

FACTS AND PROCEDURAL HISTORY

Grove #29 is an Indiana not-for-profit corporation that owns real and personal property in Richmond, Indiana. Its Articles of Incorporation state its purpose is:

[t]o unite men together irrespective of nation, tongue or creed, for mutual protection and improvement, to assist socially and materially by timely counsel and instructive lessons, by encouragement of business, by assistance to obtain employment when in need; to foster among its members the spirit of fraternity and good fellowship, and by a well regulated system of dues and benefits, to provide for the relief of the sick and destitute, the burial of the dead and the protection of the widows and orphans of its deceased members.

(Cert. Admin. R. at 65.) Grove #29 not only uses its property to raise funds and collect donations for charitable organizations, but also to provide meals and host private social events for the benefit of its members (i.e., dances, pool tournaments, and bingo and euchre games).

On April 29, 2002, Grove #29 filed an application for an exemption with the Wayne County Property Tax Board of Appeals (PTABOA). The PTABOA denied Grove #29's request for exemption on September 8, 2003. Grove #29 subsequently appealed to the Indiana Board. On April 16, 2004, after conducting a hearing, the Indiana Board issued a final determination denying Grove #29's request for an exemption.

On May 28, 2004, Grove #29 filed this original tax appeal. The Court heard the parties' oral arguments on February 16, 2007. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. *See College Corner, L.P. v. Dep't of Local*

Gov't Fin., 840 N.E.2d 905, 907 (Ind. Tax Ct. 2006). Consequently, the Court will reverse a final determination of the Indiana Board only if it is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1) - (5) (West 2007).

The taxpayer bears the burden of proving that it is entitled to the exemption that it seeks.¹ See *College Corner*, 840 N.E.2d at 907 (footnote added). In order to meet that burden, the taxpayer must have submitted probative evidence, during the administrative hearing, sufficient to establish that it is entitled to the exemption. See *id.* Probative evidence is evidence that “tends to prove or disprove a point in issue.” See *Inland Steel Co. v. State Bd. of Tax Comm’rs*, 739 N.E.2d 201, 211 (Ind. Tax Ct. 2000), *review denied* (citation omitted).

DISCUSSION AND ANALYSIS

In Indiana, all tangible property is subject to taxation. See IND. CODE ANN. § 6-1.1-2-1 (West 2007). Nevertheless, the Indiana Constitution provides that the

¹ In Indiana, an exemption is strictly construed against the taxpayer and in favor of the State because it releases property from the obligation of bearing its fair share of the cost of government and serves to disturb the equality and distribution of the common burden of government upon all property. See *Indianapolis Osteopathic Hosp., Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004), *review denied*.

legislature may exempt certain categories of property from taxation. See IND. CONST. art. X, § 1. Pursuant to this grant of authority, the legislature enacted Indiana Code § 6-1.1-10-23, which exempts “tangible property [] from property taxation if it is owned by a fraternal beneficiary association which is incorporated, organized, or licensed under the laws of this state.” IND. CODE ANN. § 6-1.1-10-23(a) (West 2002). Real property, owned by a fraternal beneficiary association, is exempt when “it is actually occupied and exclusively used by the association in carrying out the purpose for which it was incorporated, organized, or licensed.” A.I.C. § 6-1.1-10-23(b).

The Indiana Court of Appeals has previously explained that “[t]he term ‘fraternal beneficiary association’ [] has a very limited and definitive meaning.” *State Bd. of Tax Comm’rs v. Fort Wayne Sport Club, Inc.*, 258 N.E.2d 874, 880 (Ind. Ct. App. 1970).

Specifically, a fraternal beneficiary association is:

- 1) any incorporated society, order, or supreme lodge without capital stock, whether incorporated or not,
- 2) [that is] conducted solely for the benefit of its members and their beneficiaries, and [is]
- 3) not-for-profit,
- 4) operated on a lodge system with [a] ritualistic form of work,
- 5) having a representative form of government, and
- 6) that provides benefits in accordance with [Indiana Code § 27-11].

See IND. CODE ANN. § 27-11-1-1 (West 2002).² See also *Fort Wayne Sport Club*, 258 N.E.2d at 880 (applying the previous version of Indiana Code § 27-11-1-1 to define a fraternal beneficiary association).

In its final determination, the Indiana Board held, among other things, that Grove #29 failed to establish that it had a representative form of government. (See Cert. Admin. R. at 25.) In so holding, the Indiana Board relied on Indiana Code § 27-11-2-2 which states a fraternal beneficiary association has a representative form of government when its “officers . . . are elected either by the supreme governing body or by the board of directors [and o]nly benefit members are eligible for election to the supreme governing body, the board of directors, or any intermediate assembly.” See IND. CODE ANN. § 27-11-2-2(2), (3) (West 2002). The Indiana Board found that Grove #29’s bylaws indicated that local members, as opposed to its supreme governing body or its board of directors, elected its officers and that officer positions were not limited to benefit members. (See Cert. Admin. R. at 25.) As a result, the Indiana Board held Grove #29 did not establish that it had a representative form of government.

On appeal, Grove #29 asserts that the Indiana Board erred in concluding that it did not have a representative form of government. (See Pet. For Judicial Review (hereinafter, Pet.) at 4.) Grove #29 maintains that although its local members elect its local officers, it has a representative form of government because “the General Assembly could not have intended to disqualify a fraternal organization because its local

² Title 27 of the Indiana Code regulates entities that are engaged in the business of insurance. See generally IND. CODE ANN. § 27-1-1-1 *et seq.* (West 2002). See also *Bauer v. Samson Lodge, No. 32, K. of P.*, 1 N.E. 571, 574-75 (Ind. 1885) (recognizing that fraternal beneficiary associations are entities with features similar to both insurance companies and benevolent organizations (i.e., charities)).

officers are directly elected by the local members.” (See Pet. at 4.) Furthermore, Grove #29 claims that during the administrative hearing it provided evidence, through “its representative, [Mr.] James. R. Ross, [which indicated] that social members could not hold a position as an officer.” (See Pet. at 4 (emphasis in original).) In other words, Grove #29 claims that only its benefit members were eligible for election to the supreme governing body, the board of directors, or intermediate assemblies.³

With respect to Grove #29’s assertion regarding the intent of the General Assembly, Indiana Code § 27-11-2-2(2) is not ambiguous: it clearly states that a fraternal beneficiary association has a representative form of government when either the supreme governing body or the board of directors elects its officers. See A.I.C. § 27-11-2-2(2). Grove #29 has conceded that its local members elect its officers; therefore, it has not shown that it has a representative form of government as defined by Indiana Code § 27-11-2-2(2). See *Indianapolis Historic Partners v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1224, 1227 (Ind. Tax Ct. 1998) (stating that “[a] clear and unambiguous statute must be read to mean what it plainly expresses, and its plain and obvious meaning may not be enlarged or restricted”) (internal quotation and citation omitted).

As to Grove #29’s claim that it presented evidence showing that social members could not hold officer positions, the Court could not locate the evidence in the administrative record and Grove #29 failed to direct the Court to its location. (See Pet. at 4.) Furthermore, Grove #29’s bylaws do not clearly indicate whether social members

³ Benefit members are eligible to receive benefits designated under a benefit contract; social members, however, are not eligible to receive benefits. See IND. CODE ANN. § 27-11-1-3, -4 (West 2002) (defining benefit member).

are eligible for officer positions. (See Cert. Admin. R. at 75-77.) Therefore, Grove #29 has not shown that it has a representative form of government as defined by Indiana Code § 27-11-2-2(3). Consequently, Grove #29 has not established that it is a fraternal beneficiary association. As such, Grove #29's property does not qualify for the fraternal beneficiary association exemption provided in Indiana Code § 6-1.1-10-23.⁴

CONCLUSION

For the above stated reasons, the final determination of the Indiana Board is AFFIRMED.

⁴ Grove #29 also asserts that the Indiana Board's final determination is erroneous for two other reasons. First, it claims that pursuant to Indiana Code § 27-11-9-4 it was not required to show that it meets each of the six statutory requirements in Indiana Code § 27-11-1-1. (See Pet'r Br. at 2-3; Oral Argument Tr. at 4-9.) Second, Grove #29 asserts that its property qualifies for a charitable purposes exemption as provided in Indiana Code § 6-1.1-10-16. See IND. CODE ANN. § 6-1.1-10-16(a) (West 2002) (amended 2003). (See also Pet'r Br. at 4-6; Oral Argument Tr. at 9-10.) The Court, however, disagrees.

First, Indiana Code § 27-11-9-4 exempts certain entities from being regulated under Indiana's insurance laws; it does not exempt an entity from demonstrating that it is a fraternal beneficiary association for purposes of Indiana Code § 6-1.1-10-23. See *Brotherhood's Relief and Comp. Fund v. Smith*, 277 N.E.2d 180, 184 (Ind. Ct. App. 1971) (holding that an organization was not entitled to an award of attorney's fees, which were provided under Indiana's insurance laws, because it was exempt from Indiana's insurance laws pursuant to Indiana Code § 27-11-9-4(a)(2) (previously IND. CODE ANN. § 27-1-14-27 (West 1971)). See also *Dep't of Ins. of Ind. v. Noblesville Brother-Sisterhood*, 72 N.E.2d 240, 243-44 (Ind. Ct. App. 1947) (holding that an organization was subject to Indiana's insurance laws because it did not qualify for an exemption under the previous version of Indiana Code § 27-11-9-4). Therefore, the exemption provided in Indiana Code § 27-11-9-4 has no bearing on whether Grove #29's property qualifies for the fraternal beneficiary association exemption provided under Indiana Code § 6-1.1-10-23.

Second, during the administrative hearing, Grove #29 unequivocally abandoned its claim for a charitable purposes exemption. (See Cert. Admin. R. at 116, 144-47 (stating that its accountants erroneously applied for the charitable purposes exemption).) Consequently, the Indiana Board did not render a final determination as to that issue and, therefore, the Court will not entertain Grove #29's attempt to raise this issue on appeal. See IND. CODE ANN. § 33-26-6-3 (West 2002) (stating that "[j]udicial review is limited to only those issues raised before the [Indiana Board], or otherwise described by the [Indiana Board], in its final determination.")