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# Ada County Bd. of Equal. v. J.R. Simplot Appellant's Brief Dckt. 44898

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

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ADA COUNTY BOARD OF  
EQUALIZATION,

Petitioner-Respondent,

vs.

J.R. SIMPLOT FOUNDATION, INC.,

Respondent-Appellant.

Supreme Court Docket No. 44898-2017  
Ada County No. CVOC-2016-09520

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**APPELLANT'S BRIEF**

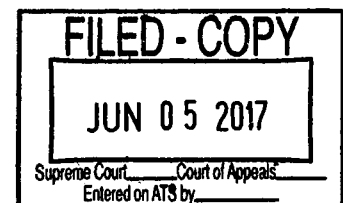
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Appeal from the District Court of the Fourth  
Judicial District for the County of Ada

Honorable Richard D. Greenwood, District Judge, Presiding

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## **STATEMENT OF THE CASE**

### **A. Nature of the Case**

This case arises from the District Court ruling that, as a matter of law, the charitable property exemption from ad valorem taxation under I.C. § 63-602C did not apply to the subject property during construction of the charitable public building known as Jack's Urban Meeting Place ("JUMP") by the Appellant, J.R. Simplot Foundation, Inc. ("Simplot Foundation"). The District Court's ruling reversed that of the Idaho Board of Tax Appeals, which, after a contested two-day trial, determined that the JUMP property was entitled to charitable exemption during construction based upon the facts shown at trial.

This appeal addresses the following points:

1. The District Court should have adopted the majority rule that the construction of a charitable use building is tax exempt during its construction, especially if it is a single-purpose structure designed solely for public use such as JUMP.
2. In any event, the District Court erred by concluding that, as a matter of law, a charitable building cannot be used for any charitable use during its construction.
3. The District Court should have held a trial in order to receive and weigh the evidence as to the actual uses of JUMP during construction in order to make a factual determination as to whether an exemption is justified under I.C. § 63-602C.

This is a case of first impression for the Idaho Supreme Court.

### **B. Relevant Procedural History**

The Simplot Foundation applied to Ada County for a charitable property exemption from tax year 2015 ad valorem taxation under I.C. § 63-602C for its 2.471 acre parcel of property located in downtown Boise upon which it was constructing JUMP.

The Ada County Board of Equalization denied Simplot Foundation's claim for a tax

exemption during the period of construction.

Simplot Foundation appealed the denial to the Idaho Board of Tax Appeals. Following a two-day trial, the Board of Tax Appeals issued its Final Decision And Order on April 8, 2016, ruling that the JUMP Property was entitled to a property tax exemption because of the charitable activities that were occurring at JUMP during its construction.

The Ada County Board of Equalization then appealed the decision of the Idaho Board of Tax Appeals to the District Court. Both Ada County and the District Court agreed that the Jump Property complied with all of the requirements for an exemption under I.C. § 63-602C except for the “use” requirement. R. p. 932. The parties filed their respective motions for summary judgment which resulted in the District Court issuing its Memorandum Decision and later Judgment on February 23, 2017, reversing the decision of the Idaho Board of Tax Appeals and denying the Simplot Foundation its 2015 charitable property tax exemption for JUMP under I.C. § 63-602C.

This appeal followed.

## **C. Statement of Facts**

### **1. JUMP’s Unique Charitable History and Mission**

JUMP is the largest and most diverse and complex public structure built with private foundation funds in Idaho history.

In order to understand the charitable and non-profit activities at JUMP during 2014 and 2015 when the structure was under construction, it is necessary to appreciate the unique mission and functions of JUMP in the community as a public park, museum, and community center.<sup>1</sup> For many years, Simplot family has been conceptualizing and planning an agricultural museum and innovation

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<sup>1</sup> Community centers have a long tradition in the United States as meeting places for local service clubs, volunteer societies, grange halls, religious events, celebrations, political meetings, and youth meetings.



center that would enable both future generations and the present community to both appreciate their agricultural-based heritage and encourage creativity and risk taking in their lives. JUMP is the result of those long efforts.

As related in the affidavit of J.R. Simplot's son, Scott Simplot, Mr. Simplot originally created the Simplot Foundation to pursue these charitable pursuits back in 1953. Mr. Simplot was born at the turn of the century and therefore lived through the agricultural revolution, which was created by the steam and gasoline tractor replacing horses as the main source of agricultural productivity. He witnessed how the innovative tractor sent shock waves throughout the American economy changing established production relationships and upending old ways of doing business. The replacement of horses with tractors resulted in much larger farms, new crop patterns, reorganization of farm work, and greatly accelerated urbanization due to the exodus of rural working families from the farm to the cities – greatly reducing the number of small family farms. R. p. 630.

J.R. Simplot left home when he was 14 years of age and, in time, became a pioneer of this revolution occurring in American agriculture, as he established the international agribusiness, J.R. Simplot Company.

Recognizing the tractor as a key instrument in his great success, Mr. Simplot wanted to create a museum that would show future generations what pre-industrial farming was like and how the tractor was one of the most important technological innovations that occurred in America at the beginning of the twentieth century. He originally wanted to create a "living farm" with vintage tractors and farm implements being used as originally intended to stimulate creativity and entrepreneurship in the younger generation. Attached as Exhibits "G" and "H" to the Affidavit of Scott Simplot are the initial concepts for such a museum and vintage farm to be located near what

was then the Swiss Village Cheese factory outside of Nampa. R. p. 728 and R. p. 752.

As J.R. Simplot acquired more vintage tractors and farm implements for his living farm, he began to realize that such a facility must have a major interactive dimension. Thus, in June of 2000 he commissioned a study for a larger and more complex Simplot American Museum of Agriculture which would have public participation venues in it, not only to educate the public about past agricultural life, but to also promote interactive agricultural knowledge and understanding by the increasingly urban public. The proposed site was located on approximately 120 acres off Eisenman Road in Boise, Idaho near the Micron plant. A true and accurate copy of this museum concept is illustrated in Exhibit "C" to the Affidavit of Scott Simplot and the proposed public participation programs for the use of the museum are attached as Exhibit "D" to the Affidavit of Scott Simplot. *See* R. p. 641 and R. p. 643, respectively.

J.R. Simplot's desire for public participation in the museum continued to evolve. In 2004, the Simplot Foundation explored building a major non-profit facility in downtown Boise that would be part of a partnership with another local non-profit entity that involves highly interactive exhibits known as the Discovery Center of Idaho, Inc. The Discovery Center of Idaho creates these highly interactive scientific exhibits for youth and adults to learn various principles of science and physics. Mr. Simplot desired to promote agricultural understanding and appreciation of the history of innovation in farming which, if combined with the Discovery Center exhibits, would also help revitalize downtown Boise with a world-class open public facility. Attached as Exhibit "E" to the Affidavit of Scott Simplot is a copy of the feasibility study and building program plan for their partnership. *See* R. p. 678. Exhibit "F" of the Affidavit of Scott Simplot illustrates the triangular parcel of property that would house the new Simplot Foundation structure and contain vintage

tractors, farm implements, agricultural education exhibits, and the interactive scientific exhibits of the Discovery Center of Idaho. *See* R. p. 726.

Eventually the overwhelming scale of creating scientific and agricultural exhibits that must be periodically dismantled and replaced with new exhibits convinced both the Discovery Center of Idaho and the Simplot Foundation that such a facility on the scale as proposed was too large and complicated to operate. As a result, the Discovery Center project was abandoned by mutual agreement of the parties.

Nevertheless, Mr. Simplot's dream of a highly interactive and educational facility combined with public meeting areas for non-profit entities remained intact. To that end, he visited the Henry Ford Museum in Dearborn, Michigan which was highly influential to him because of its extensive collection of antique farm equipment as well as other collections of interest. Sadly, J.R. Simplot passed away in 2008 at the age of 99, before he could see his dream come to fruition. Following his passing, Mr. Simplot's children and the Simplot Foundation picked up the torch. In 2009 and 2010, Scott Simplot and his wife, Maggie Soderberg, and others toured numerous other mission-orientated, interactive museums and facilities. They visited such diverse but highly popular facilities as the interactive City Museum in St. Louis, Missouri and the EMP Museum in Seattle. This, coupled with their discussions with numerous museum curators reinforced their conviction that a museum of tractors and other agricultural implements alone could not be successful enough because of the public's desire for more active and dynamic exhibitions and for open public space to be available for local non-profit entities to use for their varied events. *See* Affidavit of Scott Simplot and Affidavit of Maggie Soderberg, R. p. 632 and R. p. 372, respectively.

Finally, after many years of planning, all of these concepts coalesced into the creation of

Jack's Urban Meeting Place or JUMP. Attached as Exhibit "G" to the Affidavit of Scott Simplot is the JUMP vision statement which expresses the dynamic and interactive mission of JUMP. R. p. 728.

Maggie Soderberg poignantly described JUMP's purpose at the two-day trial before the Idaho Board of Tax Appeals in the following terms:

- A. That's how we created what we're doing, because we asked everyone what would you use this for [Prior and During Construction]. And so a lot of what we did was created by, you know, community kitchen for teaching healthy cooking classes or international dinners of whatever. But yeah, we've had constant -- we -- it's kind of like -- for someone like me who's never done this before, it was the one way that I could wrap my arms around what the needs were in the community.
- Q. And did you communicate to these nonprofits in 2014 that there would be reduced rates for the use of the building?
- A. Yes, we did.
- Q. Okay. And maybe the -- kind of the ending question would be, why would you work with the foundation to spend these many tens and tens of millions of dollars in constructing this building that's going to lose money forever?
- A. Oh, because I believe in what we're doing. I mean, it's not about the building. It's about the mission. And, yeah, it's a beautiful building. But, you know, I feel like everyone in life at times, whether it's when you're a kid or when they grow up or when they get older, has that thing about trying to figure out, you know, why am I here and what am I supposed to do in life, and I think JUMP gives people that opportunity to experiment to try things, to meet people, to expand their backgrounds, their horizons, and I think it's just -- I don't know. I just think that it's, you know, just one of those things in life that's so important to all of us. At least it's important to me, so -- and a lot of people that I talk to.

R. p. 818.

It is also noteworthy that starting on page 23 of this JUMP document (R. p. 749) is a Customer Audit that was performed of other non-profits in the Ada County area showing a great need for meeting areas for the public and non-profits. It became very clear to the Simplot

Foundation that the non-profit community in Idaho very much needed substantially more community space of varying room sizes for the multiplicity of non-profit, charity, governmental, and other socially beneficial uses that would meet the evolving and expanding needs and demands of the community.

The Simplot Foundation retained a renowned architect to design the JUMP facility in downtown Boise and contracted with the general contractor who built the Seattle EMP Museum to construct JUMP. After a series of modifications to the building design required by Boise City to make the exterior less flamboyant, JUMP was approved. Construction commenced on the facility in 2012 and was completed in December 2015. JUMP's completion was celebrated with its grand opening gala on December 4 and 5, 2015, and open house events on December 13, 20, and 27 which were attended by thousands. R. P. 619.

## **2. Unique Single-Purpose Nature of the JUMP Building as Related to its Charitable Mission**

Physically, the JUMP property is a 2.471 acre parcel located in downtown Boise improved with a six-story, multi-use structure which includes a three-story parking garage and outdoor public space, and which contains interior usable spaces totaling approximately 66,000 square feet. To assist the Court in understanding the JUMP facility, attached as Exhibit "C" to the Affidavit of Mark H. Bowen is a true and accurate copy of an aerial photograph showing the JUMP building during its construction as well as attached depictions showing the various floors and improvements at JUMP then under construction in 2015. R. p. 594.

Importantly, the JUMP structure is designed to be a single-purpose or special-purpose building, meaning it is designed solely as a museum-community center and for no other purpose. Its layout and construction is so unique and purposeful that it cannot be converted into an office

building or a retail space as is confirmed by two independent MAI appraisals of the property. *See* Affidavit of Mark W. Richey, MAI of Idaho Land and Appraisal, LLC, and the appraisal from Advanced Valuations and Consulting. R. p. 459 and R. p. 396, respectively.

As the Idaho Statesman noted in its editorial on JUMP's opening in December of 2015, the facility contains the most public space of any building constructed this century in Boise, or for that matter Idaho. A true and accurate copy of the editorial is attached as Exhibit "D" to the Affidavit of Mark H. Bowen. R. p. 598.

The following is a brief description of each floor of the JUMP building which emphasizes its single-purpose nature:

1. The outside urban park area of JUMP open to the public contains the meeting area known as Celebration Circle; the Pioneer Path connecting JUMP with the greenbelt into Boise; the event lawn for the public to use for frisbee play, picnics and any other type of park-type entertainment; an outdoor amphitheater seating 600 persons open to the public; the Mister that sprays mist; the Climber which is a large climbing pyramid for "children of all ages;" a blue top area for athletics and basketball; large tractor exhibits in the open-air Pioneer Plaza for public gatherings; unrestricted outside seating for up to 200 public visitors who may happen to be walking through the area, and a water fountain.

Once you pass into the interior lobby area of JUMP open to the public, there is the "Share Kitchen" which is an industrial kitchen which can be used for groups to have parties, cooking, classes, and other culinary events. Large glass doors open out of the "Share Kitchen" to the outdoor Pioneer Plaza for larger culinary events. The first floor also contains a large public area for impromptu meetings with free Wi-Fi where anyone from the public can linger in the facility and relax. Volunteer "greeting ambassadors" have a desk on the first floor to greet the public who enter JUMP as well as to assemble for tractor and JUMP building tours open to the public for free.

2. The second floor of JUMP contains the administrative office for the staff and volunteers and additional conference rooms for use by the public if necessary.
3. The popular third floor contains the garden terrace area which is an extension of the large urban park outside which allows the public to have outdoor picnic events and observe the city from a high vantage point without charge.

4. The fourth floor contains the “Inspire Studio” for large exhibits, meetings, etc. The fourth floor also has the “Play Studio” which is a multi-media studio with state-of-the-art video and film equipment for use by the public in order to make films and recordings.
5. The fifth floor has multiple vintage tractor exhibits. In all, the facility has approximately 52 large vintage tractors with displays illustrating the history of each particular tractor and the importance of it to American agriculture history.

The fifth floor “Move Studio” has a well-designed area for dance, yoga, exercise, parties, and a large video screen. The “JUMP Room” is also located on this floor for various public events, dancing and other charitable activities. “The Deck” is a highly popular outdoor barbeque and kitchen area which also contains the “Slide Zone” where there is a large competition slide and a five-story exterior spiral slide from the top of the building down to the ground floor.
6. The sixth floor contains the crown of the building, which is the “Pioneer Room” that contains spectacular view of Boise and is available for large meetings of up to 400 to 600 occupants.
7. The attached three-story unique parking garage also contains outdoor tractor display areas which are open to the public for free. The floors in the parking garage were intentionally designed to be flat in order to allow for outside covered car shows, farmer’s markets, trunk-or-treat events and similar types of public events.

JUMP contains five themed rooms with various state-of-the-art pieces of equipment for the public to use as well as meeting areas for regular classes for the public of an educational and self-improvement nature. No rent is charged for the use of the themed rooms but subsidized rent is charged for the meeting rooms. JUMP responds to the non-profit community’s desire for highly affordable open space for the public to have various non-profit events which previously had been lacking in the community.

It must be emphasized that JUMP has no financial barriers to non-profit use. Most of the area of JUMP is open to the public for free during its operating hours, but there is a charge for renting the rooms depending upon if one is a non-profit or not. As is reflected in the Affidavit of

Doug Zandersmith of the Simplot Foundation, the rental rate for the meeting rooms that are rented are at a rate that is significantly less than the actual cost of operation. R. p. 319. Non-profits enjoy a 25% reduction in the already below-cost, modest room charges and if a non-profit cannot afford the fee then it can be rented for free or for a nominal charge. The military rate is 15% of the published rate. In other words, regardless of the rental rate, all of the rent is substantially subsidized and operates as a loss causing the Simplot Foundation to subsidize the operations of JUMP. It should also be emphasized that none of the members of the Board of Directors of the Simplot Foundation are compensated and none of the Simplot family members who spend substantial time managing JUMP receive any compensation for their services.

The non-profit nature of JUMP is shown by the fact that the facility will operate at a very significant annual net loss as is confirmed by Doug Zandersmith in his affidavit as the CPA and accountant for the Foundation. As he states in his affidavit, it is anticipated that the annual Foundation contributions will be in excess of \$900,000.00 per year. *See* Exhibit "H" attached to the Affidavit of Doug Zandersmith. R. p. 319.

In order to have overwhelming acceptance of JUMP by the non-profits and the public in order for them to use JUMP for its intended purpose, an extensive advertising campaign was initiated during construction as shown in Exhibit "E" to the Affidavit of Mark H. Bowen. This campaign proved to be a great success and has resulted in extensive use by Idaho's non-profits. R. p. 602.

Because JUMP is a sophisticated, large community center focused primarily on non-profits, it was essential that JUMP begin involving the non-profit community in participating in the JUMP concept early on. Attached as Exhibit "F" to the Affidavit of Mark H. Bowen is one example of the



2013 JUMP drive to get the non-profits and other public charities in Idaho invested in the JUMP community space. R. p. 614. This was an essential component in making JUMP a success. When it had its grand opening events in December, 2015, it was attended by over 15,000 members of the public. The press reported the crowd as “huge.” R. p. 619.

### **3. Actual Charitable Uses During Construction**

JUMP was actually being used for a host of public uses directly relating to the charitable mission of JUMP even during its construction. As the Idaho Board of Tax Appeals ruled in its previously cited Decision, a property can be used for charitable purposes during its construction as occurred with JUMP. *See* quote from the decision appearing on page 29 of this brief. Also, R. p. 355.

The Affidavits of Maggie Soderberg, Project Director of JUMP; Mark Bowen, Project Manager for JUMP; and Scott Simplot, Vice President of the Simplot Foundation,<sup>2</sup> each describe the extensive charitable activities that occurred on the property during 2014 and 2015 while JUMP was under construction. R. p. 371 and p. 629.

As confirmed in these affidavits, the Simplot Foundation had adopted the philosophy of making JUMP an experimental educational project for Boise State University during its actual construction phase because of its world class unique structure and also because of the need to actively reach out to Idaho’s non-profit entities to get them committed to using JUMP for their non-profit activities. R. p. 359.

As of the tax assessment date of January 1, 2015, the JUMP project was approximately 70% complete. R. p. 932. Throughout 2014 and 2015 the Simplot Foundation was making active

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<sup>2</sup> These affidavits were filed by Simplot Foundation with and in support of its motion for summary judgment.

charitable use of the project during this construction phase as follows:

1. 2014 BSU Educational Involvement.

The JUMP project would ultimately take a substantial time to complete. A renowned architect and highly experienced construction firm was retained to design and build this project specifically created for the single purpose of being a non-profit community center. Accordingly, the Simplot Foundation determined to use the actual construction process as part of an ongoing educational process for the Construction Engineering Management Program at Boise State University. As a result, during 2014 as well as 2015, Boise State University used JUMP for case studies for their various classes which involved on-site inspections and instruction. The students then used the actual construction process of JUMP as part of their own educational process for which they received grades and college credits.

Additionally, in October, 2014, JUMP's general contractor gave approximately five detailed site tours and presentations on the unique construction process to the Boise State Construction Engineering Management Program with professors and numerous students. This was done because of the unique materials and design of the structure.

The general contractor also used JUMP as a basis for coaching a Boise State ASC (Associated Schools of Construction) Reno team.

Moreover, the contractor employed Boise State students as student interns on the JUMP project.

2. 2014 Charitable and Educational Activities.

In addition to the educational role of JUMP during construction, the Simplot Foundation determined that it was critical for the community to be engaged in the construction phase of the JUMP project as they would be the future users of the facility. As a result, an aggressive outreach program was implemented by the Simplot Foundation during 2014 and 2015 to have all of the potential non-profit users of the facility participate in tours and presentations of the facility as well as to receive feedback and input from them as to the type of management policies and uses that could be made of JUMP once it became fully functional. In 2014 for example, the following tours and activities took place at JUMP during construction:

Community Tours:

- a. 9/10/2014: Presentation and tour for Boise City leadership with

25 attendees.

- b. 9/19/2014: Community Open House and Tour with 30 attendees.
- c. 9/26/2014: Presentation and tour for Boise City Parks and Recreation Department with 20 attendees.
- d. 9/26/2014: Presentation and tour for Office Equipment Co. with 5 attendees.
- e. 10/17/2014: Open House and Tour with 30 attendees.
- f. 11/3/2014: Simplot Sustainability Tour with 30 attendees.
- g. 11/21/2014: Community Open House and Tour for the general public with 30 attendees.
- h. 12/12/2014: Community Open House and Tour for the general public with 30 attendees.
- i. 1/1/2014: Community Open House and Tour for the general public with 30 attendees.
- j. 12/1/2014: Tour for Sprague Solutions with 2 attendees.
- k. 3/5/2014: Presentation and tour for the University of Idaho architect students with 30 attendees.
- l. 3/7/2014: Community Open House and Tour for the general public with 30 attendees.
- m. 4/25/2014: Community Open House and Tour for the general public with 30 attendees.
- n. 5/15/2014: Presentation and tour for Riverstone International School students with 25 attendees.
- o. 5/8/2014: Presentation and tour for the US Green Building Council with 30 attendees.
- p. 5/30/2014: Community Open House and tour for the general public with 30 attendees.
- q. 7/11/2014: Community Open House and tour for the general public with 30 attendees.
- r. 7/16/2014: Presentation and tour for Boise Convention and Visitor's Bureau with 8 attendees.
- s. 8/29/2014: Community Open House and tour for the general public with 30 attendees.
- t. 5/14/2014: General public tour - Hollis Sein with 15 attendees.
- u. 5/16/2014: General public tour with 10 attendees.

Community Presentations:

- a. 10/15/2014: OSHER Institute for Lifelong Learning presentation, with 230 attendees.
- b. 11/6/2014: City Club presentation, with 250 attendees.
- c. 11/19/2014: Boise Chamber of Commerce Non-Profit Committee presentation, with 35 attendees.
- d. 9/8/2014: Simplot group presentation, with 30 attendees.
- e. 10/8/2014: HUB Insurance Group presentation, with 5 attendees.
- f. 10/22/2014: Boise City IT Department presentation, with 5 attendees.
- g. Boise Centre on the Grove presentation with 50 attendees.
- h. 12/4/2014: Simplot Grower's Solutions presentation, with 40 attendees.
- i. 1/1/2014: AIA Meeting with 50 attendees.
- j. 2/12/2014: Simplot Agribusiness presentation with 30 attendees.
- k. 2/25/2014: Chamber Small Business Advisory Committee presentation, with 50 attendees.
- l. 4/2/2014: Topping Out Celebration for subcontractors and workers, with 270 attendees.
- m. 4/22/2014: Idaho AGC presentation, with 50 attendees.
- n. 6/25/2014: Simplot Agribusiness presentation, with 50 attendees.

Community Outreach/Public Relations/Media:

- a. 9/25/2015: Interview and tour with KTVB Channel 7 and the Idaho Business Review.
- b. 10/22/2014: Interview with the Idaho Statesman.
- c. 4/29/2014: Presentation and tour to the Idaho Business Review, Anne Wallace Allen.
- d. On-site interview with KTVB Channel 7.
- e. 6/16/2014: Tractor Press Release to share story about tractor collection move to JUMP.
- f. Interview with KTVB Channel 7.

- g. Interview and tour with KBOI.

Community Engagement Meetings with local non-profit organizations/entrepreneurs/educational institutions/business organizations:

- a. 10/21/2014: Idaho Watercolor Society meeting, with 3 attendees.
- b. 10/24/2014: Raino Zoeller – Entrepreneur group, with 3 attendees.
- c. 1/28/2014: Downtown Boise Association meeting, with 3 attendees.
- d. 4/21/2014: Boise Convention and Visitor's Bureau meeting, with 2 attendees.
- e. 4/22/2014: Jim Everett and team from the YMCA meeting, with 3 attendees.
- f. 4/28/2014: Pat Rice and team from the Boise Centre on the Grove meeting, with 2 attendees.
- g. 1/30/2014: The Trey McEntire Project meeting, with 3 attendees.
- h. 10/29/2014: Candace Pate with the Sun Valley Film Festival meeting, with 2 attendees.
- i. 9/12/2014: Idaho Department of Labor meeting, with 3 attendees.
- j. 12/4/2014: Boise State University Engineer Department and Library meeting with Amy Moll, with 4 attendees.
- k. 11/12/2014: Mary with Boise State University Business School meeting.
- l. 10/14/2014: Boise Symphony Director and Mary Abercrombie meeting, with 2 attendees.
- m. 10/15/2014: Idaho Youth Ranch meeting, with 3 attendees.
- n. 7/31/2014: Jamie McMillan with the Albertson's Foundation meeting.
- o. 2/7/2014: Paul Schoenfelder with the Boise Parks and Recreation Community Center meeting.
- p. 12/2/2014: Sally Uberagua – (proposed) Idaho Sports Complex meeting.
- q. 1/9/2014: Treasure Valley Institute for Children's Arts meeting with Jon Swarthout.
- r. Boise State University STEM Project.
- s. Boise HIVE
- t. 9/18/2014: Hendbest meeting.
- u. 10/2/2014: Boss Coffee, with 2 attendees.
- v. Boise State University Education Department meeting with

Petros Panaou and Greg Demke.

Onsite Pilot Testing:

- a. 10/10/2014: Dance class led by local belly dance instructor, Kay Anderson.
- b. Exhibit testing in annex with approximately 75 individuals from contractors, city employees, students, downtown residents, and others who were invited to help test JUMP prototype exhibits. The exhibit testing was held from July of 2014 through December of 2014.
- c. 9/17/2014: Construction lunch for contractors.
- d. 11/20/2014: Participated in Foothills School city planning project.

Additionally, because the seeds of JUMP arose out of the desire of Mr. Simplot to have antique tractors and farm implements displayed and highlighted in an active educational surrounding, the first antique tractors and steam engines were hoisted onto the site in July of 2014, with at least 26 tractors displayed to the public for free and to commuters. Free guided public tours were given during 2014 and 2015 of the tractor displays. These tractors are now fully embedded in the JUMP project with sophisticated signage telling the role of the tractors as part of the American agricultural revolution. *See*, for example, Exhibit "B" to the Affidavit of Mark H. Bowen. R. p. 537.

3. 2015 Charitable and Educational Activities.

In addition to partnering with Boise State University and having construction classes held at JUMP, the Simplot Foundation also engaged the marketing department of the University of Idaho to assist in the composition of the marketing, mission statement, and other non-profit objectives of JUMP, resulting in highly valuable and important written materials now being used by JUMP to reach out to the public and the non-profit community. This resulted in educational and community engagement by JUMP during the 2015 construction period included but was not limited to the following:

- a. 1/12/2015: Tour with John May of Idaho Outfitters and Guides Association.
- b. 1/13/2015: Meeting with Helene Peterson of Boise Contemporary Theater.
- c. 1/13/2015: Tour with Joyce.
- d. 1/21/2015: Tour with University of Idaho architect students.
- e. 1/22/2015: Media meeting on site with Teya from the Idaho Business Review.
- f. 1/22/2015: Meeting with Leslie from the Idaho Youth Ranch.

- g. 2/5/2015: Tour with insurance representatives.
- h. 2/25/2015: Media meeting with Boise State University student regarding student paper.
- i. 2/27/2015: Community Open House and tour.
- j. 5/26/2015: Tour with Onward Shay marathon reps to discuss marathon at JUMP in the fall of 2016.
- k. 6/24/2015: Tour with Visitors and Convention Bureau director.
- l. 6/30/2015: Tour with FM local marketing agency representatives.
- m. 7/28/2015: Tour with Roseanne from Boise City Parks and Recreation to discuss partnerships.
- n. 7/29/2015: Construction Safety Lunch on site for 300 contractors.
- o. 8/20/2015: Media meeting with the Idaho Statesman.
- p. 8/26/2015: Tour with Hollis and group.
- q. 10/2/2015: Tour with community volunteers.
- r. 11/3/2015: Tour with Invent Idaho and meeting to discuss hosting January community event at JUMP.
- s. 11/23/2015: Media and public relations event held at JUMP.
- t. 11/30/2015: Tour with UW.
- u. 12/4/2015: JUMP Team event at JUMP for approximately 350 attendees.
- v. 12/5/2015: JUMP Sneak Peak tour and event for non-profit and community leaders. Approximately 1,200 invitations were sent.
- w. 12/8/2015: Media interview with the Idaho Statesman.
- x. 12/10/2015: Tour and meeting with the Boise Police Department.
- y. 12/13/2015: Community Open House, with approximately 4,000 – 5,000 attendees.
- z. 12/13/2015: Various media tours and interviews to promote the mission of JUMP.
- aa. 12/20/2015: Community Open House, with approximately 4,000 – 5,000 attendees.
- bb. 12/27/2015: Community Open House, with approximately 4,000 – 5,000 attendees.

R. p. 378.

### **ISSUES ON APPEAL**

- A. Whether, as a matter of law, the JUMP Property should be exempt from ad valorem taxation during construction pursuant to I.C. § 63-602C because of the substantial case law in the United States supporting the conclusion that the construction of a charitable structure with tax exempt funds is exempt during construction.

- B. Whether the District Court erred in ruling that as a matter of law, the use of a non-profit's funds to construct a building for the purposes of the non-profit's charitable objective is not a charitable use because construction automatically prevents any other charitable uses during construction.
- C. Whether the District Court erred in granting summary judgment for the taxing authority because a genuine issue of material fact exists as to whether or not the actual uses made of JUMP during construction during 2015 constituted charitable uses.

### **STANDARD OF REVIEW ON APPEAL**

“On appeal from the grant of a motion for summary judgment, this Court utilizes the same standard of review used by the district court originally ruling on the motion.” *Arregui v. Gallegos-Main*, 153 Idaho 801, 804, 291 P.3d 1000, 1003 (2012). Summary Judgment is proper “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Idaho Rule of Civil Procedure 56(c). “When considering whether the evidence in the record shows that there is no genuine issue of material fact, the trial court must liberally construe the facts, and draw all reasonable inferences, in favor of the nonmoving party.” *Dulaney v. St. Alphonsus Reg'l Med. Ctr.*, 137 Idaho 160, 163, 45 P.3d 816, 819 (2002). “If the evidence reveals no disputed issues of material fact, then only a question of law remains, over which this Court exercises free review.” *Lapham v. Stewart*, Idaho 582, 585, 51 P.3d 396, 399 (2002). *Safaris Unlimited, LLC v. Von Jones*, 158 Idaho 846, 850, 353 P.3d 1080, 1084 (2015) (quoting *Conner v. Hodges*, 157 Idaho 19, 23, 333 P.3d 130, 134 (2014)).

### **SUMMARY OF ARGUMENT**

- A. **As a matter of law, the property of JUMP should be exempt under I.C. § 63-602C from ad valorem taxation during construction because of the substantial case law in the United States confirming that charitable exemption statutes apply during construction.**
- B. **The District Court erred in ruling that, as a matter of law, the use of a non-profit's**



**funds to construct a building for the purposes of the non-profit's charitable objective is a not a charitable use because construction automatically prevents any other charitable uses during construction.**

- C. The District Court should not have granted summary judgment for the taxing authority because a genuine issue of material fact exists as to whether or not the actual uses made of JUMP during construction during 2015 constituted charitable uses as had been previously ruled after trial by the Idaho Board of Tax Appeals. The District Court should have held a trial on that issue.**

### **ANALYSIS**

- A. As a matter of law, the property of JUMP should be exempt under I.C. § 63-602C from ad valorem taxation during construction because of the substantial case law in the United States confirming that charitable exemption statutes apply during construction.**

The Idaho Constitution guarantees the right to real property tax exemptions "...from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory, shall continue until changed by the legislature of the state..." Idaho Constitution, Article VII, § 5.

The Idaho Constitution expressly grants the Legislature plenary power with regard to exemptions. In *Williams v. Baldridge*, 48 Idaho 618, 284 P.203 (1930), this Court observed that Idaho was almost unique among the western states in not freezing the exemptions in the constitutions but instead granted liberal authority to the Legislature to grant such exemptions as the Legislature saw fit. The almost uniform practice of the other states was to limit the number of exemptions in their constitutions, thereby restricting the broad discretion that the legislature has to allow such exemptions by majority vote. 48 Idaho at 626.

I.C. § 73-102 explicitly states that the compiled laws of the State of Idaho and their respective provisions *and all proceedings under them* "...are to be liberally construed, with a view to effect the objects and to promote justice." I.C. § 73-102(1) ("The rule of the common law that

statutes in derogation thereof are to be strictly construed, has no application to these compiled laws. The compiled laws establish the law of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed, with a view to effect their objects and to promote justice.”).

An apparent contradiction exists in the law between the liberal statutory construction prescribed in I.C. § 73-102(1) and the Idaho Supreme Court rule that statutes granting tax exemptions must be strictly construed against the taxpayer and are never presumed nor can exemptions be extended by judicial construction to create exemptions that are not specifically authorized by statute. Nevertheless, exemption cases in Idaho are to be decided on a case-by-case approach as an individual matter. *See Evangelical Lutheran Good Samaritan Society v. Board of Equalization of Ada County*, 161 Idaho 378, 386 P.3d 901 (2016). The analysis requires a particularized and individual factual analysis because of the uniqueness of charitable activities.

Though the rules of liberal construction versus strict construction seem inconsistent, in fact they are not. As the Supreme Court of Iowa observed in *South Iowa Methodist Homes, Inc. v. Board of Review of Cass County*, 257 Iowa 1302, 136 N.W.2d 488 (1965), there is no conflict:

Without a noted exception, our cases hold taxation is the rule and exemption the exception and exemption statutes are therefore to be strictly construed. Even cases which appear liberal in recognizing exemptions reiterate this rule of construction.

On the other hand, we are faced with an express legislative mandate to construe the ‘provisions and all proceedings’ under the code ‘liberally’ with a view to promote its objects and assist the parties in obtaining justice.’

These rules seem to be in conflict, but under the facts here, each can be applied in its appropriate place. There is nothing in section 427.1(9) which indicates a legislative intent that ‘appropriate objects’ should be broadly interpreted. The rule of strict construction should be used in determining what projects are within the ‘appropriate

objects' of the institution. We do not have that question before us. The stipulation concedes the project here was an appropriate object. Once it is admitted the project itself is within the statute, we must, under section 4.2, interpret the statute liberally to promote its object.

The exemption statutes are a legislative recognition of the benefits received by society as a whole from properties devoted to appropriate objects of exempt institutions and the consequent lessening of burden on the government. They are designed to encourage these institutions to use their funds and property for such projects. If this is the legislative intent, we reach an illogical result if we hold the legislature intended property, ultimately exempt, to be subject to taxation during the construction period. Such activities are not encouraged by adding to the building costs. The subjection of this property to taxation during the construction period would tend to defeat the object of the exemption statutes.

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In view of our cases, the taxing of properties under construction would result in some anomalous situations. For instance, funds held to construct an exempt building are not subject to taxation. The completed building is exempt. But the use of exempt funds to build an exempt building would result in the imposition of a tax during the construction period.

136 N.W.2d at 489-90 (internal citations omitted).

In the present litigation, both the Idaho Board of Tax Appeals which originally granted the exemption to JUMP and the Honorable Richard D. Greenwood agreed that JUMP is a charitable use building and thus it is the appropriate subject of a charitable exemption. In its Final Decision And Order, the Idaho Board of Tax Appeals specifically found that JUMP was a charitable use as a museum, urban park, and community meeting center, and that because construction is not a use, the uses made during construction of community tours and educational events were the proper charitable use for an exemption. Similarly, Judge Greenwood specifically found that it was "undisputed that the Foundation intends to use JUMP for charitable purposes," but ruled that the property was being used for construction as a use and that construction use is not a charitable use. R. p. 936.

Moreover, it is impossible for the taxing authority to allege that JUMP is anything other than a single-purpose structure designed for charitable purposes since Ada County itself granted a

charitable exemption to JUMP for 2016 after it was completed. Indeed, Ada County does not dispute JUMP's charitable purpose. R. p. 857.

It having been universally acknowledged that the JUMP building itself is a charitable purpose building It is therefore appropriate in this case to construe the statutory exemption language in I.C. § 63-602C as required by I.C. § 73-102(1) in order to give full effect to its objects and to promote justice.

The Idaho Supreme Court has never ruled upon the issue of whether the construction of a charitable building by a non-profit entity using tax exempt funds to create a charitable building for the public is exempt from real property taxation during such construction.

This issue is of immense importance to non-profit entities in the State of Idaho because the vast majority of non-profit entities who build structures are usually stretched to their financial limits to construct their building. As argued later in this brief, the public policy reasons for exempting a property during construction is the only appropriate manner to give full effect to the exemption statute. Indeed, both Judge Eismann in the *Appeal of St. Luke's Regional Medical Center, Ltd.*, Ada County Case No. CV-OC-97-04923\*D discussed later in this brief, and Judge Greenwood in the present case noted that there were good public policy reasons for building construction to be exempt, perhaps expressing their own personal disagreement with what they perceive to be the rule denying the exemption during construction. R. p. 801 and p. 938.

The majority of jurisdictions in the United States that have ruled on this issue have found that the construction of a building for the benefit of the public by a non-profit entity is exempt from taxation under their state's ad valorem exemption statutes.

One illustrative case is that of *Corporation of Episcopal Church in Utah v. Utah State Tax*

*Commission*, 919 P.2d 556 (Utah 1996). In that case, the Utah Supreme Court began its analysis by citing the Utah tax exemption statute which required that the property be “used exclusively for charitable purposes:”

Construction of a church on church-owned property indicates that the property is “irrevocably committed” to a religious use, not simply held for future development. *See Utah County By and Through County Bd. of Equalization v. Intermountain Health Care, Inc.*, 725 P.2d 1357, 1359 (Utah 1986). We have held that the commencement of construction qualifies the property for a tax exemption. *Id.* Contrary to the Commission’s conclusion, we do not require that property be irrevocably committed to a particular exempt purpose to qualify for an exemption. Rather, an irrevocable commitment is merely one indicium of the nonprofit entity’s intent. It is that intent and its manifestation which determine whether property is exempt.

919 P.2d at 560.

The Utah Supreme Court in *Utah County v. Intermountain Health Care, Inc.* 725 P.2d 1357 (1986) specifically noted that the purpose of the exemption statute in Utah while construed narrowly nevertheless must fulfill the purpose of the statute:

Although exemptions from taxation are generally construed narrowly [Citations omitted], they should, nonetheless, be construed with sufficient latitude to accomplish the intended purpose. *See e.g., South Iowa Methodist Homes, Inc. v. Board of Review*, 257 Iowa 1302, 1305, 136 N.W.2d 488, 490 (1965).

To deny a charitable exemption for real estate on which a hospital is being constructed when its use is irrevocably committed to purposes that will qualify for a charitable exemption at its completion would not be consistent with the constitutional policy of encouraging private charities. The benefits conferred on the public by charities can only be diminished, to a greater or lesser extent in the long run, if monies committed to the charity must be used to pay *ad valorem* property taxes. *E.g., Society of St. Vincent DePaul v. Department of Revenue*, 272 Or. 360, 537 P.2d 69 (1975); *Hedgcroft v. City of Houston*, 150 Tex. 654, 662, 244 S.W.2d 632, 636 (1951). A contrary policy might well tend to deter charities from shouldering burdens which would otherwise have to be assumed by the state. *Overmont Corp. v. Board of Tax Revision*, 479 Pa. 249, 251, 388 A.2d 311, 312 (1978); *South Iowa Methodist Homes*, 257 Iowa at 1305, 136 N.W.2d at 490.

725 P.2d at 1359.

The Utah Supreme Court cited with approval the Texas Supreme Court decision of *Hedgcroft v. City of Houston*, 150 Tex. 654, 244 S.W.2d 632 (Texas 1951), where the Texas Supreme Court reversed its intermediate appellate court and stated:

It is obvious that without some preparation of the premises, there never could have been a polio clinic in operation. To fulfill the charitable purpose of treating polio sufferers, Hedgcroft had first to remodel the property, then to operate the clinic. Preparation for and operation of the clinic are both indispensable. Both took place on the premises. Both constituted a use by Hedgcroft of the premises. The constitutional clause which admittedly exempts the property during operation likewise exempts the property during bona fide necessary preparation.

244 S.W.2d at 636.

The many cases approving of the property tax exemption during the construction of a charitable use building relate to a host of different charitable uses. The Getty Museum in *J. Paul Getty Museum v. County of Los Angeles*, 148 Cal. App. 3d 600, 195 Cal. Rptr. 916 (California Ct. App. 1983) was granted an exemption during its period of construction because the purpose of the Getty Museum was to display Greek and Roman antiquities, Renaissance paintings and 17<sup>th</sup> and 18<sup>th</sup> Century decorative arts as part of its cultural, educational, and recreational objectives to benefit the people of Southern California. The court ruled that “The Getty Museum provides a link to the past and inspiration to current and future generations of Californians.” 148 Cal. App. 3d at P.607.

The Supreme Court of Colorado in *McGlone v. First Baptist Church of Denver*, 97 Colo. 427, 50 P.2d 547 (Colorado 1935) ruled that the construction of a church entitled the property to be exempt during the period of time that it was demolishing buildings on the property and working on constructing a church thereon.

The Appellate Court of Illinois in *Weslin Properties, Inc. v. Illinois Dep’t of Revenue*, 157 Ill. App. 3d 580, 510 N.E.2d 564 (1987) similarly ruled that the actual construction of an urgent care

center clearly showed the development and adaption of the property for an exempt use. The court stated that one would have to ignore the realities of modern construction practices given the complexity of the architectural process, obtaining governmental approval, and constructing the building to conclude that the property was not being developed for its charitable purpose and therefore was entitled to an exemption.

The Supreme Court of Minnesota in *Village of Hibbing v. Commissioner of Taxation*, 217 Minn. 528, 14 N.W.2d 923 (Minnesota 1944) held that "...the work of adapting and fitting the property for such use [public hospital] was being prosecuted continuously and diligently in good faith; and that a reasonable time only was being consumed for the purpose." 14 N.W.2d at P.927. As a result, the exemption was granted during construction.

The Supreme Court of Ohio in *Carney v. Cleveland City School District*, 169 Ohio St. 65, 157 N.E.2d 311 (Ohio 1959) acknowledged the rule of strict construction of exemption statutes but nevertheless approved an exemption during the construction of a public library with the following rationale:

It is, of course, appellant's theory that until there is an actual physical use of property for a public purpose there can be no tax exemption. A very strict construction of the tax-exemption statutes would require this conclusion. However, as we have previously said, this strict construction must be tempered with reason.

It is a matter of common knowledge that, even though property is acquired for an intended use, actual physical occupancy cannot begin immediately. Even where, as in the present case, there is an existing physical structure, there are usually certain structural changes necessary to make it fit the needs of the purchaser. Granting the availability of funds, plans must be prepared, bids let and the actual construction work take place. All these preparations consume time during which actual physical use cannot begin.

In instances where a structure must be built before an actual physical use can begin, in addition to the preparation of plans, the letting of bids and the actual construction, quite frequently it is necessary to procure funds, either by appropriation, the selling

of bonds by a governmental entity or, in the case of nongovernmental entities, by voluntary contributions. All these matters necessarily consume time during which there can be no actual physical use.

157 N.E.2d at P. 313.

In the current litigation, JUMP was always under active construction during 2015 and thus, no issue exists that the property was vacant or inactive. In addition to the construction, significant tours and public involvement occurred during 2015 at the site as was previously discussed.

The Supreme Court of Oregon in *Willamette University v. State Tax Commission*, 245 Or. 342, 422 P.2d 260 (Oregon 1966), held that a student housing facility under construction was “actually and exclusively occupied or used” in work carried out by such educational institution:

We are of the opinion that the better rule is found in the opinions of the courts which have carefully considered the issue and reached the conclusion that ‘actually occupied and used’ pertains to whether or not premises are then being prepared to carry out the purposes of exempt charity and if they are they fall within the legislative intent.

422 P.2d at 263.

The Supreme Court of Pennsylvania in *Overmont Corp. v. Board of Tax Revision of City of Philadelphia*, 479 Pa. 249, 388 A.2d 311 (Pennsylvania 1978), succinctly ruled that “we hold that when a charity is constructing facilities, that charity is “using its property for charitable purposes” so as to come within the scope of the General County Assessment Law. To hold otherwise would tend to impede the purpose for which the tax exemption was created.” 479 Pa. at 251.

In another “actual use” case, the Supreme Court of Appeals of West Virginia convincingly held in *United Hospital Center, Inc. v. Romano*, 233 W.Va. 313, 758 S.E.2d 240 (W. Virginia 2014), as follows:

We proceed to address the respondents’ claim that the regulatory inclusion of the phrase “actual use” fully resolves the question of the Hospital’s entitlement to a tax exemption. The respondents argue that the non-use of the Hospital for patient-



treating purposes on July 1, 2010, necessarily prohibits the Bridgeport facility from qualifying as charitable on such date. The context in which “actual use” is employed in 110 C.S.R. § 3-24.17.3 is tied to “mak[ing] the primary and immediate use of the property charitable within the meaning of section 19 of the regulations.” While the respondents do not take issue with the Hospital’s qualification as a charitable organization under federal law or its operation on a non-profit basis, they do contend that it was not serving charitable purposes on July 1, 2010, as they maintain that it could neither directly benefit society nor benefit an indirect number of people with its doors closed to the public. We disagree.

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While the respondents seek to offensively apply the rule of strict construction with regard to the extension of tax exemptions, they overlook the corollary requirement that such construction must be rational. *Patterson Mem’l Fund v. James*, 120 W. Va. 155, 157, 197 S.E. 302, 303 (1938) (“While judicial construction of tax exemptions should be strict, it should be rational.”) (*overruled on other grounds* as stated in *Central Realty*, see Syl. Pt. 3, 126 W. Va. 915, 30 S.E.2d 720). As we held in syllabus point three of *Kittle*, “[a] constitutional provision authorizing legislative exemption of property from taxation is strictly construed and nothing can be exempted that does not fall within its terms; but rational construction within the terms used is required as well as permitted.” 87 W. Va. 526, 105 S.E. 775. This Court provided additional enlightenment, stating in *Kittle*:

The only arbitrary requirement of the rule of strict construction, however, is that its subject matter must be within the terms, as well as the spirit, of the provision under construction. It does not require assignment to terms actually used, of the most restricted meaning of which they are susceptible, nor any particular meaning. So long as the court stays within the terms used, it may give effect to the spirit, purpose, and intent of the makers of the instrument. The rule permits, and other law requires, rational interpretation within the terms actually used.

87 W. Va. at 529-30, 105 S.E. at 776; see also *Mountain View Cemetery Co. v. Massey*, 109 W. Va. 473, 477, 155 S.E. 547, 549 (1930) (observing that “a strict construction must be reasonable and not limited so as to defeat the underlying purpose of the statute”); accord *Trotter v. Tennessee*, 290 U.S. 354, 356, 54 S.Ct. 138, 78 L.Ed. 358 (1933) (recognizing that tax exemptions “are not to be read so grudgingly as to thwart the purpose of the lawmakers”).

Our review of this state’s tax exemption laws reveals that the overarching concern in looking to a property’s usage was to ensure that such usage properly fell within the scope of the state’s enumerated subjects entitled to tax exemption. See W. Va.

Const. art. X, § 1. Given the inarguable benefits that inure to society from the provision of charitable services, such as those provided by the Hospital, we find it doubtful that the constitutional framers sought to deny tax exemption where such laudable eleemosynary purposes are being achieved. *See Prichard v. County Court of Kanawha County*, 109 W. Va. 479, 486, 155 S.E. 542, 545 (1930) (observing that “it is the purpose of our state under its tax laws to deal liberally with and foster and encourage all charitable and educational institutions when their conduct and operation does not result in private gain”) (*overruled on other grounds* as stated in *Central Realty*, see Syl. Pt. 3, 126 W. Va. 915, 30 S.E.2d 720). Rather than a “gotcha” type of calendar-focused interpretation, we are convinced that a rational construction of the tax exemption extended by West Virginia Code § 11-3-9(a)(12) is required by the facts of this case. And by applying that type of a construction, we are compelled to conclude that charitable purposes were unquestionably being achieved by the Hospital on the legal date of assessment.

758 S.E.2d at p.247: 249

Significantly, this interpretation is consistent with this Court’s decision of *Northern Idaho Jurisdiction of Episcopal Churches, Inc. v. Kootenai County*, 94 Idaho 644 496 P.2d 105 (1972), where the Idaho Supreme Court ruled that the charitable activity complied with the following test “...since all activities conducted thereon, although in some aspects charitable, and in some aspects educational, are nevertheless *directly related to the religious purposes for which the groups are organized.*” 94 Idaho at p. 650. (Emphasis added). The Court ruled:

We therefore hold that the doctrine of tax exemption set forth in I.C. §§ 63-105B, 105C and 105L are not mutually exclusive. The real property utilized by religious organizations for summer encampments such as in the case at bar and in Upper Columbia should be exempt from ad valorem taxes, since all activities conducted thereon, although in some aspects charitable, and in some aspects educational, are nevertheless directly related to the religious purposes for which the groups are organized.

The judgment of the trial court is affirmed. Costs to respondent.

94 Idaho at p. 650

Numerous other decisions could be cited to the Court expressing all of the foregoing concepts and rationales. It is therefore apparent that the majority of courts that have carefully

considered the issue now before this Court have concluded that the benefit to society of providing the small public subsidy by the exemption to encourage the construction of significant public buildings is a very small price to pay for citizens of the state contributing their money and funds to construct buildings for the public benefit.

- B. The District Court erred in ruling that, as a matter of law, the use of a non-profit's funds to construct a building for the purposes of the non-profit's charitable objective is a not a charitable use because construction automatically prevents any other charitable uses during construction.**

**No Authority for District Court Conclusion that  
Construction is a Non-Charitable Use**

A two-day trial was held before the Idaho Board of Tax Appeals on the issue of an exemption for 2015 for JUMP while it was under construction. The Idaho Board of Tax Appeals is a specialized quasi-judicial body charged by Idaho law to determine property tax and other taxation issues in the State of Idaho in order to provide a uniform and consistent body of decisions with regard to tax matters, including specifically exemptions for charitable and other purposes. I.C. § 63-3801, et seq.

After having carefully considered the evidence regarding the 2015 exemption application for JUMP, the Board unanimously ruled that JUMP was entitled to an exemption because of its unique nature and the uses that were actually made of JUMP during the process of construction:

Not only is JUMP a unique facility itself, the use of the property for tours and educational purposes during construction was also somewhat unique. The record reveals approximately 500 people toured the facility during 2014, and more than 1,000 community leaders and organizations participated in JUMP presentations and community engagement meetings conducted by Appellant. Admittedly, JUMP was not "open" to the general public in the same way it will be when the facility is completed. The controlling statute, however, does not require continuous or every day charitable use of the property to qualify for the exemption. Rather, the statute simply requires the property be used exclusively for the charitable purposes for which Appellant is organized and not some other purpose. Such is the case here,

where the only “use” of the property was educating the public about JUMP in furtherance of Appellant’s charitable objectives. Construction is not a use, even though active construction can restrict the types or degree of use. Commonly a property is simply not used for its intended purpose during the construction phase. JUMP, however, was used during construction, which use in the Board’s view is sufficient to satisfy the use requirement of I.C. § 63-602C.

R. p. 355.

The Idaho Board of Tax Appeals took the approach that the construction of the building was not a use and certainly not a use separate and distinct from the realization of the construction of a building for public use.

It made little sense to the Idaho Board of Tax Appeal to deny an exemption for the community center, museum, and urban park of JUMP when there were significant, well organized and continuous tours and educational classes taking place at the facility during construction.

While it is true that the appeal by Ada County of the decision of the Idaho Board of Tax Appeals to grant JUMP its exemption is held by the District Court *de novo* pursuant to I.C. § 63-3812, nevertheless the District Court should have carefully considered and given due regard to the ruling of the Idaho Board of Tax Appeals as a specialized tax court. “In appropriate circumstances courts may refer to the agency charged with the administration of a statutory provision for its interpretation.” *See State Tax Commission v. Haener Brothers*, 121 Idaho 741, 743; 828 P.2d 304 (1992). Other courts have ruled similarly:

The first issue raised in this appeal is the proper construction of section 15-35 of the Code (35 ILCS 200/15-35 (West 2000)). Interpretation of a statute is a question of law; in cases involving an agency’s interpretation of a statute that the agency is charged with administering, the agency’s interpretation is considered relevant but not binding on the court. *Branson v. Department of Revenue*, 168 Ill.2d 247, 254, 213 Ill.Dec. 615, 659 N.E.2d 961 (1995). Accordingly, our review of this issue is *de novo*, with some deference accorded to the Department’s statutory interpretation. Our supreme court has frequently acknowledged the wisdom of judicial deference to an agency’s experience and expertise. *AFM Messenger Service, Inc. v. Department of*

*Employment Security*, 198 Ill.2d 380, 394, 261 Ill.Dec. 302, 763 N.E.2d 272 (2001). Moreover, a significant reason for giving substantial weight and deference to an agency's interpretation of an ambiguous statute is that " 'agencies can make informed judgments upon the issues, based on their experience and expertise.' " *AFM Messenger Service*, 198 Ill.2d at 394, 261 Ill.Dec. 302, 763 N.E.2d 272, quoting *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill.2d 76, 98, 180 Ill.Dec. 34, 606 N.E.2d 1111 (1992).

*Swank v. Department of Revenue*, 336 Ill.App.3d 851, 855, 785 N.E.2d 204, 207 (2003)

When the District Court ruled on the issue now before this Court it disregarded the decision of the Idaho Board of Tax Appeals and held, contrary to that Board that construction of a charitable facility is a "use," and without any judicial support whatsoever, came to the conclusion that "It is not a charitable use." R. p. 936.

Without any additional rationale, the District Court simply created its own rule that the use of exempt funds by a non-profit entity to construct a single-purpose charitable building for public use in which simultaneously public tours and educational activities were occurring on the property could not be a charitable use.

#### **District Court Decision of *Appeal of St. Luke's***

Ada County has relied upon a 1998 District Court decision decided by the Honorable Daniel T. Eismann sitting as a District Court judge in an appeal by St. Luke's Regional Medical Center, Ltd. of a denial of its ad valorem tax exemption for two parcel of property owned by it.

Ada County's reliance upon the District Court's decision is misplaced.

The first part of the decision on that appeal dealt with a specific statute applicable only to hospitals which required that the hospital facility would only be exempt if it was being "operated" as a hospital pursuant to I.C. § 63-105K, which itself had been repealed by the time of the present District Court's decision in this case. The District Court ruled that because the Meridian facility was

not finished and was not being “operated” it was not entitled to an ad valorem tax exemption under 63-105K or 63-105C.

The decision then addresses the issue of whether the Meridian St. Luke’s facility which was still under construction was “used exclusively for the purposes for which such corporation or society is organized” pursuant to the then existing I.C. § 63-105C. In contrast to JUMP during its construction, no activities relating to the purposes of a hospital were being conducted at the Meridian hospital building.

Instead of analyzing the substantial case law from multiple other jurisdictions regarding the issue of the entitlement of an exemption during construction, the District Court in the present case instead relied upon the decision in the St. Luke’s case which itself relied upon the decision of *Malad Second Ward of the Church of Jesus Christ of Latter-Day Saints v. State Tax Commission*, 75 Idaho 162, 269 P.2d 1077 (1954) regarding a claimed exemption by the Malad Second Ward to use its lands to raise wheat which was then ground into flour and distributed as part of its welfare program for the use of needy members.

In the *Malad Second Ward* decision it was clear that the land itself was not used for any charitable purpose but rather was simply being used to produce products and income for charitable purposes. In other words, the wheat may have been used for a charitable purpose but not the land that grew the wheat. The *Malad Second Ward* decision was properly decided. It would be inappropriate, for example, for a food store to donate groceries to the Idaho Food Bank and then argue that its grocery store itself should be exempt as charitable property. The *Malad Second Ward* case therefore has no application to the present circumstances where the JUMP facility which was then 70% complete was being built solely as a single-purpose entity for a community center,

museum, and urban park, plus JUMP was being used for its tours and educational purposes.

The only other authority cited by the District Court in the St. Luke's case is a sixty-seven year old decision from California, *Cedars of Lebanon Hospital v. Los Angeles County*, 35 Cal.2d 729, 221 P.2d 31 (California 1950), which was reversed by statute and is not the law in the State of California. See Cal. Rev. & Tax Code § 214.1 (1954).

### **The Later Change to the Hospital Exemption Statute (I.C. 63-105K)**

Another reason that the District Court ruled that there was no tax exemption for buildings under construction is that following Judge Eismann's decision in the *Appeal of St. Luke's*, the Idaho Legislature amended the exemption statute as it applies to hospitals (now I.C. § 63-602D) to allow the claiming of the exemption during construction for hospitals.

Instead of ruling that the reversal of the decision in *Appeal of St. Luke's* by statute indicated a legislative policy favoring tax exemptions for buildings under construction, the District Court instead held:

There are sound public policy reasons to grant a tax exemption for buildings under construction in circumstances such as this, but that exemption must be granted by the Legislature. The hospital in *Appeal of St. Luke's* sought the exemption under the same statute at issue here as well as under the hospital exemption statute. The Legislature chose to amend the exemption statute for hospitals but not for charitable organizations in general following the decision in that case. This Court cannot do what the Legislature chose not to do.

R. p. 938.

The District Court mistakenly assumed that because only the hospital statute was amended to allow an exemption during construction, the Legislature had rejected as a matter of policy the notion that tax exempt funds being expended by non-profits other than hospitals for the construction of buildings should also be exempt.

The District Court's assumption of the Legislature's intention in this regard is in error.

This Court should look to the legislative history of the present hospital exemption statute:

If the words of the statute are subject to more than one meaning, it is ambiguous and this Court must construe the statute "to mean what the legislature intended it to mean. To determine that intent, [this Court] examine[s] not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history."

*Doe v. Boy Scouts of America*, 148 Idaho 427, 430, 224 P.3d 494, 497 (2009) (quoting *State v. Doe*, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009)). Further:

In construing a statute, this Court will not deal in any subtle refinements of the legislation, but will ascertain and give effect to the purpose and intent of the legislature, based on the whole act and every word therein, lending substance and meaning to the provisions. *George W. Watkins Family v. Messenger*, 118 Idaho 537, 539-40, 797 P.2d 1385, 1387-88 (1990).

*Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 428, 849 P.2d 98 (1993).

In 1998, the Idaho Legislature approved House Bill 689 which established an interim committee of legislators called the Legislative Council Interim Committee on Property Tax – Charitable Exemptions to undertake and complete a study of property tax exemptions granted to charitable organizations and non-profit hospitals. *See* 1998 Idaho Session Laws 38. In November, 1998 the Interim Committee issued its Final Report to the Legislature. *See* Final Report, Property Tax-Charitable Exemptions Interim Committee, November, 1998 attached hereto as Exhibit "A" and incorporated herein by reference.<sup>3</sup>

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<sup>3</sup> "A Court may take judicial notice of legislative facts when interpreting a statute, particularly when the statute is grounded in public policy." AMJUR EVIDENCE § 133. This is not precluded by the rule of evidence pertaining to judicial notice, Idaho Rule of Evidence 201, because that rule only deals with "adjudicative facts." I.C. § 9-101 specifically permits judicial notice of public and private official acts of the legislature. The Idaho Supreme Court has held consistently with this widely adopted rule. *Knight v. Employment Sec. Agency*, 398 P.2d 643, 645 (Idaho 1965) ("This court takes judicial notice of public and private acts of the legislature and journals of the legislative bodies for the purpose of ascertaining what was done by the legislature."); *reaffirmed by Coeur D'Alene Tribe v. Denney*, 161 Idaho 508, 387 P.3d 761, 769 (2015). In regards to timing, a Court can take judicial notice of a fact for the first time on appeal. Indeed, judicial notice can be taken *at any time*. *State v. Doe*, 146 Idaho 386, 389, 195 P.3d 745, 748 (Ct. App. 2008).



This Final Report is significant because it explicitly states that the Legislative Committee intentionally narrowed its scope to only hospitals because of the relatively short amount of time available to it to resolve the issue created by the *Appeal of St. Luke's*. The Joint Committee report states:

## II. Nature of Dispute and Scope of Committee

House Bill 689 was the product of a dispute between Ada County and St. Luke's Regional Medical Center in Boise. St. Luke's applied to the county for a property tax exemption for several parcels of real estate on which it was conducting or was going to conduct business. Historically, applications such as these were granted. However, this time Ada County denied the applications based on the conclusion that, among other things, St. Luke's was no longer acting as a charitable hospital. Although this was a local decision, it had ramifications for counties and hospitals throughout the state. Therefore, the issue was pursued not only by Ada County and St. Luke's, but by the Idaho Association of Counties and the Idaho Hospital Association.

The committee was broadly charged in House Bill 689, but restricted its inquiry to property tax exemptions for nonprofit or charitable hospitals. The committee limited its inquiry due to the context of the dispute that prompted formation of the committee, the relatively short amount of time available to resolve the matter and the complexity of issues surrounding exemptions for charitable or nonprofit organizations generally.

Thus, the Memorandum Decision of the District Court in the present litigation incorrectly assumed that the amendment to the hospital exemption statute I.C. § 63-602D was an explicit determination by the Legislature that exemptions should not be granted in favor of other charitable institutions. In fact, the Legislature only addressed the narrow issue of hospitals not only because that was the bill proposed by St. Luke's but also because the legislators had no time to consider the issue as it pertains to non-hospital charitable exemptions.

Even more significantly, the Interim Committee specifically stated that by allowing hospitals to have a property exemption during construction it would make Idaho consistent with the approach

taken by the majority of states that allow an exemption during construction, a position which the Committee obviously endorsed:

#### IV. Conclusion

In two meetings, this committee examined property tax exemptions provided to nonprofit, charitable hospitals in Section 63-602D, Idaho Code. These hospitals are vital to the health of the state and its citizens. Property tax exemptions provide undisputed financial benefits to the businesses that receive them. Therefore, it is a legitimate exercise of state and local authority to provide an exemption to these businesses so long as they continue to operate as nonprofit organizations fulfilling a charitable mission. Moreover, it is legitimate and appropriate to deny exemptions to organizations that do not fulfill their charitable mission. *The legislation recommended by the committee reflects these concerns and is intended to promote the following goals: reward legitimate charitable operation by nonprofit hospitals; remedy problems caused by ambiguities in the present statute; prohibit exemptions for property used on a for-profit basis; promote communication between counties and hospitals regarding community benefits; and to be consistent with the approach taken by the majority of states.*

(Emphasis added.)

Unfortunately, the District Court decision on the matter did not analyze the legislative history concerning the hospital exemption statute. If an analysis would have been undertaken it would have been obvious that the policy of the State of Idaho to have tax exemptions for buildings under construction be consistent with other states which do allow such an exemption, but due to time constraints and other pressing matters, the Committee was not able to review any other exemption statutes in Idaho thus leaving it to the courts to determine any ambiguities with regard to the current exemption statutes.

In any event, if the District Court had applied the more appropriate rules of construction as announced by the Supreme Court of Illinois in the previously-cited *South Iowa Methodist Homes* decision, then the result in the St. Luke's case could have been totally different. It must be remembered that Judge Eismann in his St. Luke's decision specifically stated that "This Court

certainly believes that there are valid public policy reasons to grant a tax exemption for buildings under construction as in this instant.” R. p. 801. The District Court should have analyzed whether the building itself, then being constructed, fell within the objectives of the non-profit entity. This type of analysis would have to have concluded that JUMP certainly falls within the charitable objectives of the Simplot Foundation. Then the Court should have applied the construction of the exemption statutes required by I.C. § 73-102(1) to find that the exemption should be granted.

### **Significant Public Policies Justify an Exemption During Construction**

Judge Eismann observed in his decision in the *Appeal of St. Luke's* that sound public policy reasons justified granting a tax exemption for buildings under construction with circumstances such as are present with JUMP. Judge Greenwood similarly echoed Judge Eismann's sentiments that there were significant and valid public policy reasons for granting such an exemption but neither District Court judge felt it was their role to create such a rule of first impression in the State of Idaho.

It is also significant that the Idaho Board of Tax Appeals granted construction exemptions for both the Simplot Foundation in the current litigation as well as in the *St. Luke's* case. R. p. 792.

The public policy grounds noted by the two District Court judges in favor of construction exemption could be summarized as follows:

1. The constitutional authority granted in a liberal manner to the Idaho Legislature expressed a significant public policy favoring the citizens of the State of Idaho donating their money, time, and effort to create public charities for the benefit of all society and relieving public institutions of the expense of developing such facilities themselves.
2. It is illogical to deny an exemption when a qualified non-profit entity uses tax exempt funds to acquire real property and construct at great expense a public facility which upon conclusion of the construction will be exempt property.

In other words, there is no policy justification for the cash funds sitting in an account being tax exempt and then when the funds are actually deployed to construct a charitable building, the property then becomes taxable during construction and then

upon completion of construction the building is tax exempt. The tax exempt funds prior to construction should remain tax exempt when being used to construct a charitable building which itself will be exempt upon completion.

3. Most non-profits have limited funds and thus the financial stress of constructing a building justifies encouragement by granting an exemption during the limited period of time when the non-profit is in great need of every financial benefit it can receive.
4. There is no burden on the government during the period of construction of the property because by definition the building is being constructed by a non-profit entity with tax exempt contributions and non-governmental funds.
5. The construction of a permanent structure devoted toward charitable goals, whether it be a museum, art gallery, hospital, care facility, community meeting hall, urban park, or other similar use, enriches society and diversity and lessens the financial burden on government agencies.
6. During the construction of the building, the non-profit entity is expending large amounts of funds as compared to most of its annual budgets and thus, the exemption encourages the construction of such buildings for the benefit of society.
7. Under Idaho law, the exemption must be renewed every year by the non-profit entity for the tax exemption. *See* I.C. § 63-602. Thus, the risk of a “never-ending construction project” for a tax exemption entity does not exist.
8. The tax exemption encourages the citizens of Idaho to contribute funds to non-profits to assist in the construction of permanent charitable projects which benefits all of society, such as parks, museums, auditoriums, etc.
9. Non-profits traditionally have difficulty borrowing funds from lenders because of their normally weak financial position and thus the extra financial benefit of the exemption assists in the construction of such buildings.
10. One of the traditional public policies for exempting non-profits from taxation is to prevent punitive taxes against unpopular charities and non-profits such as religious institutions, schools, museums, etc. By keeping the property exempt during construction when tax exempt funds are being used to build it promotes the policy of keeping political or taxing authorities from taxing non-profits which such taxing authorities find objectionable.
11. Finally, the taxing authorities have never been able to articulate a substantial public policy for taxation during construction in light of the fact that tax exempt funds are being expended for a charitable purpose anyway.

Simplot Foundation urges this Court to rule that the temporary construction activities for a non-profit is, as a matter of law, exempt because it is fulfilling the charitable goals of the entity. It is poor public policy to require a factual inquiry during construction on charitable projects because it is a waste of public resources when in fact it is tax exempt dollars being used to construct a tax exempt building. Rather than putting non-profits, which are usually struggling financially anyway, through the ordeal of a factual trial for their construction exemption before the Board of Equalization, the Court should adopt the majority rule in the United States.

If the District Court was going to determine whether the actual uses during construction constituted charitable uses then the District Court should have held a trial on that issue and have weighed the facts to make a determination as to whether or not the uses made of JUMP by the Simplot Foundation were sufficient from a factual standpoint to find that the Simplot Foundation was entitled to its exemption. Instead of evaluating and weighing the evidence, the District Court simply ruled that you could not have a charitable use during construction and ended the inquiry at that point.

Accordingly, if this Court does not accept the majority rule that the use of tax exempt funds to construct a tax exempt building is not entitled to an exemption during construction then in any event, this litigation should be referred back to the District Court for a trial on the merits as to whether or not the activities that were taking place at JUMP were charitable activities sufficient to justify an exemption.

- C. The District Court should not have granted summary judgment for the taxing authority because a genuine issue of material fact exists as to whether or not the actual uses made of JUMP during construction during 2015 constituted charitable uses as had been previously ruled after trial by the Idaho Board of Tax Appeals. The District Court should have held a trial on that issue.**

As apparent from the Memorandum Decision of the District Court, the Court did not evaluate the actual charitable activities that were taking place at JUMP during construction in 2015. The Court did not feel that it was necessary to evaluate or weigh the evidence because the Court mistakenly took the position that Idaho law automatically did not allow an exemption during construction.

The District Court should have held a trial on the uses during the process of construction in 2015 if it was going to reject the position that a single-purpose charitable building under construction was not entitled to an exemption.

Accordingly, even if this Court was to reject the legal arguments set forth in this brief, this Court should in any event, reject the District Court's refusal to consider the actual uses during 2015 and remand the matter back for a full trial to evaluate and weigh the evidence as to the charitable uses versus construction uses at the project during 2015. This was the approach that was adopted by the Idaho Board of Tax Appeals in ruling in favor of the Simplot Foundation's exemption.

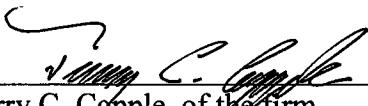
### **CONCLUSION**

For the reasons set forth herein, J.R. Simplot Foundation, Inc. respectfully requests that the Court reverse the District Court's ruling and remand the case back for a new trial.

DATED this 5<sup>th</sup> day of June, 2017.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: \_\_\_\_\_

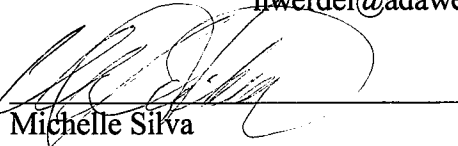
  
Terry C. Copple, of the firm  
Michael E. Band, of the firm  
Attorneys for Respondent/Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5<sup>th</sup> day of June, 2017, a true and correct copy of the foregoing was served upon the following by the method indicated below:

Sherry A. Morgan, Esq.  
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nwerdel@adaweb.net

  
\_\_\_\_\_  
Michelle Silva

# LEGISLATIVE COUNCIL

## INTERIM STUDY COMMITTEE ON PROPERTY TAX -- CHARITABLE EXEMPTIONS

### FINAL REPORT

NOVEMBER, 1998

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#### **I. Introduction**

House Bill 689 (1998) deferred taxes on real property owned by nonprofit or charitable hospitals and authorized the formation of this committee. The bill directed the committee to:

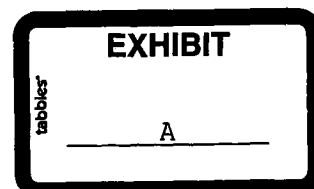
complete a study of property tax exemptions granted to charitable organizations and nonprofit hospitals, including related satellite, ancillary and outreach facilities, and to report to the First Regular Session of the Fifty-fifth Idaho Legislature on necessary legislation to ensure that truly charitable organizations providing bona fide charitable works, and nonprofit or charitable hospitals providing a general public benefit to the community, receive the exemption from property taxes while others [that are not fulfilling a charitable mission] do not.

The committee's activities, findings and recommendations are presented in this report. In brief, the committee finds that the statute that provides the property tax exemption for charitable hospitals, Section 63-602D, Idaho Code, is ambiguous and out-of-date. The committee recommends legislation to amend the statute. The committee did not examine exemptions available to other nonprofit or charitable organizations.

#### **II. Nature of Dispute and Scope of Committee**

House Bill 689 was the product of a dispute between Ada County and St. Luke's Regional Medical Center in Boise. St. Luke's applied to the county for a property tax exemption for several parcels of real estate on which it was conducting or was going to conduct business. Historically, applications such as these were granted. However, this time Ada County denied the applications based on the conclusion that, among other things, St. Luke's was no longer acting as a charitable hospital. Although this was a local decision, it had ramifications for counties and hospitals throughout the state. Therefore, the issue was pursued not only by Ada County and St. Luke's, but by the Idaho Association of Counties and the Idaho Hospital Association.

The committee was broadly charged in House Bill 689, but restricted its inquiry to





property tax exemptions for nonprofit or charitable hospitals. The committee limited its inquiry due to the context of the dispute that prompted formation of the committee, the relatively short amount of time available to resolve the matter and the complexity of issues surrounding exemptions for charitable or nonprofit organizations generally.

### **III. Committee Membership**

Ten legislators were appointed to the committee. Senator Clyde Boatright and Representative Donna Jones were appointed as co-chairs. Other members were Senator Jerry Thorne, Senator Moon Wheeler, Senator Grant Ipsen, Senator Marguerite McLaughlin, Representative Dorothy Reynolds (replacing Representative Debbie Field), Representative Dennis Lake, Representative Bert Stevenson, and Representative Pat Bieter.

### **IV. Committee Meetings**

The interim committee held two meetings: the first on August 5, 1998, the second on August 27, 1998. Both meetings were held at the state capitol building in Boise and were open to the public. The first meeting was generally educational. The committee heard testimony about the history of the dispute and the continuing disagreements about how to resolve it. The committee was informed that the parties had been unable to reach a compromise despite substantial efforts to do so.

The primary issue separating the parties was what standard should be applied to evaluate whether a property tax exemption should be granted. Ada County and the Idaho Association of Counties argued that the standard should be based on the county's determination of community needs and an examination of hospital operations to determine if the hospital is meeting those needs. The Idaho Association of Counties asserted that the counties were adequately staffed and trained to examine hospital operations and that a less comprehensive review would not produce meaningful results and would negate county authority and local control.

St. Luke's and the Idaho Hospital Association argued that the appropriate standard is provided in the federal income tax exemption granted to qualified charitable organizations in Section 501 of the Internal Revenue Code. They asserted that if a hospital is granted an income tax exemption under Section 501(c)(3) of the Internal Revenue Code and is properly organized under state law, then a county property tax exemption should be granted without further investigation by the county. They felt that the review performed by the federal government in granting an exemption under Section 501(c)(3) was sufficient and need not be duplicated by the county. The Idaho Hospital Association argued that such duplication would be unnecessary and would result in inconsistent application. The association also asserted that a county review would be contrary to state tax policy, which recognizes the federal exemption for state income tax purposes.

The parties presented substantial testimony regarding what a county looks for when

deciding whether to grant a property tax exemption, and what conduct on the part of the hospital makes that hospital conclude that it is eligible for an exemption. Testimony encompassed the following issues, which indicate that substantial differences continue to divide the parties: whether community needs and benefits should be determined on a county basis or a regional basis; how to define and measure a community, community needs and community benefits; whether the county should be able to determine what community needs must be met; whether the county should be able to review hospital operations to determine if satisfactory resources are being provided to the community; whether the county can accurately examine those operations with existing staff; and whether there is a level of (a) charges for service; (b) efforts to collect money owed for services; (c) physical expansion; or (d) cash reserves that indicates a hospital has cast off its nonprofit, charitable status and is operating as a for-profit hospital?

At the end of the first meeting, the co-chairs directed the Idaho Hospital Association and the Idaho Association of Counties to meet together to try once again to settle their disagreements. The two groups were instructed to prepare draft legislation for presentation at the second committee meeting.

At the second meeting the committee heard testimony from the Idaho State Tax Commission, the Idaho Hospital Association and the Idaho Association of Counties. Dan John, representing the Tax Commission, discussed section 501 of the Internal Revenue Code.

Steve Millard, president of the Idaho Hospital Association, testified about the efforts the association had made to reach a compromise with the Idaho Association of Counties. Mr. Millard also presented draft legislation amending Section 63-602D, Idaho Code. The amendments imposed an exemption standard based on whether the hospital is recognized as an exempt entity under Section 501(c)(3) of the Internal Revenue Code and is properly organized under state law. The association presented information indicating that the overwhelming majority of states have exemption statutes that rely on an objective standard and do not provide for substantial review by counties.

Dan Chadwick, president of the Idaho Association of Counties, also noted the efforts made to reach a compromise and presented legislation amending Section 63-602D, Idaho Code. The amendments gave counties an active role in determining community needs and examining hospital operations. The amendments were modeled, at least in part, after recent statutory changes in the states of Texas and Pennsylvania.

The committee accepted the draft presented by the Idaho Hospital Association, with several changes.

#### **IV. Findings and Recommended Legislation**

The committee, the Idaho Association of Counties and the Idaho Hospital Association agreed that Section 63-602D, Idaho Code is ambiguous and needs to be changed. Section

63-602D, Idaho Code, provides that:

The following property is exempt from taxation: hospitals and refuge homes, their furniture and equipment, owned, operated and controlled, and medical equipment leased, by any religious or benevolent corporation or society with the necessary grounds used therewith, and from which no gain or profit is derived by reason of their operation.

This exemption, if not the exact same statute, has existed since 1899 when the word "hospitals" was added to a statute providing a property tax exemption for church property. The earliest version of the statute prohibited the receipt of rent. "Rent" was changed to "profit" in 1923, and the word "gain" was added in 1929. The statute has existed in substantially the same form since then. However, public expectations of hospitals, the role hospitals play in a community and hospital operations have changed dramatically. There was no agreement between the parties on how to address those changes.

The committee finds that the phrase "from which no gain or profit is derived" is ambiguous. For instance, does the phrase mean that a charitable hospital cannot have revenues that exceed expenses, that a hospital cannot accumulate cash reserves, or that a hospital cannot physically expand its facilities? Or does the phrase merely mean that profits cannot be paid to shareholders? Both parties presented legislation deleting the phrase.

The committee concludes that the draft legislation presented by the Idaho Hospital Association, with changes as required by the committee, is the preferred solution. The statute, with the preferred amendments, provides the following: it defines the word hospital; it declares that certain property is exempt from taxation; it provides for an exemption for real property being prepared for use as a hospital (i.e., property under construction); it requires that in order to be granted an exemption a hospital corporation must show that it is organized as a nonprofit corporation under the state law and has received a federal exemption under Section 501(c)(3) of the Internal Revenue Code; it provides for treatment of property used for a purpose that is not directly related to the hospital's exempt purpose (i.e., a part of a property used by a for-profit entity); and it requires large hospitals seeking the exemption to provide community benefit reports to the county board of equalization each year. However, the report is to be provided as a matter of community information. It does not provide a basis for approval or denial of the tax exemption.

The committee finds that the recommended legislation will remove ambiguities present in the existing statute and will help ensure consistent interpretation and application. The recommended legislation clarifies treatment of land under construction and portions of property used on a for-profit basis. The legislation requires submission of information regarding community needs and benefits provided by nonprofit hospitals. This information is intended to encourage communication between the counties and the hospitals while avoiding government mandates.

#### **IV. Conclusion**

In two meetings, this committee examined property tax exemptions provided to nonprofit, charitable hospitals in Section 63-602D, Idaho Code. These hospitals are vital to the health of the state and its citizens. Property tax exemptions provide undisputed financial benefits to the businesses that receive them. Therefore, it is a legitimate exercise of state and local authority to provide an exemption to these businesses so long as they continue to operate as nonprofit organizations fulfilling a charitable mission. Moreover, it is legitimate and appropriate to deny exemptions to organizations that do not fulfill their charitable mission. The legislation recommended by the committee reflects these concerns and is intended to promote the following goals: reward legitimate charitable operation by nonprofit hospitals; remedy problems caused by ambiguities in the present statute; prohibit exemptions for property used on a for-profit basis; promote communication between counties and hospitals regarding community benefits; and to be consistent with the approach taken by the majority of states.

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