

ORIGINAL

# In the Supreme Court of Ohio

Equity Dublin Associates and SHSCC #2  
Limited Partnership,

Appellees,

v.

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.

Case No. 2014-0168

On Appeal from the Ohio Board of Tax  
Appeals:

Case Nos. 2011-Q-1792 and 2011-Q-1795

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**APPELLEES' MOTION FOR RECONSIDERATION ON THE MERITS OF THIS  
COURT'S DECISION ENTERED DECEMBER 2, 2014**

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# In the Supreme Court of Ohio

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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 for reconsideration of its decision on the merits under S.Ct.Prac.R. 18.02(B)(4). 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

### I. SUMMARY OF APPELLEES' ARGUMENT

Appellees respectfully urge this Court to reconsider its decision for the reason that the Court's opinion has now rewritten Ohio law by writing into the tax exemption statute a specific limitation or restriction that does not currently exist. The limitation imposed by this Court in restricting the claimed tax exemption to only those instances in which the public college owns the land is not contained within the statute, nor was it intended by the General Assembly. Appellees respectfully submit that this Court's decision was made in error. Further, by imposing the additional restriction in the tax exemption statute at issue, the Court did not consider its own canons of statutory construction. Appellees thus urge the Court to use its reconsideration authority, as the Court's decision has far-reaching consequences for institutions of higher learning, which consequences run contrary to the intent of the legislature.

In reconsideration of the Court's decision, Appellees submit that this Court must exercise judicial restraint. It is not the Court's role to legislate from the bench. Appellees urge the Court to heed the advice of the Honorable Justice O'Donnell, set forth in a dissent he authored earlier this year concerning, ironically, the definition of certain statutorily-defined property:

\* \* \* and this court has taken upon itself the role of legislating from the bench in its conclusion that it will order these benefits to be considered as marital property. I cannot join in this action, because I believe in judicial restraint and the role of the court as being limited to interpreting the law as written by the General Assembly.

*Daniel v. Daniel*, 139 Ohio St.3d 275, 2014-Ohio-1161 11 N.E.3d 1119, ¶23 (J. O'Donnell dissent)  
(emphasis added).

## **II. LAW AND ARGUMENT**

### **A. MOTIONS FOR RECONSIDERATION**

Under S.Ct.Prac.R. 18.02(B)(4), a motion for reconsideration may be filed with respect to a decision on the merits of a case. A motion for reconsideration shall not constitute a re-argument of the case. *Id.* As explained by this Court, “we use our reconsideration authority to ‘correct decisions which, upon reflection, are deemed to have been made in error.’” *Dublin City Sch. Bd. of Educ. v. Franklin County Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940, 11 N.E.3d 222, ¶9.

In *Dublin City Sch. Bd. of Educ.*, this Court did not hesitate to reconsider (and correct) its decision in a tax appeal matter that, upon further reflection, was deemed by the Court to have been made in error. *Id.* at ¶9. The instant case warrants the same consideration. The Court’s decision here is at odds with the tax exemption scheme legislated by the General Assembly, and represents a marked departure from the exemption status conveyed upon institutional educations for more than one hundred (100) years. Appellees respectfully request that this Court correct its decision upon further reflection.

### **B. THE COURT SHOULD RECONSIDER AND CORRECT ITS DECISION**

The Court’s decision reversing the Board of Tax Appeals and refusing a tax exemption hinges solely on this Court’s interpretation of the definition of “property,” as exempted under R.C. 5709.07(A)(4). See *Equity Dublin Assocs. v. Testa*, 2014-Ohio-5243, ¶40. Under that statute, the following property is exempt from taxation:

Public colleges and academies and all buildings connected with them, and all lands connected with public institutions of learning, not used with a view to profit...

This Court reads into the statute a requirement that the subject property must be “owned and occupied and used by those institutions for their basic institutional purposes.” *Id.* at ¶40.

While the language of this statute does not contain any such limitation (nor does this Court's holding in *Cleveland State Univ. v. Perk*, 26 Ohio St.2d 1, 268 N.E.2d 577 (1971)), this Court nonetheless reasons that such limitation is the intent of the statute by "clear implication." *Id.*

In surmising on the legislative intent of R.C. 5709.07(A)(4), the Court erred by failing to consider other exemption statutes that form a part of Ohio's overall system of tax exemption legislation. Specifically, the Court makes an inference on the legislative intent of R.C. 5709.07 without any consideration of R.C. 5701.02(A) or R.C. 3354.15.

In its decision, this Court holds that the term "property," as used in the exemption statute, targets only the buildings located on land owned by the public college. *Equity Dublin Assocs.* At ¶43. The Court then equates this interpretation to having the presence of buildings "on campus." *Id.* (emphasis added).

The Court arrives at its conclusion by relying on two prior decisions of this Court, and yet fails to consider the legislature's express definition of real property, as that term is used in Title 57. See R.C. 5701.02(A). Under R.C. 5701.02(A), real property includes the land itself, and "all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto." (Emphasis added).

Under R.C. 5709.07(A)(4), the term "property," as it pertains to exemption status and as defined by statute, does not equate to a requirement of ownership, notwithstanding this Court's imposition. To the contrary, property for which an exemption is sought statutorily includes all of those rights and privileges belonging to or appertaining to that property. The record shows, and this Court agrees, that Columbus State Community College does possess rights and privileges appertaining to the property for which Appellees seek exemption.

This Court has long held that “the provisions of a statute are to be construed in connection with all laws in *pari materia*, and especially with reference to the system of legislation of which they form a part, and so that all the provisions may, if possible, have operation according to their plain import. It is to be presumed that a code of statutes relating to one subject, was governed by one spirit and policy, and intended to be consistent and harmonious, in its several parts.” *City of Cincinnati v. Connor*, 55 Ohio St. 82, 89, 44 N.E. 582 (1896).

Notwithstanding the statutory definition of property set forth in R.C. 5701.02(A), this Court imputes the requirement of ownership into R.C. 5709.07(A)(4). In doing so, the Court reasoned that the statute’s reference to “public colleges” denotes a type of property exempted, and that “public colleges” refers only to that type property owned and used by the college. *Equity Dublin Assocs.* at ¶40. The Court then attempts to justify this interpretation by explaining that the buildings for which the exemption is sought must be located “on the campus” of the public college. *Id.* at ¶43. The Court then attempts to close the loop by equating “on the campus” to ownership of the property. *Id.* Indeed, this interpretation is at odds with today’s ever-changing and evolving system of higher education, whereby more and more public colleges are under expansion by way of satellites and branch campuses (many of which include leased buildings on private land), and even online instruction.

As explained by Justice Pfeifer, “the majority takes an incidental fact from *Perk* and makes it an essential element of eligibility for an R.C. 5709.07(A)(4) exemption.” *Id.* at ¶55 (emphasis added). The majority thus “ignores the intent of the statute and encumbers the mission of community colleges in Ohio.” *Id.*

Along these lines, the Court’s decision ignores the implication of R.C. 3354.15, thus failing to consider all of the exemption statutes together, in *pari materia*. Under R.C. 3354.15, “[a]

community college district shall not be required to pay any taxes or assessments upon any real or personal property acquired, owned, or used by it.” While this particular statute is not the subject of the exemption request on appeal, it bears much significance to the legislative intent behind the tax exemption statutes. Under R.C. 3354.15, the General Assembly makes no distinction whatsoever between property owned by the community college versus property simply used (but not owned) by the college. Rather, the property is exempt – regardless of ownership. The bottom line here, and as made clear by R.C. 3354.15 and the other exemption statutes, is that these statutes were intended to promote higher education by exempting property used solely for educational purposes.

Therefore, Appellees respectfully urge this Court to further reflect on its decision and to reconsider it. Upon reflection, this Court should examine the entire statutory scheme, which at first the Court failed to do. In doing so, the Court must give deference to the legislature’s definition of “property,” rather than create its own definition based solely upon R.C. 5709.07 and the Court’s holding in *Perk*. Appellees respectfully submit that a reconsideration will lead to a correction of the Court’s decision and an affirmance of the BTA.

### **III. CONCLUSION**

This Court’s decision severely limits and frustrates the legislative purpose of the tax exemption statutes. In reaching its decision, this Court did not apply the exemption statutes as written, nor did this Court interpret the statutes together, in *pari materia*. The Court did, however, rewrite Ohio’s exemption statute pertaining to public colleges. Respectfully, this is not the role of the judiciary.

As Justice O'Donnell aptly explained earlier this year, the Court should exercise judicial restraint and abstain from legislating from the bench. *Daniel*, 2014-Ohio-1161 at ¶23.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Reconsideration was served by regular U.S. mail and by electronic mail, on this 12th day of December, 2014, upon the following:

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