charitable purpose for which the hospital was formed.<sup>47</sup>

In contrast, the use of the property in the instant case was to conduct meetings, initiations and ceremonies of the fraternal associations. This did not constitute a "use in furtherance of a charitable purpose" because the practice of Masonry does not relieve the community or state of any obligation or duty which they might otherwise have to assume. In *Santa Rosa*, the fact that the hospital rendered medical services to some patients free of charge resulted in the discharge of not only a community obligation, but also of a burden that the community might otherwise have had to assume. Since the practice of Masonry is not a charitable purpose, it follows naturally that the use of the property by the defendants is not in *furtherance* of a charitable purpose.

The Supreme Court of Texas stated: "We do hold that Section 22 of Art. 7150 is unconstitutional *as applied to the property involved in this suit.*"<sup>48</sup> It is evident that the court did not render all applications of section 22 unconstitutional. The property involved in this case was used for noncharitable activities, and the defendants failed to prove that its use was in *furtherance* of a charitable purpose. The property involved in this suit does not come within the provisions of section 22, and a ruling to that effect would have been sufficient.

It is apparent that the decision rendered has a twofold application. The court's determination that the use of the property was neither for a charitable purpose nor in *furtherance* thereof is, in effect, a message to future litigants that such property as *involved in this suit* will not be entitled to exemption from taxation. On the other hand, the declaration that section 22 is unconstitutional as applied to the property in this suit, serves a much different purpose. This declaration informs the legislature that their constitutional authority (to exempt property from taxation) has reached its limit. By so holding, the Supreme Court of Texas has effectively warned the legislature against enacting an amendment to section 22 exempting all property of fraternal organizations, and that should they enact such a statute, it will be unconstitutional.<sup>49</sup>

*Tommy Mac Gumfory*

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47. *Id.* at 935.

48. *City of Amarillo v. Amarillo Lodge NO. 731*, 488 S.W.2d 69, 73 (Tex. Sup. 1972) (emphasis added).

49. Prior to the enactment of section 22 in 1967, all suits involving the exemption of fraternal organizations' property which was used for conducting meetings and other lodge purposes were decided under section 7. In all of those cases, the exemption was denied for one reason or another. *City of Houston v. Scottish Rite*