TAXATION—TAX-EXEMPTION TO NON-PROFIT CORPORATION FOR PROPERTY USED IN FURTHERANCE OF ITS TAX-EXEMPT PURPOSE EXTENDS TO SECONDARY PROPERTY ACQUISITIONS—*Boys' Club of Clifton, Inc. v. Township of Jefferson*, 72 N.J. 389, 371 A.2d 22 (1977).

In 1962, Boys' Club of Clifton, Inc. (Boys' Club), a non-profit corporation,[1] purchased 33.25 acres of land in Jefferson Township, New Jersey for the purpose of establishing a camp for boys.[2] Subsequently, in 1966, Boys' Club purchased an adjoining 63.85 acre vacant tract of land to complement the existing camp facilities,[3] and to qualify the camp for accreditation by the American Camping Association.[4] With this acquisition, Boys' Club intended to carry on an assortment of programs that included camping, hiking, and conservation activities designed to instill in the young boys attending Camp Clifton an "'appreciat[ion of] God and natural surroundings.''[5]

During the winter of 1972, Boys' Club rented several sleeping cabins at the facility to Snow Bowl, Inc., a private corporation operat-

---

[1] Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 396, 371 A.2d 22, 24, 25–26 (1977). The township identified this original tract as Lot 15, Block 307. *Id.* at 396, 371 A.2d at 26.

[2] Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 396, 371 A.2d 22, 25 (1977). Boys' Club was incorporated as a non-profit corporation pursuant to N.J. STAT. ANN. § 15:1-1 (West 1933), on July 13, 1955. Brief for Petitioner-Respondent at 1, Boys' Club of Clifton, Inc. v. Township of Jefferson, 137 N.J. Super. 136, 348 A.2d 209 (1975) [hereinafter cited as Brief for Petitioner-Respondent]. The general provisions governing the incorporation of non-profit corporations can be found in N.J. STAT. ANN. §§ 15:1 to 23 (West 1933). Boys' Club qualified as a benevolent organization established "to promote the health, social, educational, vocational and character development of Boys." 72 N.J. at 396, 371 A.2d at 25; Brief for Petitioner-Respondent, *supra* at 1. Boys' Club's designation as a charitable corporation is supported by case law. *See, e.g.*, Y.W.C.A. of Harvey Cedars v. Pelham, 9 N.J. Misc. 196, 153 A. 397 (Sup. Ct. 1931), *aff'd*, 108 N.J.L. 553, 158 A. 544 (Ct. Err. & App. 1932) (summer home for girls entitled to charitable tax exemption).

[3] Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 396, 371 A.2d 22, 26 (1977). Boys' Club purchased the additional tract because the camp could not be adequately operated on the original 33 acre tract. *Id.* Actually there were two tracts involved in the second purchase. One tract consisted of .45 acres. The larger tract of 63.4 acres was identified by the township as Lot 1A, Block 320 and was the focus of the controversy. *Id.*

[4] *See* Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 396, 371 A.2d 22, 26 (1977). In order to be accredited, the American Camping Association required that the ratio of the camp's acreage to campers be one to one. With the purchase of Lot 1A, Block 320 Boys' Club's acreage totaled 99.9 acres, just short of the 100 acres needed to be accredited for 100 campers, the number the camp was designed to service. Although accreditation was given to Boys' Club, it would not have been granted without the purchase of Lot 1A, Block 320. Brief for Petitioner-Respondent, *supra* note 2, at 4.

[5] Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 396, 371 A.2d 22, 26 (1977) (quoting Brief for Petitioner-Respondent, *supra* note 2, at 2–3).

ing a local ski resort.[6] For a nominal fee, Boys' Club also permitted groups of college students to use the area for ecological programs.[7] Despite the receipt of this additional income, the camp operated at a loss for the tax years of 1971 and 1972.[8]

Pursuant to section 4-3.6 of Title 54 of the New Jersey statutes,[9] the land and buildings on the original 33.25 acre tract were designated by Jefferson Township as exempt from local real property taxes due to Boys' Club's status as a qualified charitable organization.[10]

---

[6] Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 397, 371 A.2d 22, 26 (1977). Four of the camp's dormitory cabins were utilized to house the staff of Snow Bowl, Inc. from November 1972 through March 1973 and from November 1973 through March 1974. Brief for Petitioner-Respondent, *supra* note 2, at 4–5. In addition, in 1972, 25 young skiers from Snow Bowl, Inc. were housed for a single weekend. 72 N.J. at 397, 371 A.2d at 26 (1977).

[7] Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 397, 371 A.2d 22, 26 (1977). Religious groups were also permitted to use the facilities of Camp Clifton. *Id.*

[8] Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 397, 371 A.2d 22, 26 (1977). The actual losses sustained were $3,200 in 1970, more than $15,000 in 1971 and $1,850 in 1972. *Id.* Boys' Club's detailed financial reports indicated that the fees charged to campers represented only a small fraction of the operating costs associated with running the camp. Brief for Petitioner-Respondent, *supra* note 2, at 5–7. For further discussion of the effect that a corporation's net profit has on its non-profit status, see notes 45–49 *infra* and accompanying text.

[9] N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979). This provision grants a tax exemption to non-profit corporations for property used by the corporation in furtherance of its tax-exempt purpose. The statute provides in part that

> [t]he following property shall be exempt from taxation under this chapter: . . . all buildings actually and exclusively used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children, or for religious, charitable or hospital purposes, or for one or more such purposes; all buildings owned or held by an association or corporation created for the purpose of holding the title to such buildings as are actually and exclusively used in the work of 2 or more associations or corporations organized exclusively for the moral and mental improvement of men, women and children; all buildings owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them; . . . the land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed 5 acres in extent; . . . provided, in case of all the foregoing, the buildings, or the lands on which they stand, or the associations, corporations or institutions using or occupying them as aforesaid, are not conducted for profit, except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided, the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent or religious purposes. . . .

Id.

[10] *See* Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 396, 371 A.2d 22, 25–26 (1977).

This charitable tax exemption was extended to the 1966 acquisition until the 1971 tax year.[11] In 1971 and 1972 Jefferson Township assessed property taxes on the 1966 acquisition, designated as Lot 1A, Block 320 (Lot 1A),[12] but left the exemption of the original tract undisturbed.[13] The Morris County Tax Board affirmed the Township's tax assessment.[14] On Boys' Club's appeal, the New Jersey Division of Tax Appeals reinstated the charitable tax exemption.[15] The appellate division reversed and remanded the dispute to the New Jersey Division of Tax Appeals for further fact finding.[16] That court affirmed its prior determination that the tax exemption was proper.[17] Upon Jefferson Township's appeal, the appellate division disallowed the exemption.[18] Following grant of certification,[19] the Supreme Court of New Jersey in the six-to-one decision of *Boys' Club of Clifton, Inc. v. Township of Jefferson*,[20] reversed the appellate division by ultimately finding that Lot 1A was entitled to tax exempt treat-

---

[11] Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 394, 371 A.2d 22, 24–25 (1977).

[12] Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 394, 397, 371 A.2d 22, 25, 26 (1977).

[13] *See* Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 397, 371 A.2d 22, 26 (1977). The tax exempt status was not questioned as the buildings were constructed on the original piece of property. *See id.*

[14] Morris County Tax Bd., Appeal No. 276 (Nov. 9, 1972). While affirming the assessment of the newly acquired tract of land, Lot 1A, Block 320, the Morris County Tax Board also allowed the exemption of the original tract, Lot 15, Block 307, to remain in effect. *See* Morris County Tax Bd., Appeal No. 277 (Nov. 9, 1972).

[15] Boys' Club of Clifton, Inc. v. Township of Jefferson, No. L-3928 71 (N.J. Div. of Tax App., Apr. 4, 1974). In his decision, Judge Convery stated that the adjoining tract, Lot 1A, Block 320, was exempt due to the fact that it was used for the same purposes that were the basis of the tax exemption on Lot 15, Block 307 and that the 99 acres were within the statutory maximum for the 28 buildings.

[16] Boys' Club of Clifton, Inc. v. Township of Jefferson, No. A-2423 73 (App. Div. June 25, 1974).

[17] Boys' Club of Clifton, Inc. v. Township of Jefferson, Nos. L-3928 71, L-3950 72 (N.J. Div. of Tax App., Jan. 9, 1975). This decision, which included consideration of the exclusivity of use of Lot 1A, Block 320, was decided in favor of Boys' Club. The court found, notwithstanding the off-season use of the camp by Snow Bowl, Inc. and charitable organizations, that the monies received for these uses did not in any way indicate that profit was the motivating factor. *Id.* at 4.

[18] Boys' Club of Clifton, Inc. v. Township of Jefferson, 137 N.J. Super. 136, 141, 348 A.2d 209, 211 (App. Div. 1975), *rev'd and remanded*, 72 N.J. 389, 371 A.2d 22 (1977). In their *Boys' Club* decision, the appellate division held that the tax exemption questioned was controlled by Sisters of Charity v. Cory, 73 N.J.L. 699, 65 A. 500 (Ct. Err. & App. 1907), which limited the applicability of the exemption to " *'the land whereon the building is erected.'* " Boys' Club v. Township of Jefferson, 137 N.J. Super. 136, 139, 348 A.2d 209, 210 (App. Div. 1975), *rev'd and remanded*, 72 N.J. 389, 371 A.2d 22 (1977) (emphasis in original).

[19] Boys' Club v. Township of Jefferson, 70 N.J. 143, 358 A.2d 190 (1976).

[20] 72 N.J. 389, 371 A.2d 22 (1977).

ment.[21] The supreme court held that where a section 54:4-3.6 qualifying non-profit corporation's buildings are devoted exclusively for the qualified purpose, then all adjacent and adjoining property used for the same purpose, irrespective of the date of the property's acquisition, is exempt from taxation to the extent of five acres per building.[22] In reaching this decision, the court discredited the existing charitable tax exemption test.[23]

New Jersey courts have long adhered to the majority rule of strict construction of statutes which grants exemptions from taxation.[24] Under the majority rule, all doubts must be resolved against the taxpayer seeking a statutory tax exemption, based upon the principle that the burden of taxation should be shared equally.[25] Consis-

---

[21] *Id.* at 405, 371 A.2d at 30.

[22] *See id.* at 404–05, 371 A.2d at 30.

[23] *See id.* at 397–98, 371 A.2d at 26–27. The *Boys' Club* decision eliminated the two-prong test of Sisters of Charity v. Cory, 73 N.J.L. 699, 65 A.500 (Ct. Err. & App. 1907), which had been followed in numerous cases. 72 N.J. at 398, 371 A.2d at 27; *see* notes 62–69 *infra* and accompanying text.

[24] *See* Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 172 A.2d 420 (1961) (tax statutes construed against claimant); Township of Teaneck v. Lutheran Bible Inst., 20 N.J. 86, 118 A.2d 809 (1956) (all doubts resolved against claimant); Julius Roehrs Co. v. Division of Tax Appeals, 16 N.J. 493, 109 A.2d 611 (1955) (exemption represents departure from fundamental principle that all property bear fair share of tax burden); Textile Printers Corp. v. Director, Div. of Taxation, 145 N.J. Super. 456, 368 A.2d 375 (App. Div. 1976) (exemptions construed against claimant); Locustwood Cemetery Ass'n v. Cherry Hill, 133 N.J. Super. 92, 304 A.2d 750 (App. Div. 1975) (burden of proving exemption on claimant); *In re* Tillis Estate, 123 N.J. Super. 280, 302 A.2d 539 (App. Div. 1973) (claimant, not state, has burden to prove exemption); Township of Princeton v. Tenacre Foundation, 69 N.J. Super. 559, 174 A.2d 601 (App. Div. 1961) (tax exemption strictly construed against claimant).

This principle is widely recognized by other jurisdictions as a fundamental rule to be applied in interpreting tax statutes. *See, e.g.*, State v. Bridges, 246 Ala. 486, 21 So.2d 316 (1945) (rule of strict construction is in keeping with principle of "equality is equity"); Hartford Hosp. v. Hartford, 160 Conn. 370, 279 A.2d 561 (1971) (tax exemptions no matter how meritorious must be strictly construed); State *ex rel.* Miller v. Doss, 146 Fla. 752, 2 So.2d 303 (1941) (exemptions from taxation are special favors frowned on by courts); People *ex rel.* Paschen v. Hendrickson-Pontiac, Inc., 9 Ill. 2d 250, 137 N.E.2d 381 (1956) (framers of Constitution intended district construction of tax exemptions of property); Arkansas City v. Board of County Comm., 197 Kan. 728, 420 P.2d 1016 (1966) (strict construction of tax exemptions as exceptions to tax statutes); Fitterer v. Crawford, 157 Mo. 51, 57 S.W. 532 (1900) (cardinal principle of tax exemption laws is strict construction); People *ex rel.* Unity Congregational Soc'y v. Mills, 189 Misc. 774, 71 N.Y.S.2d 873 (Sup. Ct. 1947) (exemptions from taxation are not favored and are strictly construed). *But see* Kemp v. Pillar of Fire, 94 Colo. 41, 27 P.2d 1036 (1933) (tax statutes granting exemptions to property used for charitable purposes should be less strictly construed than those granting exemptions for property used for gain or profit); Adams County v. Catholic Diocese, 110 Miss. 890, 71 So. 17 (1916) (exemption for religious institution will not be subjected to same strict construction applied to corporation created for gain or profit).

[25] *See, e.g.*, Bloomfield v. Academy of Medicine, 47 N.J. 358, 363, 221 A.2d 15, 18 (1966); Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 214, 172 A.2d 420, 422 (1961); Teaneck v. Lutheran Bible Inst., 20 N.J. 86, 90, 118 A.2d 809, 811 (1955); Township of Princeton v. Tenacre Foundation, 69 N.J. Super. 559, 563, 174 A.2d 601, 604 (App. Div. 1961);

tent with the general principles of statutory construction, when interpreting tax statutes the courts are bound by the legislature's purpose for enacting the statute.[26] Accordingly, when a literal interpretation of the statute would lead to a result not intended by the legislature, the legislative intent will prevail over a literal reading of the statutory language.[27] Section 54:4-3.6[28] is an attempt by the legislature to assist, by way of property tax relief, non-profit corporations that provide services benefiting society as a whole.[29] In order to qualify for an exemption under the statute, a non-profit organization must show

---

Rector of Christ Church v. Township of Millburn, 26 N.J. Misc. 123, 125–26, 57 A.2d 506, 507 (Div. Tax App. 1948).

[26] *See, e.g.*, Township of Princeton v. Tenacre Foundation, 69 N.J. Super. 559, 563, 174 A.2d 601, 604 (App. Div. 1961).

[27] *See id.*

[28] *See* N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979). The present statute is a direct descendant of a supplement to the first tax act enacted in 1846. A supplement to the act entitled "An Act concerning taxes" approved April fourteenth, eighteen hundred and forty-six, ch. 5, § 2, [1851] N.J. LAWS 271. An 1866 amendment added the "necessary for the fair enjoyment" requirement and the five acre maximum exemption. *See* A further supplement as an act entitled "An Act concerning taxes," ch. 487, § 5, [1866] N.J. LAWS 1078. These words which now appear to limit the exemption, actually expanded the exemption to include land as well as the building. *Compare* A supplement to the act entitled "An Act concerning taxes" approved April fourteenth, eighteen hundred and forty-six, ch. 5, § 2, [1851] N.J. LAWS 271 *with* A further supplement to an act entitled "An Act concerning taxes," ch. 487, § 5, [1866] N.J. LAWS 1078.

The Tax Revision of 1903, An Act for the assessment and collection of taxes, ch. 208, § 1, [1903] N.J. LAWS 394, superceded all previous tax acts, and added the actual and exclusive use requirement on the building. *See id.* This statute also added a rent provision, which allowed the claimant to receive rental income from a tenant without disturbing the exemption as long as the rental income was utilized for the furtherance of the charity's purposes. *See id.*

The 1918 Tax Revision, An Act for the assessment and collection of taxes, ch. 236, § 203, [1818] N.J. LAWS 847, repealed the 1903 Tax Revision. However, the 1918 Revision contained no significant changes in language. *Compare* An Act for the assessment and collection of taxes, ch. 208, § 1, [1903] N.J. LAWS 394 *with* An Act for the assessment and collection of taxes, ch. 236, § 203, [1918] N.J. LAWS 847. The present statute is derived directly from the 1918 act. *See* N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979).

The 1918 Act has been amended thirteen times with most of the amendments being minor, with the exception of the 1949 amendment. *See* An act concerning exemptions from taxation, and amending, section 54:3.6 of the Revised Statutes, ch. 85, § 1, [1949] N.J. LAWS 394. The 1949 amendment was significant in that it broadened the rent income provision. *Id.* Specifically, the 1949 amendment was designed to overcome the result in Trustees of Y.M. & Y.W.H.A. v. Millburn Twp., 119 N.J.L. 504, 506, 197 A. 372, 373 (Sup. Ct.), *aff'd*, 121 N.J.L. 65, 1 A.2d 367 (Ct. Err. & App. 1938) (en banc), which had held the exemption would be lost upon evidence of rental income. For a discussion of the effect of the 1949 amendment on the holding in *Trustees of Y.M. & Y.W.H.A.*, see notes 84–86 *infra* and accompanying text.

[29] *See* Kimberly School v. Town of Montclair, 137 N.J.L. 402, 404–05, 60 A.2d 313, 314 (Sup. Ct.), *rev'd on other grounds*, 2 N.J. 28, 65 A.2d 500 (1948) (rendering of public service relieved public of burden); Carteret Academy v. State Bd. of Taxes, 102 N.J.L. 525, 529, 133 A. 886, 887 (Sup. Ct. 1926), *aff'd*, 104 N.J.L. 165, 138 A. 919 (Ct. Err. & App. 1927) (provision of an essentially public service by nonprofit organization).

that its buildings and land are exclusively used for a charitable, benevolent or religious purpose.[30] That determination is made by considering the facts and circumstances of each case.[31]

The statute sets forth three requirements which must be satisfied in order to obtain a charitable tax exemption.[32] First, the building must be "actually and exclusively used" for a qualified charitable purpose.[33] Second, the organization must not be "conducted for profit."[34] Third, the land must be land upon which the building is constructed, "necessary for the fair enjoyment" of the building, and not exceeding five acres of land.[35]

Generally, the test for actual and exclusive use considers both the exclusiveness of the organization's qualified purpose and the physical use of the property.[36] Case law is illustrative but not binding,[37] since the determination must be made on a case-by-case basis.[38]

---

[30] *See* Town of Bloomfield v. Academy of Medicine, 47 N.J. 358, 363, 221 A.2d 15, 18 (1966); Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 214, 172 A.2d 420, 423 (1961); Congregation of the Mission of St. Vincent de Paul v. Brakeley, 67 N.J.L. 176, 178, 50 A. 589, 590 (Sup. Ct. 1901).

[31] *See, e.g.*, City of Trenton v. State Bd. of Tax Appeals, 127 N.J.L. 105, 106, 21 A.2d 644, 645 (Sup. Ct. 1941), *aff'd sub nom.* City of Trenton v. Rider College, 128 N.J.L. 320, 25 A.2d 630 (Ct. Err. & App. 1942); Congregation B'nai Yisroel v. Township of Millburn, 35 N.J. Super. 67, 72, 113 A.2d 182, 184 (App. Div. 1955); Rector of Christ Church v. Township of Millburn, 26 N.J. Misc. 123, 126, 57 A.2d 506, 507 (Div. Tax App. 1948).

[32] *See* N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979). For a discussion of the three requirements, see notes 33–52 *infra* and accompanying text.

[33] N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979). For a discussion of the history of this requirement, see note 28 *supra*.

[34] *See* N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979). For cases outlining the limits of non-profitability, see Town of Bloomfield v. Academy of Medicine, 47 N.J. 358, 364–65, 221 A.2d 15, 19 (1966) (organization geared to operate at small profit not in conflict with statute); Pingry Corp. v. Township of Hillside, 46 N.J. 457, 463–64, 217 A.2d 868, 871–72 (1966) (rental income an element but not per se establishment of profitability); Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 217, 172 A.2d 420, 424 (1961) (work done for other non-profit organizations undertaken for purpose of making profit); Kimberly School v. Town of Montclair, 2 N.J. 28, 33, 65 A.2d 500, 502 (1949) (entitled to exemption if not conducted for profit); City of Trenton v. State Div. of Tax Appeals, 65 N.J. Super. 1, 10, 166 A.2d 777, 781–82 (App. Div. 1961) (no requirement that non-profit organizations undertaken for purpose of making profit); Princeton County Day School v. State Bd. of Tax Appeals, 113 N.J.L. 515, 519, 175 A.136, 138 (Sup. Ct. 1934) (operation of school at loss not controlling on question of non-profitability); Institute of Holy Angels v. Bender, 79 N.J.L. 34, 35–36, 74 A. 251, 251–52 (Sup. Ct. 1909) (school's charges for tuition and board not designed to yield profit).

[36] *See* Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 214, 172 A.2d 420, 423 (1961). Princeton University Press appealed an assessment originally levied by the local board of taxation. The supreme court found that a substantial portion of the Press' activities involved printing work done for the purpose of off-setting losses incurred in the publication of scholarly works. The court found that since such work had been accepted for the purpose of making a profit, it took on a commercial character. The property therefore was not actually and exclusively used for the Press's tax exempt purpose. *Id.* at 214–15, 172 A.2d at 423–24. This approach was followed in Town of Bloomfield v. Academy of Medicine, 47 N.J. 358, 365, 221 A.2d

A factor that has been considered in the context of actual and exclusive use is rental income.[39] Rental income obtained in furtherance of any qualified purpose under the statute will not disturb the tax exemption.[40] The question of rental income has been raised primarily in the area of housing for faculty[41] or administrative personnel.[42] In examining rental agreements, courts have had to determine whether the qualified organization has assumed a normal landlord-tenant relationship.[43] If so, the primary motive for the agreement has been held to be profit, and the exemption denied because the rental agreement was not designed to further the charitable or benevolent purpose of the organization.[44]

15, 19–20 (1966), where the supreme court granted a tax exemption on the basis that the Academy was operated solely for "the general health and welfare of the community." *Id.*; *cf.* Textile Research Inst. v. Township of Princeton, 35 N.J. 218, 223, 172 A.2d 417, 419 (1961) (non-profit corporation's purpose favored solely textile industry rather than general public).

[37] *See* Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 216, 172 A.2d 420, 423–24 (1961).

[38] *See* Town of Bloomfield v. Academy of Medicine, 47 N.J. 358, 363, 221 A.2d 15, 18 (1961); Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 216, 172 A.2d 420, 423 (1961); Congregation B'nai Yisroel v. Township of Millburn, 35 N.J. Super. 67, 72, 113 A.2d 182, 184 (App. Div. 1955).

[39] *See, e.g.*, Pingry Corp. v. Township of Hillside, 46 N.J. 457, 463–64, 217 A.2d 868, 871 (1966); Mayor of Princeton v. State Bd. of Taxes, 96 N.J.L. 334, 340, 115 A. 342, 345 (Sup. Ct. 1921).

[40] *See* N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979). The statute provides in part that

> all buildings owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them. . . .

Id.

[41] *See* Pingry Corp. v. Township of Hillside, 46 N.J. 457, 463–64, 217 A.2d 868, 871–72 (1966) (landlord-tenant relationship between private school and faculty members secondary to school's primary purpose of providing faculty housing on campus site); Mayor of Princeton v. State Bd. of Taxes, 96 N.J.L. 334, 340, 115 A. 342, 345 (Sup. Ct. 1921) (tax exemption permitted where school used dormitory rental income received from employees to fund faculty salaries); State v. Ross, 24 N.J.L. 497, 499–500 (Sup. Ct. 1854) (dwellings for professors used in furtherance of university's purpose).

[42] *See* City of Hoboken v. Division of Tax Appeals, 134 N.J.L. 594, 599–600, 49 A.2d 587, 590 (Sup. Ct. 1946), *modified on other grounds*, 136 N.J.L. 328, 55 A.2d 290 (Ct. Err. & App. 1947) (college facilities including president's house used in advancement of college's purpose). *See also* Township of Princeton v. Tenacre Foundation, 69 N.J. Super. 559, 565–66, 174 A.2d 601, 605 (App. Div. 1961) (director's residence necessary for operation of institution).

[43] *See* Pingry Corp. v. Township of Hillside, 46 N.J. 457, 463, 217 A.2d 868, 871 (1966).

[44] *See, e.g.*, City of Hoboken v. Division of Tax Appeals, 136 N.J.L. 328, 329, 55 A.2d 290, 291 (Ct. Err. & App. 1947) (exemption warranted upon showing that rental income was not profit for college), *modifying on other grounds*, 134 N.J.L. 594, 49 A.2d 587 (Sup. Ct. 1946);

Rental income is also germane to the issue of the organization's non-profit status—the second statutory requirement for a tax exemption.[45] The statute's focus is not directed toward the organization's actual profit or loss, but refers to whether the organization was operated in order to make a profit.[46]

There is no requirement within the statute that a non-profit organization operate at a loss.[47] Such a requirement, obviously, would nullify the tax advantage offered by the statute. With this in mind, the test for non-profitability is not whether a profit was realized, but rather whether the fees charged were set with the intention of yielding a profit, or had been designed to minimize operating losses.[48]

The final statutory requirement for a tax exemption focuses upon the land rather than the building.[49] To be exempt, the land must be "the land whereon any of the building hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof."[50] In making this determination, the extent of the land exempted may not exceed five acres per building.[51]

Mayor of Princeton v. State Bd. of Taxes, 96 N.J.L. 334, 340, 115 A.2d 342, 345 (Sup. Ct. 1921) (rental income from faculty does not deprive school of tax exemption).

[45] *See* N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979). The applicable statutory language concerning the exemption of property of non-profit organizations provides that

> the associations, corporations or institutions using and occupying [the buildings] as aforesaid, are not conducted for profit, except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided, the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent or religious purposes.

Id.

[46] *See* Kimberly School v. Town of Montclair, 2 N.J. 28, 37–38, 65 A.2d 500, 506–07 (1949); Mayor of Princeton v. State Bd. of Taxes, 96 N.J.L. 334, 338–39, 115 A. 342, 344 (Sup. Ct. 1921). *See also* Township of Denville v. St. Francis Sanitarium, 89 N.J.L. 293, 297, 98 A. 254, 255 (Ct. Err. & App. 1916) (charitable institution qualified for tax exemption despite being funded by fees); Bancroft School v. State Bd. of Taxes, 10 N.J. Misc. 656, 656–57, 160 A. 390, 390–91 (Sup. Ct. 1932) (no tax exemption where school for retarded children that charged substantial fees was designated as "commercial" despite operating deficit); Institute of Holy Angels v. Bender, 79 N.J.L. 34, 36, 74 A. 251, 252 (Sup. Ct. 1909) (school exempt since tuition charges not established for purposes of profitability).

[47] *See* City of Trenton v. State Div. of Tax Appeals, 65 N.J. Super. 1, 10, 166 A.2d 777, 781–82 (App. Div. 1960).

[48] *See* Mayor of Princeton v. State Bd. of Taxes, 96 N.J.L. 334, 338–39, 115 A. 342, 344 (Sup. Ct. 1921); Institute of Holy Angels v. Bender, 79 N.J.L. 34, 35–36, 74 A. 251, 251–52 (Sup. Ct. 1909).

[49] *See* N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979).

[50] N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979). For a detailed discussion of the origin of this language, see note 28 *supra*.

[51] *See* N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979). The statutory interpretation that the exemption not exceed five acres per building, as first enunciated in

Two distinguishable interpretations of this statutory language have evolved, resulting in two distinct lines of cases. One small group of cases that has taken an expansive view of the language is represented by the *State v. Ross*[52] and *Congregation B'nai Yisroel v. Township of Millburn* decisions.[53] A second more restrictive view that has been followed by a majority of the cases is illustrated by the decision in *Sisters of Charity v. Cory*.[54]

The *Ross* decision was the earliest case to consider both the necessity and scope of tax exemptions granted under this statute.[55] The issue before the court in *Ross* was how much of Princeton University's acreage was eligible for an exemption under the 1851 statute.[56] The court found that certain dwelling houses utilized by professors were exempted under the statute.[57] In determining the extent of the land to be exempted, the court held that the exemption should include all land that was "'needful and convenient'" for the performance of the college's purpose as set forth in its charter.[58] A second important aspect of the holding was that although some build-

---

Institute of Holy Angels v. Bender, 79 N.J.L. 34, 36, 74 A. 251, 252 (Sup. Ct. 1909), was followed by the court in Pingry Corp. v. Township of Hillside, 46 N.J. 457, 466, 217 A. 2d 868, 873 (1966). Interestingly enough, the *Holy Angels* interpretation of the 1903 statute which read "five acres in extent for each" is precedent although the statute was amended in 1918 to eliminate the words "for each." *Compare* An Act for the assessment and collection of taxes, ch. 208, § 1, [1903] N.J. LAWS 394 *with* An Act for the assessment and collection of taxes, ch. 236, § 203 [1918] N.J. LAWS 847.

[52] 24 N.J.L. 497 (Sup. Ct. 1854).

[53] 35 N.J. Super. 67, 113 A.2d 182 (App. Div. 1955). This case viewed "'necessary for the fair enjoyment'" as an exception to the requirement that the land be "the land whereon . . . the buildings . . . are erected." *Id.* at 70, 113 A.2d at 183 (quoting N.J. STAT. ANN. § 54:4-3.6 (West 1949)).

[54] 73 N.J.L. 699, 65 A. 500 (Ct. Err. & App. 1907). For cases following the *Cory* holding, see Township of Denville v. St. Francis Sanitarium, 89 N.J.L. 293, 295–97, 98 A. 254, 254–55 (Ct. Err. & App. 1916); Hoboken v. Division of Tax Appeals, 134 N.J.L. 594, 595, 49 A.2d 587, 588 (Sup. Ct.), *aff'd in part, rev'd in part*, 136 N.J.L. 328, 55 A.2d 290 (Ct. Err. & App. 1946); Institute of Holy Angels v. Bender, 79 N.J.L. 34, 36, 74 A. 251, 252 (Sup. Ct. 1909); Stevens Inst. v. Bowes, 74 N.J.L. 80, 81, 70 A. 730, 731 (Sup. Ct. 1909); Congregation St. Vincent de Paul v. Brackley, 67 N.J.L. 176, 177–78, 50 A. 589, 589–90 (Sup. Ct. 1901); Rector, Christ Church v. Millburn Tp., 26 N.J. Misc. 123, 128, 57 A.2d 506, 509 (Div. Tax App. 1948); Hoboken v. Stevens Inst., 25 N.J. Misc. 461, 55 A.2d 231 (Div. Tax App. 1947); Mt. Olivet Church v. Newark, 19 N.J. Misc. 232, 232, 18 A.2d 581, 582 (Bd. Tax App. 1941). Although not cited in the *Cory* opinion, the statutory interpretation identified with *Cory* appeared first in a 1902 pre-*Cory* decision of Children's Seashore House v. Atlantic City, 68 N.J.L. 385, 388–89, 53 A. 399, 401 (Ct. Err. & App. 1902).

[55] 24 N.J.L. at 500–01.

[56] *Id.* at 48; *see* A Supplement to an act entitled "An Act concerning taxes" approved April fourteenth, eighteen hundred and forty-six, ch. 5, § 2, [1851] N.J. LAWS 271. This statute did not contain the phrase "necessary for the fair enjoyment."

[57] 24 N.J.L. at 500–01.

[58] *Id.*

ings were separated by public streets, the tax exemption was not affected.[59]

Subsequent to the *Ross* decision, the case of *Sisters of Charity v. Cory*,[60] was regarded as the controlling decision concerning the eligibility of a charitable organization for property tax exemptions.[61] The court in *Cory* introduced a two-prong test for determining whether an exemption should be granted.[62] The first prong of the test required that the land be the actual land upon which the building was situated.[63] The court identified the second prong as the determination of how much land was necessary for the fair enjoyment of the building up to the permitted five acres per building limit.[64] The significance of this two-pronged test was that any land acquired subsequent to the erection of the building would fail the test, leaving the property open to taxation.[65]

The *Cory* case overruled a prior decision of the New Jersey court of errors and appeals,[66] which had exempted, without regard to the date of acquisition, all land that was being used for the Sisters of Charity's tax exempt purpose.[67] The *Cory* court determined that the statutory language offered a clear and unambiguous expression of the legislative intent behind the statute, and accordingly felt compelled to follow this mandate.[68]

---

[59] *Id.* at 501.

[60] 73 N.J.L. 699, 65 A. 500 (Ct. Err. & App. 1907).

[61] *See* 72 N.J. at 397–98, 371 A.2d at 26–27.

[62] 73 N.J.L. at 703, 65 A. at 501–02. In setting out the test, the court's language left no doubt as to the application of the test. The court stated that

> [t]he statute creates a double test, to be applied for the purpose of determining whether or not a given parcel of land is entitled to exemption from taxation—*first*, is it the very tract upon which the building was erected, or does it include land acquired at a period subsequent to the erection of the building? *Second*, if it is the tract upon which the building was erected, then is all of it necessary for the fair enjoyment of the building?

Id. (emphasis in original).

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] Sisters of Charity v. Chatham, 52 N.J.L. 373, 20 A. 292 (Ct. Err. & App. 1890) (overruled by Sisters of Charity v. Cory, 73 N.J.L. 699, 707, 65 A. 500, 503 (Ct. Err. & App. 1907)).

[67] Sisters of Charity v. Chatham, 52 N.J.L. 373, 376, 20 A. 292, 293 (Ct. Err. & App. 1890). Using an analysis similar to *Ross*, the court did not consider the date of acquisition of the property. *Id.* at 375–76, 20 A. at 293. Interestingly enough, the *Cory* court while overruling the result in Sisters of Charity v. Borough of Chatham, 73 N.J.L. at 700–07, 65 A. at 500–03, did not overrule the *Ross* decision. *See* Chatham v. Sisters of Charity, 92 N.J.L. 409, 410–11, 105 A. 204, 204–05 (Ct. Err. & App. 1918) ("the rule of law therein laid down stands unimpeached" [referring to State v. Ross, 24 N.J.L. 497 (Sup. Ct. 1854)]).

[68] 73 N.J.L. at 702–03, 65 A. at 501.

In contrast to the restrictive approach enunciated in *Cory* is the more expansive rationale taken in *Congregation B'nai Yisroel v. Township of Millburn*.[69] In *Yisroel*, the congregation purchased, with one deed, two parcels of land[70] which were divided in half by a public road and totaled less than five acres.[71] A temple was constructed on one side of the road, and the remaining half of the land was used as a parking lot for the temple.[72] Millburn Township exempted the tract on which the temple was built, and assessed taxes on the tract used as a parking lot.[73] In assessing taxes on the parking lot, Millburn conceded that the parking lot was " 'necessary for the *fair enjoyment*' of the" temple.[74] Nevertheless, Millburn contended that the lot was not "the land whereon the building was erected," and therefore, could not pass the first prong of the *Cory* test.[75]

The appellate division struck down Millburn Township's tax assessment, stating that *Cory's* literal interpretation of the statutory language had produced a result contrary to the legislature's intent.[76] In reaching this result, the court ruled by implication that "the necessary for the *fair enjoyment*" determination was not a second test to be applied, but rather an exception to the first prong of the *Cory* test.[77] The court justified its position by positing that all the land would be exempt if the road had not existed.[78]

In speaking for the *Boys' Club* court,[79] Justice Schreiber discussed three issues which he identified as standards specified by the exemption statute that had to be satisfied in order for a tax exemption to be valid.[80] These requirements were the taxpayer's "exclusive use" of the buildings and land for the tax exempt purpose,[81] the organization's profitability motive,[82] and determination that the land was "necessary for the fair enjoyment" of the buildings.[83]

---

[69] 35 N.J. Super. 67, 113 A.2d 182 (App. Div. 1955).

[70] *Id.* at 69, 113 A.2d at 182–83. Although the deed described the land conveyed as three contiguous tracts, Millburn conceded that for all intents and purposes the land "could very simply have been described by a surveyor as one parcel and included in the deed as such." *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.* (emphasis in original).

[75] *Id.* at 70, 113 A.2d at 183.

[76] *Id.*

[77] *See id.*

[78] *Id.* at 72–73, 113 A.2d at 184–85.

[79] The majority opinion delivered by Justice Schreiber was joined by Chief Justice Hughes and Justices Mountain, Sullivan, Pashman and Clifford. 72 N.J. at 412, 371 A.2d at 31.

[80] *Id.* at 399–406, 371 A.2d at 27–31.

[81] *Id.* at 399, 371 A.2d at 27.

[82] *Id.* at 403–04, 371 A.2d at 30.

[83] *Id.* 401–03, 371 A.2d at 28–29.

One statutory element recognized by Justice Schreiber was the requirement that the taxpayer's buildings and land under scrutiny "be exclusively used" for the organization's dedicated purpose.[84] To substantiate this interpretation, Justice Schreiber referred to the language and legislative history of section 54:4-3.6, and found that the statute focused upon "the physical use of the property."[85] Unlike the State Division of Tax Appeals, the majority of the *Boys' Club* court identified the receipt of rental income by a qualified organization as being merely one factor in determining whether the actual use of the property was consistent with the taxpayer's qualified purpose.[86] On this basis, Justice Schreiber held that the off-season use of the camp by another qualified charitable or benevolent organization would not affect Boys' Club's tax exempt status.[87] The majority determined that the use of the camp by church groups was consistent with Boys' Club's qualified purpose and did not negate the availability of a tax exemption to Boys' Club.[88] Recognizing an educational institution as not having a purpose considered qualified under the tax exemption statute,[89] Justice Schreiber nevertheless held that the use of the camp by the college groups would not affect the tax status

---

[84] *Id.* at 399–400, 371 A.2d at 27 (emphasis omitted).

[85] *Id.* at 399, 371 A.2d at 27. By "physical use" the majority was referring to the purpose of the activity being conducted in the building. *See id.*

[86] *Id.* Justice Schreiber viewed rental income as a vital factor in determining both the organization which is actually using the property, and whether the purpose is one within the statute's purview. *Id.*

[87] *Id.* at 400, 371 A.2d at 28; *see* An Act concerning exemption from taxation, and amending, section 54:3.6 of the Revised Statutes ch. 85, § 1, [1949] N.J. LAWS 394. The 1949 amendment made a distinction between charitable, benevolent or religious organizations and educational organizations. *Id.* This was accomplished by the deletion of the education classification, while the Bill was in the New Jersey State Senate. *See* 1949 N.J. SENATE JOURNAL 425, 501 (*amending* "Assembly Bill No. 281, entitled 'An Act concerning exemptions from taxation, and amending section 54:4-3.6 of the Revised Statutes'").

[88] 72 N.J. at 399–400, 371 A.2d at 27–28. In the majority opinion, Justice Schreiber cited the decision of Trustees of Y.M. & Y.W.H.A. v. State Bd. of Tax Appeals, 119 N.J.L. 504, 197 A. 372 (Sup. Ct.), *aff'd*, 121 N.J.L. 65, 1 A.2d 367 (Ct. Err. & App. 1938) (en banc), which denied an exemption based on a non-profit organization's rental income from other qualified organizations. This result was reversed by an amendment to the statute passed in 1949, An Act concerning exemptions from taxation, and amending, section 54:3.6 of the Revised Statutes ch. 85, § 1, [1949] N.J. LAWS 394.

The 1949 amendment broadened the rental provision by stating that

> all buildings owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes, which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them. . . .

Id.

because that particular "usage was emergent, non-recurring, and *de minimus*."[90]

Examining the question regarding the use of the exempted property by a profit-making corporation, the court recognized that such use might threaten the tax exemption granted to the qualified organization.[91] However, as to the use of the cabins by Snow Bowl, Inc. in the winter of 1972, the court found that this usage had no bearing on the tax liability of Boys' Club in 1971 and 1972.[92] In Justice Schreiber's opinion, there was no evidence indicating that the camp's buildings and the land comprising Lot 1A had not been used exclusively for Boys' Club's tax exempt purpose.[93]

A second element for determining tax exempt status discussed by the court was the question of profitability.[94] Noting that Boys' Club's expenses outweighed its revenues for the tax years in dispute,[95] Justice Schreiber indicated that even if the camp had operated at a profit, the exemption would not necessarily be lost if the profits were used in furtherance of the organization's qualified purpose.[96] According to Justice Schreiber, the proper inquiry was not whether the operation had made a profit or loss, but rather whether the operation had been conducted for the purpose of making a profit.[97] Consequently, the court focused on the aims or goals of the organization rather than the balance sheet.[98]

A third element examined by Justice Schreiber was the extent to which the land was "necessary for the fair enjoyment" of Boys' Club's

---

[89] 72 N.J. at 400, 371 A.2d at 28.

[90] *Id.* (emphasis in original). Justice Schreiber noted that Jefferson Township had not asserted that this issue was violative of the statute. *Id.* Additionally, Justice Schreiber stated that the single overnight use of the camp by skiers from Snow Bowl, Inc. could also be categorized as a *de minimus* use. *Id.*

[91] *Id.*

[92] *Id.* at 400 & n.4, 371 A.2d at 28. Section 54:4-63.26 treats a tax exemption lost by reason of a change in land use as omitted property. Therefore, the applicable rule under such circumstances required that the formerly exempt property be assessed for the property taxes for the tax year beginning on the following January 1. 72 N.J. at 400 & n.4, 371 A.2d at 28. Since the rental use of the property by Snow Bowl, Inc. occurred between October 1, 1972 and January 1, 1973, if there was a loss of exemption the assessable date would be January 1, 1973. *Id.* As the instant case was concerned only with the tax years of 1971 and 1972, the question was moot.

[93] 72 N.J. at 399–401, 371 A.2d at 27–28. Using Justice Schreiber's definition of "exclusive use," off season uses were all in the furtherance of Boys' Club's exempt purposes. *Id.*

[94] *Id.* at 403–04, 371 A.2d at 30.

[95] *Id.* at 403, 371 A.2d at 30; *see* note 8 *supra*.

[96] 72 N.J. at 403–04, 371 A.2d at 30. For a detailed analysis of the criteria for nonprofitability, see notes 45–49 *supra* and accompanying text.

[97] *See* 72 N.J. at 403–04, 371 A.2d at 30.

[98] *See id.*

buildings.[99] In making this determination, the majority rejected the *Cory* test[100] and adopted an approach similar to that utilized by the *Yisroel* court.[101] In Justice Schreiber's view, the statute did not limit the exemption merely to the land on which the building was situated.[102] In this regard, the court determined that "necessary for the fair enjoyment" implied that other land was potentially exempt to the extent of five acres per building.[103]

In interpreting the concept of "necessary for the fair enjoyment," Justice Schreiber stated that it referred to the use of the land in relation to the use of the building.[104] He reasoned that in reference to the statute, the definition of the word "necessary" was not "absolutely indispensable," but rather any land that was "reasonably necessary to accomplish the institution's purposes."[105] To illustrate this interpretation, Justice Schreiber offered a hypothetical situation similar to the facts set forth in *Yisroel*.[106] Applying the *Cory* approach to the facts of the hypothetical, the tax status of the land would be determined by the time of acquisition, rather than need.[107]

In addressing the facts in *Boys' Club*, the majority felt that to determine the extent of land eligible for an exemption the camp's buildings should be viewed as a single entity, rather than individual

---

[99] *Id.* at 401–03, 371 A.2d at 28–29. Justice Schreiber's test involves the interpretation of N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979), the relevant language being that

> the land whereon any of the buildings herein-before mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purposes and does not exceed 5 acres in extent. . . .

Id.

[100] *See* 72 N.J. at 397–403, 371 A.2d at 27–29. For further discussion of the *Cory* two-prong test, see notes 62–69 *supra* and accompanying text.

[101] *See id.* at 401–02, 371 A.2d at 28–29. For further discussion of the *Yisroel* approach, see notes 70–79 *supra* and accompanying text.

[102] *Id.* at 401, 371 A.2d at 28.

[103] *Id.* The majority cited the opinion in Congregation B'nai Yisroel v. Township of Millburn, 35 N.J. Super. 67, 70, 113 A.2d 182, 183 (App. Div. 1955), as support for this position. *See id.*

[104] 72 N.J. at 401, 371 A.2d at 28.

[105] *Id.*

[106] *Id.* at 398, 371 A.2d at 27. In Justice Schreiber's hypothetical situation the facts were that if a church was erected on a five acre piece of land, part of which was paved as a parking lot, the entire piece of land would be exempt. However, if the church and parking lot were located on adjoining pieces of land, one having been subsequently purchased, the parking lot would be taxable. Tax liability would result under the prevailing interpretation of section 54:4-3.6 since the after acquired property was not the land on which the buildings were located. 72 N.J. at 398, 401–02, 371 A.2d at 27, 28–29. *Compare* 72 N.J. at 398, 371 A.2d at 27 *with* 35 N.J. Super. 67, 69, 113 A.2d 182, 182–83 (App. Div. 1955).

[107] *See* 72 N.J. at 398, 371 A.2d at 27.

structures.[108] Justice Schreiber supported this position by reasoning that all the buildings were "integrated components necessary for the proper operation of the camp."[109] He cited additional support from the stipulated facts presented to the appellate division,[110] which clearly showed that Lot 1A was being utilized for the same camp function as the buildings in question.[111]

Lastly, on a collateral question the court ruled that the *Boys' Club* decision would apply only to those tax years for which Boys' Club had filed an appeal.[112] The court conferred jurisdiction on the New Jersey Division of Tax Appeals to consider the question of exemption for the tax years in which no appeal had been filed.[113]

In his dissenting opinion, Judge Conford[114] criticized the majority decision, stating that it went beyond the proper function of the court.[115] Judge Conford believed that it was the province of the legislature, not the judiciary, to make major changes in tax policy.[116] At the outset, Judge Conford noted that section 54:4-3.6 focused primarily on the building and only secondarily on the land.[117] In

---

[108] *See id.* at 401–03, 371 A.2d at 28–29. In adopting this position, Justice Schreiber rejected the tax assessor's finding which would have exempted one quarter of an acre per building. *Id.* at 403, 371 A.2d at 29.

[109] *Id.* at 401–02, 371 A.2d at 29.

[110] *Id.* at 402–03, 371 A.2d at 29.

[111] *Id.* at 403, 371 A.2d at 29.

[112] *Id.* at 405, 371 A.2d at 30–31. The court reversed two cases to the extent that they were contrary to the *Boys' Club* holding. *Id.* The cases were Catholic Charities v. City of Pleasantville, 109 N.J. Super. 475, 263 A.2d 803 (App. Div. 1970), and City of Newark v. Essex County Bd. of Taxation, 110 N.J. Super. 93, 264 A.2d 461 (Law Div. 1970).

Boys' Club contended that no appeal was necessary by virtue of the holding in Catholic Charities v. City of Pleasantville, 109 N.J. Super. 475 (App. Div. 1970). The majority rejected this position by indicating that N.J. STAT. ANN. §§ 54:2-43, :3-26 (West 1960), the so-called "freeze" statutes, did not apply to N.J. STAT. ANN. § 54:4-3.6. 72 N.J. at 405, 371 A.2d at 30–31.

The "freeze" statutes allow judgments as to valuation for one year to be considered "conclusive and binding" for the following two years. N.J. STAT. ANN. §§ 54:2-43, :3-26 (West 1960). The court found no reason to apply this same rationale to tax exemption statutes. 72 N.J. at 405, 371 A.2d at 30–31.

[113] *Id.* The court stated that it would not retain jurisdiction over the question of appeals for 1973 and 1974. *Id.* at 405–06, 371 A.2d at 30–31.

[114] *Id.* at 406, 371 A.2d at 31. Judge Conford was temporarily assigned to sit on the supreme court.

[115] *Id.*

[116] *Id.* An additional question raised by Judge Conford was the effect that the majority decision would have on municipalities, which would lose tax revenue by virtue of this decision. *Id.*

[117] *Id.* Judge Conford's view that N.J. STAT. ANN. § 54:4-3.6 was directed at buildings rather than land was also accepted by the majority. *See* 72 N.J. at 395–96, 371 A.2d at 26. The majority of cases have so held. *See also* notes 29–44 *supra* and accompanying text.

Judge Conford's opinion this interpretation was supported by "[t]he very tenor of the statute."[118]

Examining the statutory framework of review, the dissent identified four requirements in order for land to qualify as tax exempt. Under these standards, the land must: (1) be "that 'whereon . . . the buildings are erected'"; (2) "'be necessary for the fair enjoyment'" of the building; (3) be "'devoted to' the exempted purpose" as the building; and (4) "'not exceed 5 acres in extent.'"[119] In Judge Conford's opinion, Lot 1A failed to satisfy all but the third requirement.[120]

In examining the five acre limitation, Judge Conford noted that five acres was not the amount of land to be automatically exempt in every case, but rather the statutory maximum that could be accorded once an assessor had determined how much land was "necessary for the fair enjoyment of th[e] building."[121] Accordingly, Judge Conford indicated that it was possible for less than five acres to be the total of exempt land for a group of buildings.[122] In his opinion, it was highly unlikely that each of Boys' Club's buildings would need five acres of land to carry out each building's particular function.[123]

In reaching this conclusion, the dissent, as opposed to the majority, focused on the function of each individual building.[124] Judge Conford indicated that he felt constrained to oppose the majority's position due to the statute's emphasis on buildings rather than land.[125] Although recognizing the majority's theory of viewing the camp as a whole, the dissent was still not willing to automatically exempt Lot 1A entirely as the lot's uses were not related to the utilization of each of the buildings.[126]

---

[118] 72 N.J. at 406, 371 A.2d at 31.

[119] *Id.* at 406, 371 A.2d at 31 (quoting N.J. STAT. ANN. § 54:4-3.6 (West 1977 & Cum. Supp. 1978–1979)).

[120] 72 N.J. at 406, 371 A.2d at 31. Judge Conford conceded that Lot 1A was being used for the same purpose as Lot 15. *Id.*

[121] *Id.* at 406–07, 371 A.2d at 31. The exemption granted by the majority was potentially within the five acre limitation, since there were 28 buildings located on Lot 15 and a total of 100 acres of land. *See* Brief for Appellant, *supra* note 2, at 15.

[122] 72 N.J. at 406–07, 371 A.2d at 31–32; *see* Pingry Corp. v. Township of Hillside, 46 N.J. 457, 466, 217 A.2d 868, 873 (1966); Institute of Holy Angels v. Bender, 79 N.J.L. 34, 36–37, 74 A. 251, 252 (Sup. Ct. 1909). *See also* note 52 *supra* and accompanying text.

[123] 72 N.J. at 407, 371 A.2d at 32. The tax assessor for Jefferson Township had indicated that he would exempt one quarter of an acre per building. *See id.* at 403, 371 A.2d at 29.

[124] *Id.* at 408, 371 A.2d at 32.

[125] *Id.*

[126] *Id.* at 407–09, 371 A.2d at 32–33. Judge Conford felt that Boys' Club failed to show that all the land on Lot 1A was needed to carry out the individual functions of the buildings on Lot 15. *Id.*

From this analysis, the dissent concluded that Boys' Club had not met its burden of proving that the land was necessary for the fair enjoyment of the buildings.[127] Judge Conford strengthened this position by pointing out that Boys' Club's land was not land "whereon the buildings [are] erected."[128] In Judge Conford's view, the language of the statute was "so plain and unambiguous that [the] courts have always felt obliged to enforce it with strictness."[129] Judge Conford proposed that the *Cory* test should be followed,[130] and thus all land acquired subsequent to the erection of the buildings would be automatically subject to taxation.[131] This proposition was buttressed by the fact that after the *Cory* decision the legislature had not altered the effect of the language of section 54:4-3.6.[132]

Judge Conford did express a willingness to moderate his position in regard to strict construction, however, by indicating that he would favor a modification of the *Cory* test, but only if the after acquired land's use and purpose were so similar to that of the building that the land could be considered curtilage.[133] Lastly, Judge Conford agreed with the majority that this decision should affect only the tax years for which Boys' Club had filed appeals.[134]

The significance of the decision in *Boys' Club* lies in the context of what can now be viewed as good law.[135] Clearly, the *Boys' Club* decision is a frontal attack on the *Cory* two-prong test,[136] and all the cases applying the *Cory* rationale.[137] By expanding the already broad view of the *Yisroel* court, case law has now come full circle

---

[127] *See id.* at 408–09, 371 A.2d at 32–33.

[128] *Id.* at 409–10, 371 A.2d at 33–34.

[129] *Id.* To support his theory, Judge Conford cited Sisters of Charity v. Cory, 73 N.J.L. 699, 64 A. 500 (Ct. Err. & App. 1907) and Childrens Seashore House v. Atlantic City, 68 N.J.L. 385, 53 A. 399 (Ct. Err. & App. 1902).

[130] *See* 72 N.J. at 409, 371 A.2d at 33. For an in depth discussion of the *Cory* test, see notes 62–69 *supra* and accompanying text.

[131] 72 N.J. at 409–10, 371 A.2d at 33.

[132] *Id.* at 410, 371 A.2d at 33–34.

[133] *Id.* at 410–11, 371 A.2d at 33–34.

[134] *Id.* at 411, 371 A.2d at 34. Judge Conford, however, felt that it was not proper for the court to confer jurisdiction on the Division of Tax Appeals. *Id.* Judge Conford reasoned that the court could not confer subject matter jurisdiction on the Division of Tax Appeals, as such jurisdiction was lacking by statute. *Id.* In his view, subject matter jurisdiction was a matter pursuant to statute rather than judicial discretion. *Id.*

[135] The majority, by rejecting the *Cory* test, has by implication overruled all the cases which followed that test. For a list of the cases which have followed the *Cory* approach, see note 56 *supra*.

[136] *See* 72 N.J. at 404–05, 371 A.2d at 30.

[137] *See* note 56 *supra*.

back to the earliest view taken by the *Ross* court.[138] Further, the *Boys' Club* test has altered the effect of the statute by eliminating the "land whereon the building is erected" requirement of the *Cory* test.[139] By ignoring the statute's very language, the court has seemingly disregarded the strict construction rule which had previously been applied to tax statutes.[140]

The dissent, however, convincingly asserts that the statute's language is clear in its intended meaning as judicially interpreted, thereby obviating the need for a determination of the legislative intent behind the statute.[141] This position, however, loses some persuasiveness due to the inconsistent interpretations of the statutory language by New Jersey's courts.[142]

Although the *Boys' Club* decision represents a large step in eliminating the confusion surrounding the area of charity property tax exemptions, there is a need for the legislature to re-examine the statute and remove any language that is contrary to the result which the legislature intended. Such an amendment would involve, no doubt, political consideration of the impact upon municipal taxation systems due to increased aggregate tax exempt property.

The *Boys' Club* majority reached the proper result. Section 54:4-3 was enacted as an aid for charitable and benevolent nonprofit organizations. The strict *Cory* approach severely limited the relief available to such organizations. In light of the accentuated problems caused by an inflationary economy, the court has sensibly expanded the tax exemption to all land utilized by the organization for its qualified purpose irrespective of the date of acquisition. However, by disregarding its own rule of strict statutory construction, the court may have eroded the precedential value of their decision.

Kevin M. Hart

---

[138] *Compare* State v. Ross, 24 N.J.L. 497 (Sup. Ct. 1854) *with* Sisters of Charity v. Cory, 73 N.J.L. 699, 65 A. 500 (Ct. Err. & App. 1907). Interestingly enough, the holding in *Boys' Club* resembled the prior court of errors and appeals decision that was overruled by the *Cory* court. *See* State v. Collector of Chatham, 52 N.J.L. 373, 375, 20 A. 292, 294 (Ct. Err. & App. 1890) ("[n]o reason is perceived why the statutory immunity should not appertain to the lands comprehended in this controversy").

[139] *See* 72 N.J. at 404, 371 A.2d at 30. Under the *Cory* test, any after acquired property would fail the first prong of the test, while under the *Boys' Club* holding the property would be potentially exempt. *Compare* 73 N.J.L. at 703, 65 A. at 501–02 *with* 72 N.J. at 404, 371 A.2d at 30.

[140] *See* note 24 *supra* and accompanying text.

[141] *See* 72 N.J. at 409–10, 371 A.2d at 33–34.

[142] *Compare* Congregation B'nai Yisroel v. Township of Millburn, 35 N.J. Super. 67, 113 A.2d 182 (App. Div. 1955) *and* State v. Ross, 24 N.J.L. 497 (Sup. Ct. 1854) *with* Sisters of Charity v. Cory, 73 N.J.L. 699, 65 A. 500 (Ct. Err. & App. 1907).