



## **Recent SCOKY Decision Limits Property Tax Exemption For Nonprofits To Purely Charitable Enterprises; Case Could Spawn Other Challenges To Tax-Exempt Status**

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A recent decision by the Kentucky Supreme Court could have significant ramifications for nonprofit corporations that own real property in Kentucky and do not serve a purely charitable public purpose. In *Hancock v. Prestonsburg Industrial Corp.*, 365 S.W.3d 199 (Ky. 2012) (<http://opinions.kycourts.net/sc/2010-SC-000376-DG.pdf>), the Court discussed whether a nonprofit corporation seeking to promote economic development is tax exempt under Section 170 of the Kentucky Constitution, which exempts purely public charities from Kentucky property tax.

Prestonsburg Industrial Corporation was established as a private, nonprofit, with its main purpose being to attract business and economic development to the city. The Corporation sought to achieve this goal by purchasing and improving local property before selling it to businesses. After one such transaction, the Corporation sought a tax exemption under Section 170 of the Kentucky Constitution. The Kentucky Board of Tax Appeals determined the property in question was not exempt because it was not owned by a public entity and was not used for a public purpose. The trial court, however, found the property to be tax exempt on the bases that it was used for a public purpose and that the Corporation was a charitable organization. The Court of Appeals agreed that the property was exempt under Section 170 because the Corporation was a charitable organization. The Court of Appeals considered whether the Corporation's activities "reasonably bettered mankind" in making this determination.

The Supreme Court of Kentucky granted discretionary review and held that the Corporation was not tax exempt under Section 170 because the Corporation was not a purely public charity. The Court saw the Corporation's activities as involving the development and marketing of property, which mainly benefited the customers of the Corporation, in order to make the city more attractive to businesses. In order to qualify for the property tax exemption, an organization's activities must not center around promoting its members' interests, and the charitable result must be more than incidental. The Court found that the Corporation was not seeking to serve a public purpose by creating jobs for the community in these activities; rather, any job creation would be incidental to the arrival of new businesses. The Court explained that tax exemptions are to be strictly construed and that "commercial and economic development are the promotion of business interests and not, therefore, indicative of actions of a purely public charity."

This decision addresses the question whether nonprofits formed to promote economic development are exempt from state property tax by answering they are not. But it leaves open the question whether the Supreme Court is willing to revisit generally accepted but previously unchallenged notions about what are "institutions of purely public charity" for purposes of the property tax exemption under Section 170 of the Kentucky Constitution.