

In the
Supreme Court of Ohio

TALAWANDA CITY SCHOOL
DISTRICT BOARD OF EDUCATION,

Appellant,

v.

JOSEPH W. TESTA,
TAX COMMISSIONER OF OHIO

Appellee.

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: Case No. 2014-1798
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: Appeal from Ohio Board of Tax Appeals
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: BTA Case No. 2012-1224
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**APPELLEE TAX COMMISSIONER'S RESPONSE IN OPPOSITION TO
APPELLANT'S MOTION FOR ORAL ARGUMENT BEFORE THE FULL COURT**

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MEMORANDUM CONTRA

The appellee Tax Commissioner of Ohio opposes Talawanda City School District Board of Education's ("Talawanda's") motion for oral argument before the full Court. Contrary to Talawanda's sole reason for requesting full Court argument, there is nothing novel about the legal issue presented here.

Instead, the BTA's decision applied this Court's and its own well-settled precedent. In fact, over the long history of real property tax exemption law, Talawanda's current appeal is just the most recent of several unsuccessful attempts by school boards and other political subdivisions to seek exemption for property commercially leased to private business. This Court recently heard oral argument on this issue in *City of Cincinnati v. Joseph W. Testa, Tax Commissioner of Ohio*, Case No. 2014-0531. Thus, this Court is well-familiar with the settled law in this area, and oral argument will not aid the Court.

Commercially leased land owned by school boards or other political subdivisions of the state, rented to private business at market rates, does not qualify for real property tax exemption. A political subdivision's commercial lease of public property for private use changes the nature of the property, such that the property is no longer "public property" that is "used exclusively for public purposes." As this Court held in *Parma Heights v. Wilkins*, "wherever public property is used by a private citizen for a private purpose, that use generally prevents exemption." 105 Ohio St.3d 463, ¶ 12 (2005).

There is no need for full Court review of this basic principle. Indeed, the Court has expressly recognized and applied it regarding the specific exemption for school board-owned property at issue here. *Bd. of Ed. of City Sch. Dist. of City of Cincinnati v. Bd. of Tax Appeals*, 149 Ohio St. 564, 568 (1948) ("*Cincinnati*"); *In re Applications of the Univ. of Cincinnati*, 153

Ohio St. 142 (1950) (Hart, J., concurring) (“*Univ. of Cincinnati*”).

The requirement of “exclusive public use” pervades real property tax exemption law for publicly-held property. The Court uniformly has applied that very same principle to deny real property tax exemption regarding commercially leased property owned by municipalities and other political subdivisions of the state under the “public property” exemption set forth in R.C. 5709.08. *See e.g., Cleveland v. Perk*, 29 Ohio St.2d 161, 165 (1972) (publicly-held airport terminal leased to private businesses taxable); *Carney v. Cleveland*, 173 Ohio St. 56, 58 (1962) (publicly-held airport hangers leased to private parties taxable); *Bd. of Park Comrs. of Troy v. Bd. of Tax Appeals*, 160 Ohio St. 451, 454 (1954) (publicly-held sports arena leased to private corporation taxable); *Div. of Conserv. and Nat. Resources v. Bd. of Tax Appeals*, 149 Ohio St. 33 (1948) (publicly-held land leased to fish hatchery business taxable).

Property interests used by a private entity for commercial purposes as lessee do not even qualify as publicly-held property under the principles of tax exemption. ““Where a public body owns real property and leases it to a private corporation at a fixed rental and other emoluments, **the elements of ownership are partly vested in the lessor and partly in the lessee. That part of the ownership vested in the private corporation by its lease thereafter ceases to be public property.** The use which the lessee in this case makes of such property * * * is not a use by the applicant [lessor] but by the private corporation.”” *Carney v. Cleveland*, 173 Ohio St. at 58 (emphasis added), quoting *Bd. of Park Comrs. of Troy; Columbus City Sch. Dist. Bd. of Ed. v. Zaino*, 90 Ohio St.3d 496, 497-98 (2000) (property held by a non-profit corporation is not public property because it is not vested in a public entity “exclusively for the benefit of the state”).

This Court’s uniform body of case law holding that commercially leased property loses its character as property “owned” by a political sub-division and “ceases to be public property”

directly applies here. Just as in those cases, it is undisputed that the property for which Talawanda has sought exemption is commercially leased to a private corporation at commercial lease rates. Thus, this Court's well-established precedent provides that the private commercial use of Talawanda's property defeats exemption. *Carney v. Cleveland*, 173 Ohio St. at 58; *Bd. of Park Comrs. of Troy*, 160 Ohio St. at 454; and *Columbus City Sch. Dist. Bd. of Ed.*, 90 Ohio St.3d at 497-98

Talawanda's request for full Court review likewise ignores an established body of BTA case law regarding the R.C. 3313.44 school board exemption. The BTA has applied the holding of *Cincinnati* and *Univ. of Cincinnati* in a long line of its own decisions rejecting R.C. 3313.44 exemption claims for school board-owned property commercially leased to private business. Time and again, the BTA has so held, rejecting the very same contention advanced by Talawanda here on a regular, almost periodic, basis over the intervening decades since the Court's issuance of its controlling guidance:

- (1) *Westerville City Sch. Dist. Bd. of Ed. v. Testa*, BTA Case No. 2012-2661 (Jan. 23, 2015), unreported (school board-owned office space leased to for-profit corporation taxable), TC Brief Appx. 11-13;
- (2) *London City Sch. Bd. of Ed. v. Zaino*, BTA Case No. 2000-B-1478 (Jan. 12, 2001), unreported (school-board owned property leased for private commercial farming taxable), TC Brief Appx. 14-23;
- (3) *Bd. of Ed. of Col. City Sch. Dist. v. Tracy*, BTA Case No. 92-A-598 (Apr. 23, 1993), unreported (school-board land property leased as a commercial parking lot taxable), TC Brief Appx. 24-26; and
- (4) *Gallipolis City Sch. v. Kinney*, BTA Case No. 81-D-377 (Apr. 25, 1983), unreported (school-board owned realty leased to individual as private residence taxable), TC Brief Appx. 30-34; See also, *Bd. of Ed. of Canfield Local Sch. Dist. v. Olenick*, (7th Dist. Ohio 1975), 1975 WL 180420, unreported (granting exemption for school-board owned property used as a schoolhouse on the grounds that the property was used exclusively for school purposes, as required to qualify under R.C.3313.44), *reversed on other grounds*, 45 Ohio St.2d 300 (1976).

There is only one difference between the BTA's decision in the present case and its previous decisions rejecting R.C. 3313.44 exemption claims for school board-owned property commercially leased to private business: Talawanda has decided to appeal from the BTA's decision, whereas in the previous cases, the school board exemption claimants gave up the ghost and chose not to appeal as of right pursuant to R.C. 5717.04. In this way, Talawanda is asking the Court to grant exemption for commercially leased property that the Commissioner, the BTA, and school boards over the 140 year history of the R.C. 3313.44 exemption (first enacted in 1873) have agreed is not properly exempt.

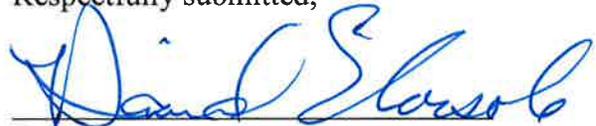
Finally, Talawanda's reliance on a 1931 amendment to the Ohio Constitution as a basis for the Court to overturn its uniform body of case law is easily refuted. Talawanda bases its argument and motion for full court review on its erroneous belief that a 1931 amendment to the Ohio Constitution and *Denison v. Bd. of Tax Appeals*, 2 Ohio St.2d 17 (1965) somehow abrogates the uniform body of decisional law providing that the school board exemption requires exclusive public school use.

The argument does not withstand analysis, however, because, as detailed in the Commissioner's merit brief, this Court already reaffirmed the exclusive public school use requirement under the school board exemption in 1948 through *Cincinnati*. The *Cincinnati* case was decided by this Court in 1948 -- well after the 1931 constitutional amendment discussed in *Denison*. BTA precedent and the 7th District's *Olenick* decision were also decided after both the 1931, as was the *Denison* decision itself. Further, *Denison* makes no mention of the uniform body of case law addressing the school board exemption including *Cincinnati* case, let alone the school board exemption itself. Constitutional amendments are not self-executing, and even if they were, a 1931 amendment would not change the meaning of a statute as construed in 1948

and thereafter. *Denison* also does not change the meaning of the *statutory* school board exemption as Talawanda suggests.

In sum, the Commissioner and Board of Tax Appeals steadfastly have adhered to a uniform body of decisional law and this Court's own controlling precedent in rejecting Talawanda's claim to exemption for the commercially farmed property at issue in this case. Accordingly, there is no need for full Court argument in the present case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Appellant Tax Commissioner's Response Memorandum to Appellee's Motion for Oral Argument Before the Full Court* was served upon the following by U.S. regular mail on this 20th day of April, 2014:

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