

IN THE SUPREME COURT OF OHIO

Northeast Ohio Psychiatric Institute
Appellant,

v.

William W. Wilkins [Richard A. Levin],
Tax Commissioner of Ohio,
Appellee.

Case No. 2008-0033

(Appeal from the Ohio
Board of Tax Appeals
No. 2005-Z-1683)

JOINT REPLY OF APPELLANT NORTHEAST OHIO PSYCHIATRIC INSTITUTE
AND
AMICUS CURIAE OHIO COUNCIL OF BEHAVIORAL HEALTHCARE PROVIDERS

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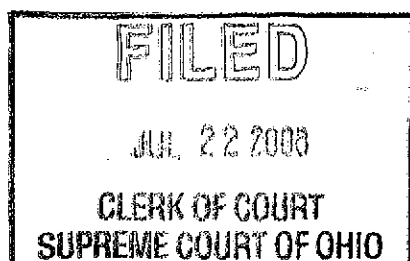


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Preliminary Statement

The need to address mental illness and chemical dependency, protect the public from those dangerous to themselves or others, prevent suicides, and minimize psychiatric hospitalization is indisputable. Property where such work is done fits the legislative intent of tax exemptions. Public mental health services are precisely the kind of “present benefit to the general public from the operation of the charitable institution [that is] sufficient to justify the loss of tax revenue.”¹ It is common among publicly-funded entities to provide charitable services via related entities, one leasing property to the other, to make provision of services and accounting for property expense more efficient, stable and flexible.² Conversely, collecting property taxes from such entities raises the cost of services, and wastes the public resources used in the process of taking from one to give what remains, after collection costs, to the other.

Portage Path and the Institute under its control are jointly engaged in addressing the public need for mental health care. The Tax Commissioner and Amici try to discredit the charitable nature of the hard, necessary work they do, but these opponents’ zeal is misdirected. Sadly, agencies that serve vital public needs are reduced to fighting over the scraps of public funding—but the worthiness of school funding does not justify a no-holds-barred assault on other socially indispensable services.

Portage Path and the Institute exist only to advance mental health care for the public without regard to ability to pay. These jointly-operated nonprofits use a leaseback structure as an intrinsic part of providing public mental health care, and take other pragmatic steps to maximize efficiency and minimize waste. These ancillary activities may incidentally generate minimal net

¹ *Bethesda Healthcare, Inc. v. Wilkins* (2004), 101 Ohio St.3d 420, 423; 2004-Ohio-1749, ¶ 19; 806 N.E.2d 142 (internal quotation marks and citation omitted).

² See *Community Health Professionals v. Levin* (2007), 113 Ohio St.3d 432, 2007-Ohio-2336 at ¶ 2, 866 N.E.2d 478, describing structural reorganization in reaction to Medicaid rules.

revenues, but form no part of their goals, and play no part in their use of the Disputed Property. The use of the Disputed Property is solely to provide the charitable service for which they exist.

The opponents of the exemption portray the purpose and operations of these charitable institutions inaccurately. They confuse the principles defining charitable *use* of property with definition of a charitable entity. They argue isolated aspects of the Institute's operations, ignoring its sole purpose and primary function as an integral part of Portage Path's charitable work. The property that the Institute leases to Portage Path merits exemption under R.C. 5709.121, under law allowing exemption for such leases between charitable entities since 1969.

CLARIFICATION OF FACTS

As the evidence shows and the Board of Tax Appeals ("Board") has already found, Appellant Northeast Ohio Psychiatric Institute ("the Institute"), was organized for "the promotion of mental health care" and to be operated exclusively for "charitable, education or scientific purposes within the meaning of Section 501(c)(3) of the [Internal Revenue] Code."³ It was set up by Portage Path to hold real property for use in Portage Path's charitable work as a public mental health provider.⁴

The Disputed Property consists of the grounds and the 68% of the building *used for public mental health services* by Portage Path Behavioral Health Services ("Portage Path").⁵

The Disputed Property is the *only* property that the Institute seeks to exempt. Exemption is not

³ Appx. 10, Decision at 2, citing Appellant's Ex. 2 (Supp. 140).

⁴ Separate organization set up to purchase and lease property to Portage Path. Supp. 108, Tr. 119. The Institute has no revenue in excess of expense on the Disputed Property, which is the space used by Portage Path. If costs do not equal the rent chargeable to Portage Path, the Institute discounts the rent. The Institute charges less than the stated rent if costs fall below it. Supp. 97-98, 109, 263-68, Tr. 74-77, 122; Ex. 15.

⁵ Supp. 83, 88, 92-93, Tr. 17-20, 37, 54-56, 59; See also Supp. 157-249, Ex. 7, Service Provider Contract between Summit County ADAMH Board and Portage Path, § 3.2.2 and § 9.1.2; Supp. 250-52, Ex. 8, Assurance Statement at ¶ 16. The only sworn testimony clearly states that Portage Path has used 68% of building since 2000. Supp. 95, Tr. 66-67. See also Supp. 263-66.

sought for any property leased to for-profit entities, or used in any incidental staff outplacement activities. In this brief, as throughout the Merit Brief of the Institute, the entire land and building are called the “Property,” while the “Disputed Property” is the Property *exclusive of* the portions leased to private parties.⁶ The opposition briefs are rife with confusing references to the Disputed Property as if it included space leased to private parties.⁷ It explicitly does not, and all such statements are misleading.

The opposition briefs are also misleading with references to “earnings” and “income,” when they refer to *gross revenues*, ignoring the facts of record that the Institute has had either no excess of revenue over expense, or has had it in only negligible amounts,⁸ and that any excess of revenue over expense can *only* be devoted to reducing costs of public mental health care, not to any private use.⁹ The Institute is not in competition with any commercial landlord for the privilege of renting to Portage Path at or below the cost of providing the space, in preference to any prospective better-paying tenant.¹⁰ Contrary to allegations in the opposing briefs, the Institute has not offered any employee assistance services or “Lifescapes” program during any

⁶ See the Institute’s Merit Brief at 4, fn.4 (Supp. 19, S.T. 235.)

⁷ Merit Brief of Appellee (“TC Brief”) and Brief of Amicus [sic] Curiae Ohio School Board Association, et al. (“Brief of Amici;” both sometimes collectively called “opposing briefs”). The space *excluded* from the application for exemption and not at issue here is the only property that could be subject to the argument based on *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186, 503 N.E.2d 163 and related cases, Brief of Amici at 16-17.

⁸ In the years 2003 and 2002 on which the Decision focuses, the Institute’s financial statements show net loss of (-\$13,413) in 2003 and net gain of \$3,254 in 2002. (Supp. 276, Ex. 18, p. 3.) See also Supp. 109, Tr. 124 (staffing services generated stated amounts “in revenue, not in excess revenue over expense”). There is no testimony admitting a “leasing business” that is “profitable” as claimed by TC Brief at 2.

⁹ Supp. 109, Tr. 121 (any revenues in excess of expense devoted to support Portage Path and offset funding shortfalls).

¹⁰ Supp. 97-98, 109, 263-68, Tr. 74-78, 122; Ex. 15.

relevant period.¹¹ These are non-issues, but would be ancillary to the charitable purpose of the Institute in any case.

The Institute incidentally leases property that Portage Path does not need (which is not part of the Disputed Property) to others, and deploys psychiatric staff to hospitals and other mental health agencies during hours that they are not needed at Portage Path.¹² Exemption is not sought for any property leased to for-profits, or used in any staff outplacement activities.

FACTS RELATING TO PORTAGE PATH OPERATIONS

The Decision (“Decision”) of the Board of Tax Appeals below has already established that Portage Path is a charity, a point which was not cross-appealed.¹³ The TC Brief nevertheless attacks the charitable character of Portage Path. It is therefore necessary to clarify multiple misstatements of the record as to Portage Path.

The mentally ill and chemically addicted both need care themselves and pose a public concern because they may be dangerous to themselves or others.¹⁴ They were once housed for life in asylums, which gave way to state psychiatric hospitals.¹⁵ The Alcohol, Drug Addiction and Mental Health (“ADAMH”) Boards created by Chapter 340 of the Ohio Revised Code¹⁶ progressed toward community-based mental health care.¹⁷ Treatment of the mentally ill in the community saves the public up to \$180,000 per person per year for psychiatric hospital treatment.¹⁸

¹¹ Opposing parties cite internet sources without referring to the sworn testimony of record found at Supp. 102, Tr. 93; Supp. 108, Tr. 117.

¹² Supp. 93, 98, 102, 108-109, Tr. 58-59, 79, 94, 120-21.

¹³ Appx. at 15, Decision at 7.

¹⁴ Supp. 82, 94, Tr. 16, 64.

¹⁵ Supp. 82, Tr. 14-16.

¹⁶ See R.C. Ch. 340; Tr. 16.

¹⁷ Supp. 82-83, Tr. 16-17.

¹⁸ Supp. 82, Tr. 15-16.

ADAMH Boards are publicly funded. Their contractors like Portage Path receive state, local and Community Medicaid (federal) funding.¹⁹ Community Medicaid *pays cost only, no profit*; but even private physicians who can receive regular Medicaid, which allows a profit, are often unwilling to accept mentally ill Medicaid patients.²⁰

Portage Path provides mental health services to the residents of Summit County who otherwise would not be able to afford them, as an ADAMH Board contractor for Summit County.²¹ Twenty-four hours a day, 7 days a week, it provides a suicide prevention hotline without charge, and emergency psychiatric services.²² It takes in people removed from the community by law enforcement due to misbehavior arising from mental illness or chemical addiction.²³ It provides outpatient psychological and psychiatric services.²⁴ None of its patients are able to pay the cost of their care from their own income.²⁵

Portage Path is a non-profit, § 501(c)(3) organization that does not allow any owner, member, trustee, officer or other private person to benefit from any net earnings, and is not operated with any intent to make revenues exceed expenses.²⁶ It pays salaries below those available in the private sector for similarly qualified persons to its President Jerry Kraker (a Certified Public Accountant, Certified Behavioral Healthcare Administrator and Notre Dame graduate with 30 years' experience) and to administrative and mental health professionals that it

¹⁹ Supp. 83, Tr. 17-18.

²⁰ Supp. 83, 88, 94, 112-13, Tr. 18-20, 37, 61-63, 136-38.

²¹ Supp. 83, 93, Tr. 20, 59.

²² Supp. 93-96, Tr. 59-69.

²³ Supp. 94, Tr. 63.

²⁴ Supp. 93, Tr. 59.

²⁵ Supp. 93, Tr. 60.

²⁶ Supp. 89-90, 132, Tr. 42-46, Ex. 1, Portage Path Articles of Incorporation, at Art. 3rd; S.T. 277-78.

employs.²⁷ Its 2002-03 revenues equaled expenses, but any excess would be maintained for use in future years.²⁸ Upon its dissolution, any surplus goes to the Ohio Department of Mental Health.²⁹ Its contract with the Summit County ADAMH Board and related Assurance Statement require that no eligible person in need of service shall be denied services based on inability to pay and that priority will be given to those most severely disabled and those most in need.³⁰ Portage Path notifies the public in numerous ways, including literature in government and physician offices and hospitals, that it will provide care regardless of ability to pay.³¹

Sixty-five percent of Portage Path's patients are on the sliding fee scale, with 83% of those eligible to pay on the sliding scale obligated to pay \$15 a month or less for all psychiatric and psychological services.³² Even at these charity rates, 58% of the amount billed is written off.³³ The other 35% of its patients are on Medicare or Community Medicaid, which pays Portage Path based on cost for their care, with the Medicare reimbursement, after deductible, providing only about 39 cents on the dollar of that cost.³⁴ Medicare patients are about 10-12% of those served.³⁵ Some services are simply donated.³⁶

²⁷ Supp. 88-89, 114, Tr. 40-41 141-42. Both entities contribute to the salary of Jerry Kraker, who is President of both entities. Supp. 88, 105, Tr. 40, 105.

²⁸ Supp. 98-99, Tr. 80-81.

²⁹ Supp. 90, 99, 132, 271, Tr. 46-48, 81; Ex. 1 at Art. 5th; Ex. 17.

³⁰ Supp. 92, 157, 253, Tr. 54-55, Ex. 7, Service Provider Contract between Summit County ADAMH Board and Portage Path, § 3.2.2 and § 9.1.2; Ex. 8, Assurance Statement at ¶ 16.

³¹ Supp. 106, Tr. 109.

³² Supp. 92, Tr. 56.

³³ Supp. 93, Tr. 57.

³⁴ Supp. 94, 106, Tr. 62-63, 110.

³⁵ Supp. 111, Tr. 129-30.

³⁶ Supp. 105, Tr. 108.

ARGUMENT

APPELLANT'S PROPOSITION OF LAW NO. 1:

Property that is leased to a nonprofit public mental health provider by a nonprofit mental health entity wholly under its control, at or below cost, to offer public mental health services without regard to ability to pay, is property belonging to a charitable institution used for charitable or public purposes and is entitled to exemption under R.C. 5709.12 and R.C. 5709.121 (A)(1)(b).

A. Exemption of the Disputed Property serves the purpose of R.C. 5709.121 (A)(1)(b) to cover property leased by one charity from another.

The point of R.C. 5709.121 (A)(1)(b) is to exempt property that one charitable, educational or public entity leases from another to use for charitable, educational or public purposes. That is the statute's plain meaning. The opposing briefs eviscerate the law by insisting that leasing activity itself makes a lessor ineligible for any exemption.³⁷ The Tax Commissioner, relying on *Thomaston Woods*, said "commercially leased property does not meet the requirements for exemption under either R.C. 5709.12 or R.C. 5709.121[.]"³⁸ without explaining why property leased at or below cost between nonprofits, as here, is "commercially" leased. The Board adopts the conclusion, despite the fact that it is based on an unlawful and unreasonable rationale that nullifies part of the statute. This Court has been obliged to reverse before, where the Board or Tax Commissioner failed to acknowledge the import of R.C. 5709.121.³⁹

³⁷ See TC's Merit Brief at 19, 20; Brief of Amici at 7-8. Amici claim leasing "at or below cost"—i.e., under no circumstances accepting a profit—bespeaks a "responsible landlord," but choosing to lose money or break even would not be viable for any landlord in business for profit.

³⁸ *Thomaston Woods Limited Partnership v. Lawrence* (June 15, 2001, 2001 WL 672164, BTA Case No. 99-L-551, cited at S.T. 4.

³⁹ See *Galvin v. Masonic Toledo Trust* (1973), 34 Ohio St.2d 157, 296 N.E.2d 542; *Cincinnati Nature Center Ass'n v. Board of Tax Appeals* (1976), 48 Ohio St.2d 122, 124, 357 N.E.2d 381 ("Given the ruling of the Galvin case, the board's reliance on case law developed prior to the legislative definition of 'exclusive use' promulgated in R.C. 5709.121 was not proper, and its

The Institute's use of the Disputed Property⁴⁰ is solely to provide space at or below cost as an intrinsic part of Portage Path's delivery of public mental health services. Portage Path's services are provided regardless of ability to pay, under the mandate of the ADAMH board to address public mental healthcare.⁴¹ The Institute's function as a captive, nonprofit lessor leasing the Disputed Property at or below cost to its charitable affiliate is not distinguishable in any principled way from those of the affiliated, nonprofit lessors granted exemption in *Community Health Professionals, Private Duty Services* and *88/96 LP*.⁴² Similarly, new Sub.H.B. No. 160 (eff. June 20, 2008) exempts property that a charitable limited liability company leases back to its sole member, just as the older R.C. 5709.121 exempts property that one charitable corporation leases to another. The opposing briefs invoke cases decided before R.C. 5709.121 (A)(1)(b) became law, and miss the point of the law by treating leasing itself—even without any view to profit—as negating charitable character.

The application for exemption is limited to the Disputed Property, used for the public mental health work that is the purpose of the related entities, Portage Path and the Institute. It ***excludes*** any property rented to others or used in staff outplacement. The opposing briefs distort the record and ignore the split-listing requested by the Institute, to insinuate something contrary to the record here. Cases in which a charity tried to exempt property used to raise funds, apart

decision in that regard was unreasonable and unlawful.”) R.C. 5709.121 was passed in 1969, so the TC Brief's heavy reliance on earlier cases, like the 1915 *Benjamin Rose Inst. v. Myers* (1915), 92 Ohio St. 252, 110 N.E. 924 and others is improper.

⁴⁰ Comprised ***only*** of the grounds and the part of the building occupied by Portage Path, which the Institute seeks to exempt pursuant to a split-listing. (Supp. 19, S.T. 235.)

⁴¹ As testified by the former ADAMH Board director for Summit County, Supp. 81-83, Tr. 12, 16-20.

⁴² *Community Health Professionals v. Levin* (2007), 113 Ohio St.3d 432, 2007-Ohio-2336; *Private Duty Services v. Zaino*, (Aug. 31, 2007), BTA Case No. 2004-B-688, 2007 WL 2688698; *88/96 LP v. Wilkins* (July 20, 2007) BTA Case No. 2005-A-55, 2007 WL 2156133.

from its charitable work, are not on point.⁴³ Such cases might apply if the application here included premises rented to others, or the office that handles staff outplacement. But the application is for premises devoted to the core public mental health operations of the related nonprofits, from which the Institute never generates any excess of revenues over costs.

B. Failure to recognize the Institute as a charitable institution is not true to the record nor to the BTA's own findings.

The finding that the Institute is not charitable is not supported by the record. Findings of the Board are not entitled to deference when they lack reliable and probative support in the record.⁴⁴

The Board recognizes Portage Path as a charity, and as the founder of the Institute: "The record reveals that Northeast was founded by Portage Path and that Portage Path is a charitable entity."⁴⁵

There is no dispute that the Institute is completely controlled by and subservient to Portage Path—its charter and structure guarantee it.⁴⁶ It is not a vendor to various nonprofit customers like the information service in the discredited case of *OCLC Online Computer Library*

⁴³ Inapposite cites include *Joint Hospital Services v. Lindley* (1977), 52 Ohio St.2d 153, 370 N.E.2d 474 (premises of a separate laundry and linen service set up by hospitals to serve themselves and others); *Hubbard Press v. Tracy* (1993), 67 Ohio St.3d 564, 621 N.E.2d 396, (print shop set up by a division of the Presbyterian Church); *Zindorf v. Otterbein Press* (1941), 138 Ohio St. 287, 34 N.E.2d 748 (print shop run by an organ of the United Brethren Church); *Lutheran Book Shop v. Bowers* (1955), 164 Ohio St. 359, 131 N.E.2d 219 (book shop operated by Lutheran Welfare Service); *Summit United Methodist Church v. Kinney* (1983), 7 Ohio St.3d 13, 455 N.E.2d 669 (property leased to day care provider by church). In some cases, property used to generate revenues that offset costs of charitable functions *are* exempt; see *Girl Scouts-Great Trail Council v. Levin* (2007), 113 Ohio St.3d 24, 2007-Ohio-972, 862 N.E.2d 493, but this is not a case about exempting property used to generate revenues to support a charity.

⁴⁴ *Girl Scouts-Great Trail Council*, 2007-Ohio-972 at ¶ 9.

⁴⁵ Appx. 15, BTA Decision at 7.

⁴⁶ Portage Path controls the Institute. (Supp. 105, Tr. 106.) It will always be controlled by, and *could not exist without* Portage Path, because the majority of its board must be from the Portage Path board. (Supp. 89, 91, 146-47, 153, Tr. 41, 51; Ex. 3, at Art. III; Ex. 4.) Institute employees may not serve on its board. (Supp. 92, 146-47, Tr. 54; Ex. 3, Art. III.)

Center v. Kinney (1984),⁴⁷ upon which the Board and the opposing briefs rely. The Institute is not claiming “vicarious” charitable character. The record shows that it is *required* to operate for a charitable purpose and without a view to profit by its own charter and by the control exercised over its activities by Portage Path. The Board itself also found:

According to its articles of incorporation, Northeast was organized with its primary purpose “the promotion of mental health care” and was to be operated exclusively for “charitable, education or scientific purposes within the meaning of Section 501(c)(3) of the [Internal Revenue] Code.” Appellant’s Ex. 2.⁴⁸

The record presents two closely-related entities involved in public mental health. Both attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources, and without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity.⁴⁹

Both entities devote themselves to the charitable mission of providing public mental health services without regard to ability to pay, in different aspects. Portage Path provides direct services. The Institute, under Portage Path’s direction and control, provides infrastructure, and operational efficiencies. Public mental health involves:

- treating ills of a kind that have been cast as both *spiritual* and *physical* by philosophy and medicine through the ages;
- enabling mentally ill or chemically dependent people potentially to make productive use of their *intellect*;

⁴⁷ 11 Ohio St.3d 198, 464 N.E.2d 572 (legislatively overruled by R.C. 5709.72). The Board continues to rely on this questionable precedent, and undermine the intent of R.C. 5709.121 (A)(1)(b), by treating the very act of leasing as disproving a nonprofit’s eligibility for exemption, as in the cases cited by Amici at 8-9 and TC Brief at 12-13.

⁴⁸ Appx. 10, Decision at 2.

⁴⁹ *Planned Parenthood Ass’n v. Tax Comm’r* (1966), 5 Ohio St.2d 117, 214 N.E.2d. 222, syllabus paragraph one.

- addressing the *social* and *economic* issues presented by persons who may be dangerous to themselves or others, and the public needs to prevent suicide, deal with disruptive behavior, and minimize long-term psychiatric hospitalization.⁵⁰

In the process of managing operational aspects of the two entities' charitable work, the Institute incidentally may generate funds to ameliorate gaps and irregularities in public support for their mutual, charitable purpose, *although that is not its focus*. As to staff placement activities (which are *not* conducted on or from the Disputed Property) the record is clear that

- Making staff available to other agencies when they are not needed by Portage Path is neither a permanent part of the Institute's operations nor one of its objectives.⁵¹
- The gross revenues (*before expenses*) produced by staff placement are just 6-10% of the overall budget for the public mental health services that Portage Path, with the Institute's help, provides.⁵²
- Revenues from the Institute's incidental activities during the years the Board cited were *less* than expenses, or exceeded expenses by only a negligible amount.⁵³

The Institute's incidental leasing of space not currently needed by Portage Path, and its staff placement activity, are efficient stewardship, putting available resources to productive use

⁵⁰ Supp. 82-83, 93-96; Tr. 15-17, 59-69.

⁵¹ Far from being an objective of the entity or function that it was set up to perform, Mr. Kraker testified that staffing service originally did not exist, that it was merely "one of the functions" that the Institute happened to be performing currently, to deploy staff during hours when they are not needed at Portage Path. Supp. 102, Tr. 93-94.

⁵² Compare Financial Statements, Supp. 271, Ex. 17, showing operating budgets of \$10.453 million in 2003 and \$10.214 million in 2002 to Appx. 16, Decision at 8, referring to *gross* revenues from staffing of \$932,446 in 2003 and \$616,098 in 2002.

⁵³ In the years 2003 and 2002 on which the Decision focuses, the Institute's financial statements show net loss of (-\$13,413) in 2003 and net gain of \$3,254 in 2002. (Supp. 276, Ex. 18, p. 3.) See also Supp. 109, Tr. 124 (staffing services generated the cited amounts "in revenue, not in excess revenue over expense") and the relevant IRS nonprofit reporting return, Supp. 1, S.T. 157, at line 18, showing a deficit for 2003.

to lessen the cost of public mental health. Would the public (or charity) be better served if staff hired primarily to provide publicly-funded services wasted their available hours, instead of being outplaced to hospitals and other agencies? Would they be better served if surplus space were not rented to others, to lessen the expense of running Portage Path? The argument of Amici at 23-24 that these incidental activities make the Institute “commercial” ignore the record, and precedent holding that an institution’s generating some revenue is not dispositive of its claim for tax exemption.⁵⁴

All of the Institute’s activities are in furtherance of Portage Path’s work, and *none* for the purpose of profit.⁵⁵ If the Institute were not a charitable entity, it would not reduce Portage Path’s rent by any amount which would otherwise exceed its pro rata share of the costs, rent the Disputed Property to Portage Path in preference to any better-paying tenant, below cost when costs exceed the stated rent, and ultimately save charitable funds from going toward the profit margin or rate hikes of a commercial lessor.⁵⁶ It would keep any excess of revenues over costs from staffing or any other activities, instead of using them to support public mental health. *But, by virtue of its charter, structure and Section 501(c)(3) status, it cannot, and it does not.* The Institute is operated in the sole interest of public mental health, rather than a way that seeks profit. It is, therefore, charitable. This Court has already ordained that “[s]o long as an

⁵⁴ *Girl Scouts-Great Trail Council*, 2007-Ohio-972 at ¶ 17.

⁵⁵ Mr. Kraker testified that the Institute was formed by Portage Path “to serve as an insulator...for Portage Path real property and also to support mental health activities in Northeast Ohio” (Supp. 89, Tr. 41) and that it supports Portage Path by reducing its expenses in any way possible (Supp. 93, Tr. 58-59). *See also* Supp. 108, Tr. 117-19. It reduces the burden of Summit County mental health tax levies by keeping Portage Path’s costs lower. Supp. 109, Tr. 122. If revenue does exceed expense, it goes to benefit Portage Path operations. Supp. 98, Tr. 77-78.

⁵⁶ Supp. 97-98, 109, 263-68, Tr. 74-77, 122; Ex. 15

institution is operated without any view to profit and exclusively for a charitable purpose, it is a charitable institution.”⁵⁷

The Board itself recognized the Institute’s “purpose to support mental health services in the Summit County area,” calling it “an admirable undertaking.” (Appx. 17, Decision at 9.) Based on the record, the Institute fits this court’s requirements for recognition as a charity on the basis of both its purpose and of its operation (by the charity that controls it) “without hope or expectation, if not with positive abnegation, of gain or profit.” The Tax Commisisoner’s finding to the contrary, adopted by the Board, lacks any reliable or probative support in the record, and is therefore unreasonable and unlawful and should be reversed.⁵⁸

The evidence is that the *gross revenues* of the Institute’s activities either fail to meet or barely meet the costs of providing space for public mental health and defraying shortfalls. Opposing parties’ carping about the amounts of those gross revenues does not supply any reasoned basis for the Court to deny charitable status to an entity like the Institute, part of an overall structure devoted to efficient, cost-effective delivery of public mental health care. This Court has firmly established the rule that mere collection of revenues does not disqualify property from exemption.⁵⁹

The TC Brief attempts to fudge issues by citing cases on whether or not certain property had a charitable use, in support of its argument that the Institute is not a charitable institution. It relies, for example, on cases like *Otterbein Press*, which dealt with the use of property, not the

⁵⁷ *Herb Society v. Tracy* (1994), 71 Ohio St.3d 374, 376, 643 N.E.2d 1132.

⁵⁸ See *Girl Scouts-Great Trail Council*, 2007-Ohio-972 at ¶ 9.

⁵⁹ *Id.*, 2007-Ohio-972 at ¶ 17; *Bowers v. Akron City Hosp.* (1968), 16 Ohio St.2d 94, 96; 243 N.E.2d 95 (“It is the use of property rather than the fact that revenues are collected and received from property which is controlling,”) citing *Vick v. Cleveland Mem. Med. Found.*(1965), 2 Ohio St.2d 30, 206 N.E.2d 2; *Good Samaritan Hospital v. Porterfield* (1972), 29 Ohio St. 2d 25, 29; 278 N.E.2d 26.

nature of its owner. *Otterbein Press* held that *the property* where United Brethren church ran a printing business that did over 40% of its work for commercial businesses was not entitled to exemption.⁶⁰ It did not consider disqualifying the church as a charity. The continued authority of *Otterbein Press*, decided in 1941, and of other cases on which the opposing briefs rely was also limited by this Court in *Galvin*, insofar as their interpretation of “exclusive” use of property was overridden by R.C. 5709.121.⁶¹

APPELLANT’S PROPOSITION OF LAW NO. 2:

Property that is leased by a nonprofit institution whose purpose is to promote mental health, to a nonprofit public mental health clinic to offer public mental health services without regard to ability to pay, under contract with an agency of the state, is property “belonging to a charitable institution” and “made available under the direction or control of such institution, the state or political subdivision for use in furtherance of or incidental to its charitable or public purposes and not with the view to profit” and is entitled to exemption under R.C. 5709.12 and 5709.121 (A)(2).

A. The Disputed Property is made available under direction or control of a charitable institution for use in furtherance of or incidental to its charitable purposes, within the scope of exemption under R.C. 5709.121 (A)(2).

⁶⁰ 138 Ohio St. at 290, 34 N.E.2d at 750 (“It is clear from the record in the instant case that appellant’s property is not used *exclusively* for charitable purposes, but that its printing establishment is conducted in competition with other commercial printing plants.”)

⁶¹ *Galvin*, 34 Ohio St.2d at 159-60, 296 N.E.2d at 543-44 (“any prior inconsistent decisions of the courts interpreting that phrase [‘used exclusively for charitable purposes’] must yield”). *Incorp. Trustees of Gospel Worker Soc. v. Evatt*, (1942), 140 Ohio St. 185, 42 N.E.2d 900; *Lutheran Book Shop, Columbus Youth League v. County Bd. Of Revision* (1961) 172 Ohio St. 156, 174 N.E.2d 110 and *Nat’l Headquarters Disabled Am. Veterans v. Bowers* (1960), 171 Ohio St. 312, 170 N.E.2d 731 are similarly inapposite on the issue of charitable nature, and outdated pursuant to *Galvin*. *Ohio Masonic Home v. Bd. of Tax Appeals* (1977), 52 Ohio St.2d 127 (farm maintained to raise money for home for elderly) and *Hubbard Press* likewise deal with *use* of specific *property*, not defining charitable status. *Cleveland Osteopathic Hospital v. Zangerle* (1950), 153 Ohio St. 222, 91 N.E.2d 261, concerning a hospital that made a substantial annual profit, and *Lincoln Mem. Hosp. v. Warren* (1968), 13 Ohio St.2d 109, concerning a for-profit lessor to a hospital that was itself not proven to be charitable, are not on point factually nor concerned with the same issues.

The Disputed Property consists of the property that Portage Path uses to deliver public mental health services to Summit County residents without regard to their ability to pay. The Disputed Property is made available under the direction and control of the Institute (which is itself under the direction and control of Portage Path) for this charitable purpose that is shared by both. The subordinate Institute, which assists Portage Path in serving their charitable purpose, is also a charitable institution, as discussed above.

The Disputed Property here is used directly in furtherance of or incidental to the charitable purpose of public mental health care. R.C. 5709.121 broadens the definition of “charitable purposes” to include uses “in furtherance of or incidental to its charitable *** or public purposes.” The total amount of land within the Disputed Property is less than an acre and a half, containing a 5,666 square-foot office building with 38 parking spaces, used primarily for Portage Path staff and patients,⁶² and some lawn and trees that are used as a break and lunch area by mental health staff,⁶³ and to “provide for a more soothing or therapeutic environment” for the patients coming to the clinic for treatment.⁶⁴ Under *Cincinnati Nature Center* and *American Chemical Society v. Kinney*,⁶⁵ the Disputed Property deserves exemption.

The Disputed Property is entitled to exemption, first, because the Institute *is* itself charitable, as set forth above, and the Disputed Property is “is made available under the direction or control of such institution, the state, or political subdivision for use in furtherance of or

⁶² See Supp. 96, Tr. 72.

⁶³ Tr. 102

⁶⁴ Tr. 121-22

⁶⁵ *Cincinnati Nature Center v. Bd. of Tax Appeals*, (1976), 48 Ohio St. 2d 122, 357 N.E.2d 381 and *American Chemical Society v. Kinney* (1982), 69 Ohio St.2d 167, 431 N.E.2d 1007 (60-acre landscaped area of which only 15 to 20 acres were used for building and parking lots was exempted on the basis that the green space attracted employees and contributed to morale.)

incidental to its charitable *** or public purposes and not with the view to profit.”⁶⁶ While it is true that the Disputed Property belongs to the Institute, it is equally clear that the Institute is a wholly-controlled entity under the aegis of Portage Path, and thus fair to characterize the Disputed Property as indirectly owned by Portage Path, and used by it, within the purview of R.C. 5709.121 (A)(2) and *Cincinnati Nature Center*.

APPELLANT’S PROPOSITION OF LAW NO. 3:

A nonprofit entity that is restricted by its articles of incorporation to serve purposes defined by Ohio law as charitable or public purposes, and determined by the Internal Revenue Service to qualify for federal tax exemption under Section 501(c)(3), Title 26, U.S. Code, is presumably a charitable institution for purposes of R.C. 5709.121, in the absence of evidence that it has violated the requirements of its articles or of Section 501(c)(3).

AMICUS CURIAE THE OHIO COUNCIL OF BEHAVIORAL HEALTH PROVIDERS’ PROPOSITION OF LAW:

An entity granted Section 501(c)(3) status by the Internal Revenue Service shall be presumed charitable for purposes of R.C. 5709.121 unless it falls into an exception recognized by the Supreme Court of Ohio.

A. The court has jurisdiction to establish a rule of law that addresses the error of the Board in this and similar cases.

This Court formulates legal rationales in order to address assignments of error that invoke its jurisdiction. Litigants raise errors and arguments. Courts state reasoned interpretations of the law. The Court’s jurisdiction to overturn the decision below is clearly invoked by the 24 assignments of error listed in the Notice of Appeal, Appx. 1-7. By assigning as error the Board’s interpretation of R.C. 5709.12 in conjunction with R.C. 5709.121, the Institute has placed before the Court the issue of the Board’s varying rulings and sometimes circular logic in interpreting these statutes. This Court unquestionably has authority to develop interpretive tests on issues of

⁶⁶ R.C. 5709.121 (A)(2).

statutory application.⁶⁷ The Court would be well within its powers to adopt a new rule as advocated by the Institute or Amicus Curiae the Ohio Council of Behavioral Healthcare Providers.

B. A presumption would satisfy important policy objectives.

A ruling that Section 501(c)(3) organizations are generally charitable institutions makes legal and practical sense. This Court's *Planned Parenthood* definition of charity substantially parallels the definition of tax exempt entities under Section 501(c)(3), Title 26, U.S. Code. Reference to Section 501(c)(3) status recurs throughout Ohio decisions, statutes and administrative procedures pertaining to charitable status.⁶⁸ The recent House Bill 562 (signed June 24, 2008) corrects muddy Board of Tax Appeals precedent concerning nonprofit redevelopment agencies, by adding another specific reference to 501(c)(3) in new subsection (C) to R.C. 5709.121, and stating in uncodified law that the General Assembly acted not to add a new exemption, but to get the tax department back in line with legislative intent.⁶⁹

⁶⁷ See *Galvin*, 34 Ohio St.2d at 159-60, 296 N.E.2d at 544, stating, as to test for application of R.C. 5709.12 before it was clarified by the General Assembly in R.C. 5709.121, "That test was judicially developed to aid in interpretation...." Likewise, the definition of "charity" used to interpret the statutes is the judicially developed *Planned Parenthood* formula.

⁶⁸ See, e.g., *Akron Golf Charities v. Limbach* (1987), 34 Ohio St.3d 11, 13-14; 516 N.E.2d 222 (purpose restricted to serving charitable needs by federal tax exemption); R.C. 5709.12(D)(1) (establishing conclusive presumption that a 501(c)(3) entity dedicated to advancing science is charitable); 5709.12(E) (granting two-year tax exemption to real property held by a 501(c)(3) entity dedicated to constructing or rehabilitating residences for eventual transfer to qualified low-income families); DTE Form 23.

⁶⁹ The kind of Board decisions that new 5709.121 (C) addresses include *Madisonville Community Urban Redevelopment Corp. v. Tracy* (Mar. 2, 2001), BTA No. 1998-L-858, 2001 WL 224601, on which the Decision below relied, and similar cases denying exemptions to redevelopment entities cited in Brief of Amici at 12-13. These are no longer reliable precedents, since the General Assembly has specifically found them contrary to its intent, stating in uncodified Section 757.10 of H.B. 562: "The purpose of the amendment by this act of section 5709.121 of the Revised Code is to clarify the intent of the General Assembly that institutions of the kind described in the amendment are charitable institutions for the purposes of that section as

Past Board decisions, including the inconsistent results in the Decision below and in *Private Duty*,⁷⁰ present irreconcilable conflicts. No charitable institution or legal adviser to one can predict how the Board will treat charities using the same structures to deliver charitable services.⁷¹ The conflicting Board decisions cited in the briefs of the Institute and the Ohio Council reveal a lack of the consistency claimed by the Tax Commissioner and Amici.

A presumption that entities are “charitable institutions” under Ohio law if they have purposes defined by Ohio law as charitable or public, and have received an Internal Revenue Service determination that they are tax-exempt under federal law, would offer multiple benefits. It would assist those charged with enforcing compliance with tax exemption law, and free charities from tremendous uncertainty under current, conflicting precedent, about which otherwise tax-exempt nonprofits will be considered “charitable institutions.” Proof of the charitable *use* of property would of course still be necessary.

Charitable-minded people face substantial hurdles to establish, and then to maintain, a federally tax-exempt entity.⁷² The Ohio Department of Taxation specifically requires applicants

it existed before the effective date of the amendment.” Relevant portions attached in the Second Appendix, Appx.2 at A2-01 to A2-06.

⁷⁰ *Private Duty Services v. Zaino*, (Aug. 31, 2007), BTA Case No. 2004-B-688, 2007 WL 2688698.

⁷¹ Disparate treatment of the same functional relationships adds to the anomalies. Under current law, there appear to be exemptions available for property that a for-profit limited partnership leases to its general partner for charitable use as in *88/96 LP v. Wilkins* (July 20, 2007), BTA Case No. 2005-A-55, 2007 WL 2156133, and for a limited liability company renting back to its sole member for charitable use, Sub.H.B. No. 160, both structures that are functionally the same as, though technically different from, the lease here from a controlling charity to another nonprofit corporation that it controls, for a charitable use. Amici mistake the facts of *88/96 LP*, Brief of Amici at 25, which involved a “for-profit 88/96 Limited Partnership that owns the property...comprised of two partners[,]” a “non-profit entity that became a 0.1% general partner” and a for-profit limited partner. “The property is then leased to or used by [the non-profit general partner]...”

⁷² See IRS Form 1023 and IRS publication 4221, *Compliance Guide for 501(c)(3) Public Charities*

for property tax exemption to submit any Section 501(c)(3) determination letter from the IRS. *See* DTE Form 23. The presumption advocated by the Institute and the Ohio Council does not reverse any burden of proof, because any charity wishing to invoke it would need to prove its Section 501(c)(3) status, after having proven its eligibility for that status to the Internal Revenue Service.

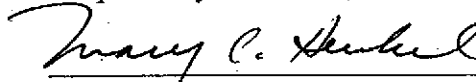
The Board has created a hodge-podge of inconsistent decisions and a daunting task for any charitable public service provider, like Portage Path and its Institute or other members of the Ohio Council.⁷³ They have a legitimate claim to exemptions to assist in their crucial work of dealing with suicidal, disruptive, chemically dependent, and other mentally ill citizens, without regard to the patients' ability to pay. Litigation costs easily become a burden on these nonprofit entities, while the State of Ohio expends further resources to litigate such cases, and to tax entities that the state and its subdivisions also collect taxes to support. Public and other charitable funds would not have to be expended in this roundabout exercise, if a clearer guideline were given by this Court. Thus, the proposed presumption would be a boon to charities, to other courts addressing these issues, and to the state itself in the form of saved compliance costs.

⁷³ *See* discussion in Institute's Merit Brief at 25-28, Amicus Brief of Ohio Council at 5-9.

CONCLUSION

For all of the foregoing reasons, this Court should modify the Decision of the Board and enter final judgment exempting 68% of the building located on the tax parcels at issue, and the parking lot and surrounding grounds.

Respectfully submitted,



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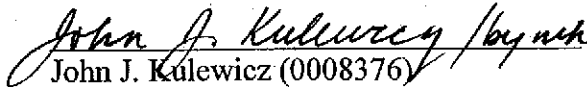
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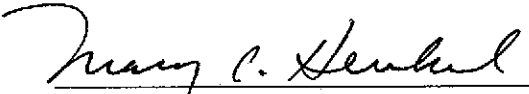
I hereby certify that a copy of this Joint Reply Brief of Appellant Northeast Ohio Psychiatric Institute and Amicus Curiae the Ohio Council of Behavioral Healthcare Providers was served by U.S. Mail, first class postage prepaid on the following counsel of record for Appellee and Amici Curiae Ohio School Boards Association, et al., on July 21, 2008:

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Buckeye Association of School Administrators*



Mary C. Henkel

CAPITAL APPROPRIATIONS (Hottinger, J.) To make capital and other appropriations and to provide authorization and conditions for the operation of state programs.

This Act had been signed by the Governor. Page numbers will not correspond with the final printed version, but the languages remain the same.

Passed : June 10, 2008

Signed by the Governor: June 24, 2008

Effective: 90 Days – Appropriations Effective Immediately

Please See Governor's Line-Item Veto Message Under Miscellaneous Documents on Bill Page

127th General Assembly

Amended Substitute House Bill Number 562

An Act

Representatives: Hottinger, Peterson, Skindell, Bacon, Bolon, Boyd, Brown, Budish, Chandler, Evans, Flowers, Garrison, Hagan, R., Hite, Jones, McGregor, R., Patton, Redfern, Schlichter, Stewart, D., Stewart, J., Strahorn, Yates, Adams, Book, Brady, Collier, Combs, Dolan, Domenick, Dyer, Gerberry, Goyal, Hagan, J., Harwood, Hughes, Koziura, Mallory, McGregor, J., Schindel, Setzer, Szollosi, Ujvagi, Webster, White, Widowfield, Beatty, Celeste, Coley, Fende, Heard, Letson, Luckie, Newcomb, Sykes, Williams, B.

Senators: Carey, Cafaro, Wilson, Kearney, Boccieri, Coughlin, Fedor, Goodman, Grendell, Harris, Morano, Mumper, Niehaus, Padgett, Roberts, Seitz, Spada, Stivers, Mason, Schaffer, Miller, D., Miller, R., Austria, Schuring

A BILL

To amend sections 9.231, 9.24, 9.835, 105.41, 109.71,	1
113.061, 113.40, 117.11, 117.13, 117.38,	2
120.08, 121.31, 122.171, 125.02, 125.021,	3
125.022, 125.04, 125.041, 125.05, 125.06,	4
125.07, 125.18, 125.25, 127.16, 133.08,	5
135.61, 135.63, 135.65, 135.66, 145.47, 149.30,	6
156.02, 165.01, 165.03, 303.12, 303.211,	7
306.43, 307.697, 317.32, 319.301, 340.02,	8
340.021, 351.26, 519.12, 519.211, 715.73,	9

subdivision.	25356
Sec. 5709.121. (A) Real property and tangible personal property belonging to a charitable or educational institution or to the state or a political subdivision, shall be considered as used exclusively for charitable or public purposes by such institution, the state, or political subdivision, if it meets one of the following requirements:	25357 25358 25359 25360 25361 25362
(1) It is used by such institution, the state, or political subdivision, or by one or more other such institutions, the state, or political subdivisions under a lease, sublease, or other contractual arrangement:	25363 25364 25365 25366
(a) As a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;	25367 25368 25369
(b) For other charitable, educational, or public purposes.	25370
(2) It is made available under the direction or control of such institution, the state, or political subdivision for use in furtherance of or incidental to its charitable, educational, or public purposes and not with the view to profit.	25371 25372 25373 25374
(3) It is used by an organization described in division (D) of section 5709.12 of the Revised Code. If the organization is a corporation that receives a grant under the Thomas Alva Edison grant program authorized by division (C) of section 122.33 of the Revised Code at any time during the tax year, "used," for the purposes of this division, includes holding property for lease or resale to others.	25375 25376 25377 25378 25379 25380 25381
(B)(1) Property described in division (A)(1)(a) of this section shall continue to be considered as used exclusively for charitable or public purposes even if the property is conveyed through one conveyance or a series of conveyances to an entity that is not a charitable or educational institution and is not the state or a political subdivision, provided that all of the	25382 25383 25384 25385 25386 25387

following conditions apply with respect to that property:	25388
(a) The property has been listed as exempt on the county auditor's tax list and duplicate for the county in which it is located for the ten tax years immediately preceding the year in which the property is conveyed through one conveyance or a series of conveyances;	25389 25390 25391 25392 25393
(b) The owner to which the property is conveyed through one conveyance or a series of conveyances leases the property through one lease or a series of leases to the entity that owned or occupied the property for the ten tax years immediately preceding the year in which the property is conveyed or an affiliate of such prior owner or occupant;	25394 25395 25396 25397 25398 25399
(c) The property includes improvements that are at least fifty years old;	25400 25401
(d) The property is being renovated in connection with a claim for historic preservation tax credits available under federal law;	25402 25403 25404
(e) The property continues to be used for the purposes described in division (A)(1)(a) of this section after its conveyance; and	25405 25406 25407
(f) The property is certified by the United States secretary of the interior as a "certified historic structure" or certified as part of a certified historic structure.	25408 25409 25410
(2) Notwithstanding section 5715.27 of the Revised Code, an application for exemption from taxation of property described in division (B)(1) of this section may be filed by either the owner of the property or its occupant.	25411 25412 25413 25414
<u>(C) For purposes of this section, an institution is a charitable institution if the institution is a nonprofit corporation or association, no part of the net earnings of which inures to the benefit of any private shareholder or individual, is</u>	25415 25416 25417 25418

exempt from federal income taxation under section 501(a) of the Internal Revenue Code, the majority of the institution's board of directors are appointed by the mayor or legislative authority of a municipal corporation or a board of county commissioners, or a combination thereof, and the primary purpose of the institution is to assist in the development and revitalization of downtown urban areas. 25419
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Sec. 5721.30. As used in sections 5721.30 to 5721.43 of the Revised Code: 25426
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(A) "Tax certificate," "certificate," or "duplicate certificate" means a document that may be issued as a physical certificate, in book-entry form, or through an electronic medium, at the discretion of the county treasurer. Such document shall contain the information required by section 5721.31 of the Revised Code and shall be prepared, transferred, or redeemed in the manner prescribed by sections 5721.30 to 5721.43 of the Revised Code. As used in those sections, "tax certificate," "certificate," and "duplicate certificate" do not refer to the delinquent land tax certificate or the delinquent vacant land tax certificate issued under section 5721.13 of the Revised Code. 25428
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(B) "Certificate parcel" means the parcel of delinquent land that is the subject of and is described in a tax certificate. 25439
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(C) "Certificate holder" means a person who purchases a tax certificate under section 5721.32, 5721.33, or 5721.42 of the Revised Code, or a person to whom a tax certificate has been transferred pursuant to section 5721.36 of the Revised Code. 25441
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(D) "Certificate purchase price" means, with respect to the sale of tax certificates under sections 5721.32, 5721.33, and 5721.42 of the Revised Code, the amount equal to delinquent taxes, assessments, penalties, and interest computed under section 323.121 of the Revised Code charged against a certificate parcel at the time the tax certificate respecting that parcel is sold, not including any delinquent taxes, assessments, penalties, interest, and charges, the lien for which has been conveyed to a 25445
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(D) Prior to the execution of the Governor's Deed, possession of the real estate described in division (A) of this section may be governed by an interim lease or license between the Ohio Department of Administrative Services and the grantee. 40555
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(E) Upon payment of the purchase price, the Auditor of State, with the assistance of the Attorney General, shall prepare a Governor's Deed to the real estate described in division (A) of this section. The Governor's Deed shall state the consideration and shall be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the office of the Auditor of State for recording, and delivered to the grantee. The grantee shall present the Governor's Deed for recording in the office of the Shelby County Recorder. 40559
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(F) The Governor's Deed shall contain a restriction that grantee shall extend the existing agreement between Dayton Public Television and the state, for Dayton Public Television's right to use the Premises and tower located thereon, described in division (A) of this section, through June 30, 2009. 40569
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(G) The risk of loss or damage to the real estate described in division (A) of this section shall remain with and is expressly assumed by the state until title passes at the time of the delivery of the Governor's Deed. 40574
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(H) The grantee shall pay the costs of the conveyance of the real estate described in division (A) of this section, including recordation costs of the Governor's Deed. 40578
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(I) This section expires one year after its effective date. 40581

Section 757.10. The purpose of the amendment by this act of section 5709.121 of the Revised Code is to clarify the intent of the General Assembly that institutions of the kind described in the amendment are charitable institutions for the purposes of that section as it existed before the effective date of the amendment. 40582
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Therefore, the amendment applies to any application for exemption, 40587
or the property that is the subject of such application, pending 40588
before the Tax Commissioner on the effective date of this act or 40589
filed thereafter. 40590

Section 803.03. Notwithstanding division (E)(5) of section 40591
5721.37 of the Revised Code, the holder of a certificate for 40592
which a notice of intent to foreclose has been filed with the 40593
county treasurer before the effective date of this section shall 40594
have ninety days from the effective date of this section to file 40595
foreclosure proceedings in a court of competent jurisdiction. 40596

Section 803.06. The amendment by this act of section 5739.02 40597
of the Revised Code, adding divisions (B)(49) and (50), applies 40598
to sales described in those divisions on or after August 1, 40599
2008. 40600

Section 803.10. That the amendment of section 5747.01 of the 40601
Revised Code by this act applies to taxable years beginning on or 40602
after January 1, 2008. 40603

Section 803.20. The amendment by this act to section 6117.012 40604
of the Revised Code applies to any proceedings, covenant, 40605
stipulation, obligation, resolution, trust agreement, indenture, 40606
loan agreement, lease agreement, agreement, act, or action, or 40607
part of it, pending on the effective date of this act. 40608

Section 803.31. Sections 4117.14 and 4117.15 of the Revised 40609
Code, as amended by this act, apply only to collective bargaining 40610
agreements and extensions and renewals of those agreements entered 40611
into on or after the effective date of those sections as amended 40612
by this act. 40613

Section 803.40. Sections 4123.26, 4123.32, 4123.37, and 40614
4123.54 of the Revised Code, as amended by this act, apply to all 40615
claims pursuant to Chapters 4121., 4123., and 4131. of the Revised 40616
Code arising on and after the effective date of those sections as 40617
amended by this act. 40618