

ORIGINAL

# In the Supreme Court of Ohio

Equity Dublin Associates and SHSCC #2	:	
Limited Partnership,	:	Case No. 2014-0168
	:	
Appellees,	:	
	:	On Appeal from the Ohio Board of Tax
v.	:	Appeals:
	:	Case Nos. 2011-Q-1792 and 2011-Q-1795
Joseph W. Testa, Tax Commissioner of	:	
Ohio, Board of Education of the Columbus	:	
City School District, and Board of Education	:	
of the Dublin City School District,	:	
	:	
Appellants.	:	

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**APPELLEES' MOTION FOR ORAL ARGUMENT BEFORE THE FULL COURT**

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: Appeals:  
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Joseph W. Testa, Tax Commissioner of Ohio, :  
Board of Education of the Columbus City :  
School District, and Board of Education of the :  
Dublin City School District, :  
: :  
Appellants. :

Now come Appellees Equity Dublin Associates and SHSCC #2 Limited Partnership, by and through their undersigned counsel, and respectfully move this Court under S.Ct.Prac.R. 17.07(A) to hold oral argument before the full Court. The bases for this Motion are more fully set forth in the accompanying Memorandum in Support.

Respectfully submitted,



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## MEMORANDUM IN SUPPORT

The issue on appeal is whether real property leased by a state community college from a commercial for-profit enterprise, and used solely for educational purposes, is exempt from taxation. Consistent with Ohio statute and the judicial precedent set by this Court, the Ohio Board of Tax Appeals (“BTA”) reasonably and lawfully held that it is.

The statute in play is R.C. 5709.07(A)(4), which exempts from taxation all buildings connected with public colleges and academies. Appellees leased a portion of their property to Columbus State Community College (“Columbus State”) for use as classrooms and other educational purposes. Under the respective lease agreements, Columbus State was obligated to pay the real property taxes. The BTA determined that the portion of property leased from Appellees to Columbus State is exempt from taxation.

In its decision, the BTA relied on the precedent set by this Court in *Cleveland State University v. Perk*, 26 Ohio St.2d 1, 268 N.E.2d 577 (1971). In *Cleveland State*, this Court held that “buildings located on the campus of a state university and used exclusively for classrooms and faculty offices are exempt from taxation, even though such buildings are not owned by the university, but are leased for a term of years, with provision for rental therefor, from a corporation for profit.” *Id.* at 8. This Court’s holding in *Cleveland State* is dispositive of the instant case.

The Tax Commissioner and the respective School Boards appealed the BTA’s decision, and are essentially requesting that this Court overturn its prior holding in *Cleveland State*. The Commissioner and the School Boards rely primarily on this Court’s holding in *Athens County Auditor v. Wilkins*, 106 Ohio St.3d 293, 2005-Ohio-4986, 834 N.E.2d 804. The *Athens County*

case, however, is inapposite; that case concerns a different set of facts and a different statutory scheme.

This disposition of the instant case will have a huge financial impact on Columbus State's funding. Article VI of the Ohio Constitution speaks to the importance of providing opportunities for Ohioans to achieve higher education. See Oh. Const. Art. VI, §§ 5-6. Similarly, Ohio law requires that the General Assembly "shall support a state community college by such sums of money and in such manner as it may provide." R.C. 3358.09. It thus goes without saying that this case is of significant importance. The School Boards would also agree that this case is of paramount significance to the funding for the Columbus and Dublin city school districts.

Given the issues raised on appeal, including Appellants' request that this Court overturn its prior precedent, and given the significant impact this Court's decision will have on funding for education, Appellees respectfully request that oral argument be scheduled before the full Court in this case.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Oral Argument Before the Full Court was served by regular U.S. mail on this 3rd day of July, 2014, upon the following:

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