
Coates' Canons Blog: Hiking for Profit? A Property Tax Exemption Dispute

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Can a land conservancy organization that preserves private land from development and

occasionally charges for guided hikes and farm workshops qualify for a charitable property tax exemption? Recent discussions between the Southern Appalachian Highlands Conservancy (“SAHC”) and Buncombe County show how difficult it can be to determine exactly what types of non-profit organizations are “charitable” under North Carolina law.

I’ve blogged in the past about the increasing number of battles between local governments and non-profits over property tax exemptions. As non-profits move beyond the traditional “social-services” model (think food banks, homeless shelters, and low-income housing) and mix charitable work with commercial activities, local governments have become more willing to question the non-profits’ property tax exemptions. SAHC’s interaction with Buncombe County follows that same pattern.

SAHC is a non-profit IRS 501(c)(3) organization whose mission is to “conserve the unique plant and animal habitat, clean water, farmland, scenic beauty, and places for people to enjoy outdoor recreation in the mountains of North Carolina and Tennessee for the benefit of present and future generations.” SAHC has protected more than 70,000 acres in the North Carolina mountains through conservation easements and land purchases and works with employees and volunteers to maintain and preserve those lands.

When the SAHC applied for a property tax exemption under the charitable prong of G.S. 105-278.7 for its newly purchased headquarters building just outside of downtown Asheville, the county tax office questioned it on two grounds. First, the county questioned whether the SAHC’s land conservation activities were “charitable” under North Carolina property tax law. Specifically, the county questioned how the SAHC’s land conservation efforts benefitted “a significant rather than a limited segment of the community” as required by G.S. 105-278.7(f)(4) for charitable activities if the general public is not permitted to use much of the land SAHC has protected through easements and purchases. Second, the county argued that the SAHC’s commercial activities—charging fees for some guided hikes and for farm planning workshops—were inconsistent with its allegedly charitable purpose and, if so, should disqualify SAHC from a charitable property tax exemption.

After SAHC provided the county with more information about its activities, the tax office relented and granted the requested property tax exemption. But the questions raised by the county were reasonable ones to which every North Carolina non-profit seeking a property tax exemption should be prepared to respond.

First, what activities count as “charitable”? The county suggested that the charitable exemption under GS 105-278.7 should be limited to organizations that provide goods and services directly to a disadvantaged population. SAHC argued that the exemption could also cover organizations that provide direct and indirect benefits to the general public, such as SAHC’s mission to protect and preserve open spaces. Who’s right?

I think SAHC has the better argument. North Carolina courts have not ruled on the specific issue of whether a land conservation organization qualifies as a charitable organization for property tax purposes. But more than thirty years ago



our state's court of appeals did observe that in the context of property tax exemptions "the concept of charity is not confined to the relief of the needy and destitute." *In re: Taxable Status of Property*, 454 N.C. App. 632 (1980). Numerous other states have addressed this issue and found that land conservancy non-profits qualify as charitable organizations for purposes of property tax exemptions. See for example, *New England Forestry Foundation, Inc. v Bd. Of Assessors of Hawley*, 468 Mass 138, 9, N.E. 3d 310 (2014 (S.J.C. Mass.))("charity may constitute more than 'mere alms giving' . . . As the science of conservation has advanced, it has become more apparent that properly preserved and managed conservation land can provide a tangible benefit to a community even if few people enter the land. . .")

I feel confident that if faced with this question North Carolina courts would rule similarly and conclude that SAHC's land conservancy efforts qualify for charitable property tax exemptions.

The county's second question about SAHC's exemption application was, "Can a non-profit still be charitable if it charges fees for some of its services?" Most of SAHC's hikes and related activities are free, but SAHC does charge between \$10 and \$20 for a few of its guided hikes and between \$20 and \$50 for its farm management workshops. In the county's view, this commercial activity was sufficient to disqualify SAHC from a charitable property tax exemption.

I'm not sure that's right. SAHC's commercial activity represented a small fraction of its overall revenue—less than one-half of one percent, to be exact. But even if the fees from hikes and workshops did represent a substantial portion of SAHC's annual revenue, the strong connection between that commercial activity and SAHC's charitable purpose should have been enough to preserve SAHC's charitable exemption. Unlike the fudge shop and restaurants on Grandfather Mountain which disqualified that organization from a property tax exemption, SAHC's commercial activities did not exist solely for revenue-production purposes. SAHC's guided hikes and farm management workshops relate directly to the organization's charitable goals promoting and protecting the community's open spaces. Commercial activity that is unrelated to an organization's exempt purpose—like Grandfather Mountain's fudge shop—should be a concern when a county reviews a property tax exemption application. Commercial activity that is intimately connected with an organization's exempt purpose—like SAHC's farm management workshops—should not.

Happily for the SAHC, after some discussion Buncombe County granted the organization a charitable property tax exemption under G.S. 105-278.7 beginning with the 2018-2019 tax year. I think that was the right decision. Do you? The comment section awaits your thoughts . . .

Links

- canons.sog.unc.edu/wp-content/uploads/2017/10/southern-appalachian-highlands-conservancy.png
- appalachian.org/
- www.ncga.state.nc.us/gascritps/statutes/statutelookup.pl?statute=105-278.7