

REPRESENTATIVE FOR PETITIONER:  
Fred O. Towe, Fillenwarth Dennerline Groth & Towe, LLP

REPRESENTATIVE FOR RESPONDENT:  
F. John Rogers, Thompson & Rogers, LLP

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Operating Engineers Local Union	)	Petition Nos.:	02-074-09-2-8-00002
No. 103, James Butler, Trustee,	)		02-074-10-2-8-00002
	)		
Petitioner,	)	Parcel No.:	02-12-34-300-014.003-074 <sup>1</sup>
	)		
v.	)		
	)		
Allen County Assessor,	)	County:	Allen
	)		
Respondent.	)	Assessment Years:	2009 and 2010

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Appeal from the Final Determination of the  
Allen County Property Tax Assessment Board of Appeals

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**November 30, 2012**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

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<sup>1</sup> The Petition for 2010 identified a different parcel number, Parcel No. 02-12-34-300-014.000-074. However at hearing, the parties agreed that there had been a split of the parcel off a larger commercial property, but that the same property was at issue in both appeals. The parties agreed the property was properly identified as Parcel No. 02-12-34-300-014.003-074.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUE**

1. The issue presented for consideration by the Board is whether the subject property should be granted an exemption under Indiana Code § 6-1.1-10-16 because the property was predominantly used for educational or charitable purposes, or under Indiana Code § 6-1.1-10-23 because the property was predominantly used as a fraternal beneficiary association in 2009 and 2010.

### **PROCEDURAL HISTORY**

2. On May 12, 2009, the International Union of Operating Engineers (IUOE), Local #103, filed a Form 136, Application for Property Tax Exemption, seeking an exemption for its real and personal property for the 2009 assessment year. The Allen County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on February 19, 2010, denying the request for exemption and finding the property to be 100% taxable. On March 31, 2010, IUOE filed a Form 132, Petition to the Indiana Board of Tax Review for Review of Exemption, requesting that the Board conduct an administrative review of the property's 2009 exemption request.
3. On May 7, 2010, IUOE filed a Form 136 application seeking an exemption for its property for the 2010 assessment year. The Allen County PTABOA issued its determination on November 15, 2010, denying the request for exemption and finding the property to be 100% taxable. On November 23, 2010, IUOE filed its Form 132 requesting that the Board conduct an administrative review of the property's 2010 exemption request.

## HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Carol Comer, held a hearing on September 18, 2012, in Fort Wayne, Indiana.
5. The following persons were sworn in at the hearing:
  - For the Petitioner:
    - Troy Smart, Accountant, IUOE Local # 103
  - For the Respondent:
    - John Swihart, Tax Exempt Deputy, Allen County Assessor's Office
6. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1(a) – Form 132 Petition for Review of Exemption for the 2010 assessment year, Form 120 Notice of Action on Exemption for the 2010 assessment year, Allen County PTABOA's findings of fact and conclusions of law for the 2010 assessment year, Form 136 Application for Property Tax Exemption for the 2010 assessment year, and Memorandum of Law in Support of Petition to the Indiana Board of Tax Review for Review of Exemption filed with Form 132,
  - Petitioner Exhibit 1(b) – Form 132 Petition for Review of Exemption for the 2009 assessment year, Form 120 Notice of Action on Exemption for the 2009 assessment year, Allen County PTABOA's findings of fact and conclusions of law for the 2009 assessment year, Form 136 Application for Property Tax Exemption for the 2009 assessment year, and Memorandum of Law in Support of Petition to the Indiana Board of Tax Review for Review of Exemption filed with Form 132,
  - Petitioner Exhibit 2 – Constitution of the International Union of Operating Engineers,
  - Petitioner Exhibit 3 – By-Laws of Local Union No. 103, International Union of Operating Engineers,
  - Petitioner Exhibit 4 – Form 990 tax return for 2006,
  - Petitioner Exhibit 5 – Form 990 tax return for 2007,
  - Petitioner Exhibit 6 – Form 990 tax return for 2008,

- Petitioner Exhibit 7 – Form 990 tax return for 2009,  
 Petitioner Exhibit 8 – *Robbins and Noland, Representatives of Teamsters Local Union No. 135 v. State Board of Tax Commissioners, et al.*, Cause No. S466-526, Marion Superior Court No. 7, November 2, 1973,  
 Petitioner Exhibit 9 – *Livingston, Representative of Laborers' Local Union No. 120, et al. v. Dopkins, Treasurer of Marion Count, et al.*, Cause No. S366-521, Marion Superior Court No. 3, December 31, 1974,  
 Petitioner Exhibit 10 – Notice of Action on Review of Application for Exemption by the State Board of Tax Commissioners, No. 89-032-8, August 6, 1990,  
 Petitioner Exhibit 11 – Notice of Action on Review of Application for Exemption by the State Board of Tax Commissioners, No. 73-132-894, August 6, 1974,  
 Petitioner Exhibit 12 – *Schubach and Summers, Representatives of Steam and Pipe Fitters Local No. 440 v. State Board of Tax Commissioners, et al.*, Cause No. S766-527, Marion Superior Court No. 7, November 2, 1973,  
 Petitioner Exhibit 13 – *Murrin and Robbins, Representatives of the Indiana Conference of Teamsters v. State Board of Tax Commissioners, et al.*, Cause No. S766-534, Marion Superior Court No. 7, November 2, 1973,  
 Petitioner Exhibit 14 – *Chauffeurs, Teamsters, Warehousemen and Helpers Local Union No. 135, et al. v. State Board of Tax Commissioners, et al.*, Cause No. S474-1467, Marion Superior Court No. 4, July 12, 1979,  
 Petitioner Exhibit 15 – *Union Building Corporation v. Wayne County Property Tax Assessment Board of Appeals*, Petition No. 89-011-02-2-8-00016, Indiana Board of Tax Review, February 4, 2005,  
 Petitioner Exhibit 16 – Highway Agreement,  
 Petitioner Exhibit 17 – Building Construction Agreement,  
 Petitioner Exhibit 18 – Sewer Agreement,  
 Petitioner Exhibit 19 – Building Construction Agreement-Steel Erectors,  
 Petitioner Exhibit 20 – Fox Contractors Agreement,  
 Petitioner Exhibit 21 – H.L.C., Inc., Agreement,  
 Petitioner Exhibit 22 – N.E.S. Management Services Agreement,  
 Petitioner Exhibit 23 – Mid-Central Operating Engineers Summary Plan Description,  
 Petitioner Exhibit 24 – Resolution of Operating Engineers Summary Plan Description,  
 Petitioner Exhibit 25 – Petitioner's Memorandum of Law in Support of Petition for Review of Property Tax Exemption.

7. The Respondent presented the following exhibits:
  - Respondent Exhibit 3(a) – Allen County PTABOA’s 2009 determination,
  - Respondent Exhibit 3(b) – Allen County PTABOA’s 2010 determination,
  - Respondent Exhibit 9 – Respondent’s Memorandum of Law.
  
8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
  - Board Exhibit A – Form 132 Petitions with attachments,
  - Board Exhibit B – Notices of Re-Scheduled Hearing, dated June 29, 2012,
  - Board Exhibit C – Hearing sign-in sheet.
  
9. The subject property is the union office for the Operating Engineers Local Union #103, located at 2080 Lincolnway Court, in Fort Wayne, Indiana.
  
10. The ALJ did not conduct an on-site inspection of the subject property.
  
11. For 2009 and 2010, the Allen County PTABOA determined the subject property to be 100% taxable.
  
12. The Petitioner contends the subject property is entitled to a 100% exemption for each tax year.

#### **JURISDICTIONAL FRAMEWORK**

13. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

## BASIS OF EXEMPTION AND BURDEN

14. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
15. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes a property owner would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
16. Worthwhile activity or noble purpose alone is not enough to qualify for an exemption. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
17. The taxpayer seeking exemption bears the burden of proving that its property is entitled to exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); and *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

## PARTIES' CONTENTIONS

18. The Petitioner contends that its property is exempt from taxation pursuant to Indiana Code § 6-1.1-10-16 because it is used for charitable and educational purposes. The Petitioner further contends that its property is exempt from taxation pursuant to Indiana Code § 6-1.1-10-23 as a fraternal benefit association. The Petitioner presented the following evidence in regard to this issue:
- A. The Petitioner's witness, Mr. Smart, testified that he was employed by the International Union of Operating Engineers Local #103 as an accountant. *Smart testimony*. According to Mr. Smart, the Petitioner is chartered by the International Union and they have their own constitution. *Smart testimony; Petitioner Exhibit 2*. Local #103 is exempt from federal taxes. *Smart testimony; Petitioner Exhibits 4-7*.
  - B. Mr. Smart testified that the Local #103 has been located at 2080 Lincolnway Court since January of 2009. *Smart testimony*. Prior to January of 2009, the Local #103 union office was located at 3535 Harris Road for roughly thirty years. *Id.* According to Mr. Smart, the Harris Road property was found to be exempt. *Id.*
  - C. Mr. Smart testified that the primary use of the subject property is for union business and for the representation of union members. *Smart testimony*. According to Mr. Smart, the Union does not rent out the subject property for use by its members or for use by the general public. *Id.*
  - D. The Petitioner's representative contends that the subject property should be exempt because the property is used for educational purposes. *Towe argument*. In support of this contention, Mr. Smart testified that the union allows contractors to train their employees in safety training at the facility. *Smart testimony*. Mr. Smart testified that since January of 2009, this type of training has occurred roughly three times. *Id.*

- E. The Petitioner's representative further contends that the subject property should be exempt because it is a fraternal benefit association. *Towe argument*. In support of this contention, Mr. Smart testified that the officers of Local #103 are elected by a secret ballot election every three years. *Id.* Further, Mr. Smart testified, Local #103 negotiates collective bargaining agreements which contain provisions for health insurance, disability insurance and death benefits for its members. *Id.*; *Petitioner Exhibits 16-24*. In addition, through a hardship fund, Local #103 has established its own death benefit for its members. *Id.*; *Petitioner Exhibit 24*. This hardship fund became effective in 1993 and remains effective today. *Id.* In response to cross-examination, however, Mr. Smart admitted that the Petitioner did not have a certificate issued by the Indiana Insurance Commissioner certifying it as a fraternal benefit association. *Id.*
- F. In his "Petitioner's Memorandum of Law in Support of Petition for Review of Property Tax Exemption," the Petitioner's representative contends that labor unions are exempt pursuant to Indiana case law. *Towe argument; Petitioner Exhibit 25*. According to Mr. Towe, decisions rendered by Marion County Courts dating back to the 1970s found labor unions to be tax exempt. *Id.*; *Petitioner Exhibits 8-15*. Mr. Towe further argues that these cases are applicable not only to the Marion County Assessor's office, but to all assessors. *Petitioner Exhibit 25 at 6*. According to Mr. Towe the Petitioner was one of the named plaintiffs in *William H. Livingston, et al. v. John Dobkins, et al.*, and "given the breadth of the order," the judge "intended for the injunction to apply to all property owned by labor organizations, regardless of the location in the state." *Id. at 6-7*.
- G. Mr. Towe further argues that the State Board of Tax Commissioners continued to rely on the Marion County injunction cases to approve exemptions for union property. *Petitioner Exhibit 25 at 8, citing In re the Notice of Action on Review of Application for Exemption for Teamsters Local 135, No. 73-132-894 (August 4, 1974) and In re the Notice of Action of Review of Application for Exemption for the Office Committee Union, No. 89-032-8 (August 6, 1990)*. In fact, as recently as 2005, Mr. Towe



argues, the Indiana Board of Tax Review approved an exemption for United Auto Workers' property. *Id.* In *Union Building Corporation*, Petition No. 89-011-02-2-8-00016, the Board granted an exemption "simply by pointing out that the subject property was used exclusively for the benefit of its members and retirees and was not used for any commercial purposes." *Id.*

H. Finally, Mr. Towe argues, the doctrine of "legislative acquiescence" prevents the Board from altering a "long adhered to" administrative interpretation. *Petitioner Exhibit 25 at 9.* According to Mr. Towe, the "Indiana General Assembly has never enacted any legislation to modify these open and notorious decision, which span almost thirty-nine years, holding and establishing that labor organizations are exempt from real and personal property taxes." *Id. at 11.* Mr. Towe argues that a 1983 amendment, adding Indiana Code § 6-1.1-10-36.3, defining "predominant use" did not substantively change Indiana exemption law, because "a review of case law predating the 1983 statute reveals that it has always been necessary that a person or entity seeking an exemption from property taxation demonstrate that a particular parcel of property is used exclusively, principally, or dominantly" for an exempt purpose. *Id. at 13.*

19. The Respondent contends that the Petitioner is not entitled to an exemption on its property. The Respondent presented the following evidence in support of its contention:

A. The Respondent's witness, Mr. Swihart, testified that the Allen County PTABOA denied the Petitioner's request for an exemption on the subject property because the property was not predominately used for educational or charitable purposes. *Swihart testimony; Respondent Exhibits 3(a) and 3(b).*

B. Similarly, the Respondent's representative contends that the Petitioner is not entitled to an exemption under Indiana Code § 6-1.1-10-16(a) because the Petitioner only engages in union activities at the subject property. *Rogers' argument.* According to Mr. Rogers, determinations from the Indiana Board of Tax Review and Indiana Tax

Court clearly establish that properties used for union activities, without more, are not exempt. *Id.*

- C. Finally, Mr. Rogers contends that the Petitioner is not entitled to an exemption under Indiana Code § 6-1.1-10-23 as a fraternal benefit association because the Petitioner does not have a certificate issued by the Indiana Insurance Commissioner. *Rogers' argument.*
- D. In his Memorandum of Law, Mr. Rogers argues that the Board is not bound by the decisions cited by the Petitioner's counsel. *Respondent Exhibit 9.* According to Mr. Rogers, the Indiana Tax Court has exclusive jurisdiction over tax appeals and therefore "trial courts lack subject matter jurisdiction over tax related litigation." *Id. at 3, citing Marion County Auditor v. Revival Temple of Apostolic Church*, 898 N.E.2d 437 (Ind. Ct. App. 2008). Thus, the Board is not "enjoined" from denying an exemption for the Petitioner's property. *Id. at 2.* Mr. Rogers also distinguishes the Board decision in *Richmond Auto Workers Building Corporation v. Wayne County Property Tax Assessment Board of Appeals* (February 4, 2005) because "the fundamental issue of whether union activity is 'per se' exempt activity was not presented" to the Board. *Id. at 4.* Regardless, Mr. Rogers argues, the Tax Court answered this question in *6787 Steel Workers Hall, Inc. v. Scott*, 933 N.E.2d 591 (Ind. Tax Ct. 2010) finding that union activities were not per se exempt. *Id. at 4-5.*

#### ANALYSIS

20. Indiana Code § 6-1.1-10-16(a) provides that "All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes." Further, "a tract of land ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it." Ind. Code § 6-1.1-10-16(a). "Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under

subsection (a) or (b) if it were a building.” Ind. Code § 6-1.1-10-16 (e). An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. *Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005). Once these three elements are met, the property can be exempt from property taxation. *Id.*

21. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*, 733 N.E.2d 36,38 (Ind. Tax Ct. 2000). The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *Id.* Despite this, the term “charitable purpose” is to be defined and understood in its broadest constitutional sense. *Knox County Property Tax Assessment Board of Appeals*, 826 N.E.2d at 182 (citing *Indianapolis Elks Bldg. v. State Board of Tax Commissioners*, 251 N.E.2d 673, 682 (1969)). A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).
22. Pursuant to Indiana Code § 6-1.1-10-36.3, “property is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.” Ind. Code § 6-1.1-10-36.3(a). Further, “property that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.” Ind. Code § 6-1.1-10-36.3(c).

23. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,” however, “is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts. See *Indianapolis Osteopathic Hospital, Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); and *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).
24. Here, the Petitioner’s representative first contends that the Petitioner’s property qualified for an educational exemption in 2009 and 2010. However, Mr. Towe presented no meeting agendas and no training materials. He merely offered Mr. Smart’s conclusory testimony that in the three years that Local #103 has been at the Lincolnway location, three training sessions had occurred. *Smart testimony*. The Petitioner’s witness did not specify how long the training sessions lasted or what topics were taught except for a vague reference to contractors performing safety training.<sup>2</sup> This falls far short of the evidence necessary to show that the facility was used more than 50% of the time for educational purposes. Thus, Mr. Smart’s testimony fails to sufficiently prove that the Petitioner’s property is entitled to an exemption for any educational use.
25. Similarly, the Petitioner’s representative failed to support his claim that the Petitioner’s property qualified for an exemption based on any charitable use. A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Department of Local Government Finance*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006).

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<sup>2</sup> “In the three years that we have been there, we have not as a union... have not held specific trainings, but we have allowed contractors to train their employees which most generally are our members, in safety training... I think it has happened about three times.” *Smart testimony*.

However, beyond arguing that the building was predominantly used for charitable purposes in his opening statement, Mr. Towe failed to provide any documentation or present any testimony to meet the requirements of Indiana Code § 6-1.1-10-16. Thus, the Petitioner failed to prove that its property was predominantly used for charitable purposes.

26. The Petitioner’s representative concentrated most of his case on Indiana Code § 6-1.1-10-23(a). That statute provides that “tangible property is exempt from property taxation if it is owned by a fraternal beneficiary association which is incorporated, organized, or licensed under the laws of this state.” Ind. Code § 6-1.1-10-23(a). The exemption, however, “does not apply to real property unless it is actually occupied and exclusively used by the association in carrying out the purpose for which it was incorporated, organized, or licensed.” Ind. Code § 6-1.1-10-23(b). Similarly, Indiana Code § 27-11-7-4 states “Every society organized or licensed under this article is declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax other than taxes on real estate not occupied by a society in carrying on its business.” Ind. Code § 27-11-7-4.
27. While Indiana Code § 6-1.1-10-23 does not define the term “fraternal beneficiary association,” at least one case has defined the term in interpreting the predecessor statute to Indiana Code § 6-1.1-10-23. *See State Board of Tax Commissioners v. Fort Wayne Sports Club, Inc.*, 147 Ind. App. 129, 258 N.E.2d 874, 880 (1970). In *Fort Wayne Sports Club*, the court explained that the term “fraternal beneficiary association” has a “very limited and definitive meaning.” 258 N.E.2d at 880. The court applied the meaning set forth in Indiana Statutes Annotated § 39-4401(b), which was part of a larger statute governing the regulation of fraternal beneficiary associations under Indiana’s insurance laws. *See Id.* Indiana Statutes Annotated § 39-4401(b) provided, in relevant part:

The term ‘fraternal benefit society’ or ‘fraternal beneficiary association’ shall mean any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit and

having a lodge system and representative form of government, and which shall make provision for the payment of [death] benefits in accordance with this act.

*Fort Wayne Sports Club*, 258 N.E.2d at 880 (quoting Ind. Stat. Anno. § 39-4401(b)).

28. In many ways, the definition of “fraternal beneficiary association” set forth in Indiana Statutes Annotated § 39-4401(b) mirrors the language currently found in its successor statute, Indiana Code § 27-11-1-1, which provides “This article applies to any incorporated society, order, or supreme lodge without capital stock, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not-for-profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and that provides benefits in accordance with this article.” Although Indiana Code § 27-11 now refers to those organizations as “fraternal benefit societies,” the legislative intent behind Indiana Code § 6-1.1-10-23 appears to have been to provide an exemption to fraternal organizations covered by the Indiana insurance laws. That remains true despite the slight difference in terminology between Indiana Code § 27-11 and its predecessor statutes. In fact, the Tax Court applied the provisions of Indiana Code § 27-11 to a request for exemption under Indiana Code § 6-1.1-10-23 in *United Ancient Order of Druids-Grove # 29 v. Wayne County Prop. Tax Assessment Bd. of Appeals*, 867 N.E.2d 296, 2007 Ind. Tax LEXIS 34 (Ind. Tax Ct., May 17, 2007). While this decision is unpublished, it is a persuasive argument and provides guidance to the Board in its determination in this matter.
29. Thus, in order to demonstrate it is entitled to an exemption under Indiana Code § 6-1.1-10-23, a taxpayer must prove (1) that it is an organization described in Indiana Code § 27-11-1-1, and (2) that it occupies and uses the property sought to be exempted exclusively for the purposes for which the taxpayer was organized or incorporated. However, the requirements for a “fraternal benefit association” are specific. For example, to have a “representative form of government,” the organization must have “a supreme governing body” constituted in one of the following ways:

(A) The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates shall constitute a majority in number and shall not have less than a majority of the votes and not less than the number of votes required to amend the society's laws. The assembly shall meet at least once every four (4) years and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws.

(B) The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member may not exceed four (4) years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. Those persons elected to the board constitute a majority in number and not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member is considered to be an elected member. The board shall meet at least quarterly to conduct the business of the society.

(2) The officers of the society are elected either by the supreme governing body or by the board of directors.

(3) Only benefit members are eligible for election to the supreme governing body, the board of directors, or any intermediate assembly.

(4) Each voting member shall have one (1) vote and no vote may be cast by proxy.

Ind. Code § 27-11-2-2.

30. Here, the Petitioner's witness testified that the union's officers are elected by its members in a secret ballot election and that these elections are held every three years. However, "Indiana Code § 27-11-2-2(2) is not ambiguous: it clearly states that a fraternal beneficiary association has a representative form of government when either the supreme governing body or the board of directors elects its officers." *United Ancient Order of Druids-Grove # 29 v. Wayne County Prop. Tax Assessment Bd. of Appeals*, 867 N.E.2d 296, 2007 Ind. Tax LEXIS 34 (Ind. Tax Ct., May 17, 2007) ("Grove # 29 has conceded that its local members elect its officers; therefore, it has not shown that it has a representative form of government as defined by Indiana Code § 27-11-2-2(2).") Thus, under Indiana Code § 27-11-2-2(2) either the supreme governing body or the board of directors must elect its officers. But like the property owner in *United Ancient Order of Druids*, the Petitioner's members elect Local #103's officers. Moreover, the Petitioner

provided no evidence that it was “operated on a lodge system with ritualistic form of work.” Ind. Code § 27-11-1-1.

31. Further, the Local #103 bears the burden of showing that it made provisions for the payment of benefits in accordance with Indiana Code § 27-11. Thus, the Petitioner was required to demonstrate that it acted as an insurer regulated by the Indiana Department of Insurance. The Petitioner easily could have done so by presenting a copy of a certificate of authority authorizing it to transact business under Indiana Code § 27-11. Such a certificate would have constituted prima facie evidence of the existence of the Petitioner as a fraternal beneficiary association as of the date of that certificate. *See* Ind. Code § 27-11-4-6 (“Upon presentation of satisfactory evidence that the society has complied with all the provisions of the law, the commissioner shall issue to the society a certificate of authority authorizing the society to transact business under this article. The certificate of authority is prima facie evidence of the existence of the society at the date of the certificate.”). But the Petitioner failed to do so. In fact, Mr. Smart admitted that the Petitioner did not have any such certificate. Mr. Smart merely testified that the Petitioner negotiates benefits for its members through collective bargaining agreements and has a hardship fund for its members. Thus, the Petitioner failed to meet its burden of proving that it is a fraternal beneficiary association within the meaning of Indiana Code § 6-1.1-10-23 or Indiana Code § 27-11-7-4.<sup>3</sup>

32. The Petitioner’s representative also argued that when the union office was located at 3535 Harris Road it was found to be tax exempt “for thirty years.” *Towe argument*. However, in original tax appeals, each assessment and each tax year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct.

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<sup>3</sup> In his Memorandum of Law, Mr. Towe argued that fraternal organizations and labor organizations are “classified together for purposes of alcohol and tobacco permits,” and therefore, the legislature intended the definition of a fraternal organization to include a labor union. However, there is no exemption for property used for fraternal purposes in Indiana law, except for property owned, occupied and used by a local unit of government. *See* Indiana Code §6-1.1-10-16(b) (“A building is exempt from property taxation if it is owned, occupied, and used by a town, city, township, or county for educational, literary, scientific, fraternal, or charitable purposes.”)



2001). Thus, evidence that the Petitioner's property was exempt in the past does not raise a prima facie case that the property is exempt in a different tax year. *Id.*

33. Similarly, the Petitioner's representative argues that a long history of cases granting or ordering property tax exemptions for union property precludes the Board from denying an exemption to Local #103's property at issue in this appeal.
  
34. First, Mr. Towe requested that the Board take judicial notice of several injunctions issued by the Marion County Superior Court in the 1970's.<sup>4</sup> But "In an effort to channel tax disputes to a specialized tribunal, the Indiana Legislature created the Tax Court in 1986." In *Marion County Auditor v. Revival Temple of Apostolic Church*, 898 N.E.2d 437 (Ind. Ct. App. 2008), the Indiana Court of Appeals stated: "The General Assembly created the Indiana Tax Court for the purpose of consolidating tax-related litigation in one court of expertise. The two general prerequisites to the Tax Court acquiring exclusive subject matter jurisdiction over a case are that the case must arise under the tax laws of Indiana and that there is a final determination made by a relevant agency."<sup>5</sup> 898 N.E.2d at 445. Because the Indiana Tax Court has exclusive jurisdiction over any case that arises under the tax laws of Indiana, it is not clear how decisions from a court with no jurisdiction over property tax matters could be binding on the Respondent, the Allen County PTABOA or the Indiana Board of Tax Review.

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<sup>4</sup> The Petitioner's Brief cites *Chauffeurs, Teamsters, Warehousemen and Helpers Local Union 135 v. State Board of Tax Commissioners, et al.*, Marion County Superior Court, Cause No. S466-526 (1973); *William Schubach, et al. v. State Board of Tax Commissioners*, Marion Superior Court, Cause No. S766-527 (1973); *Loran W. Robbins, et al. v. State Board of Tax Commissioners*, Marion Superior Court, Cause No. S466-526 (1973); *Norman C. Murrin, et al. v. State Board of Tax Commissioners*, Marion Superior Court, Cause No. S766-534 (1973); *William H. Livingston, et al. v. John Dobkins, et al.*, Marion County Superior Court, Cause No. S366-521 (1974); and *Chauffeurs, Teamsters, Warehousemen and Helpers Local Union 135 v. State Board of Tax Commissioners, et al.*, Marion County Superior Court, Cause No. S474-1467 (1979).

<sup>5</sup> In *Marion County Auditor v. Revival Temple of Apostolic Church*, 898 N.E.2d 437 (Ind. Ct. App. 2008), the property owner, a church, sought to recover its "repurchase price" from Marion County after the county sold its property at tax sale. 898 N.E.2d at 440. The Court of Appeals held that the Marion County Superior Court lacked jurisdiction to hear the matter because the Indiana Tax Court has "exclusive jurisdiction over tax appeals." 898 N.E.2d at 445 ("Because the statutorily prescribed mechanism for filing a claim for a refund of property taxes already paid is through administrative proceedings that the Legislature has provided may end with judicial review by the Indiana Tax Court, the trial court lacked subject matter jurisdiction to order a refund.").

35. Furthermore, in the majority of the cases cited by the Petitioner’s representative, the court either entered default judgment against the defendants or the defendants agreed to the injunction by stipulation. While collateral estoppel “bars the subsequent litigation of a fact or issue which was necessarily adjudicated in a former lawsuit if the same fact or issue is presented in the subsequent lawsuit,” the “former adjudication will only be conclusive as to those issues which are *actually litigated and determined therein.*” *Bartle v. Health Quest Realty VII*, 768 N.E.2d 912, 917 (Ind. App. 2002) (emphasis added). Thus, the Petitioner failed to establish how cases issued by the Marion County Superior Court that were the result of a default judgment or a stipulated entry could be or should be binding on the Indiana Board of Tax Review almost forty years later.
36. Similarly, Mr. Towe requested that the Board follow the decisions in *In re the Notice of Action on Review of Application for Exemption for Teamsters Local 135*, State Board of Tax Commissioners, No. 73-132-894 (August 6, 1974); *In re the Notice of Action on Review of Application for Exemption for the Office Committee Union*, State Board of Tax Commissioners, No. 89-032-8 (August 6, 1990) and *Union Building Corporation v. Wayne County Property Tax Assessment Board of Appeals*, Indiana Board of Tax Review, Petition No. 89-011-02-2-8-00016 (February 4, 2005). The decisions in *In re the Notice of Action on Review of Application for Exemption for Teamsters Local 135* and *In re the Notice of Action on Review of Application for Exemption for the Office Committee Union* were issued by the State Board of Tax Commissioners – an agency that was abolished by the legislature in 2001. See 2001 Ind. Acts 198 § 119(b)(2).
37. And while the final determination in *Union Building Corporation v. Wayne County Property Tax Assessment Board of Appeals* was issued by the Indiana Board of Tax Review, that decision specifically found that “retirees, widows of union members, and the ladies auxiliary use it for educational purposes, such as aerobic classes and computer orientation classes... The Red Cross has monthly meetings there and the Girl Scouts have weekly meetings there. The Red Cross and the Girl Scouts are allowed to use the building at no cost.” Indiana Board of Tax Review, Petition No. 89-011-02-2-8-00016 (February 4, 2005). Thus, the Board found that the petitioner in that case made a prima

facie showing that its property was predominantly used for educational and charitable purposes. Here, the Petitioner made no such showing.

38. To the extent that the Petitioner argues the prior cases issued by the State Board of Tax Commissioners or the Indiana Board of Tax Review can be read as finding property is exempt simply because it is used for union purposes, the Indiana Tax Court has since clarified that is not the case. In *6787 Steel Workers Hall, Inc. v. John R. Scott, Assessor of Porter County*, 933 N.E.2d 591 (Ind. Tax Ct. 2010), the Tax Court upheld the Board's determination that a banquet hall owned and operated by a union was not exempt. According to the Tax Court, "First, as the Indiana Board recognized, Local 6787 provided no citation to Indiana statutes, case law, or any other persuasive authority for the proposition that unions are inherently charitable... [and] while Local 6787's by-laws evidence some charitable/educational intent as to the organization, intent does not establish predominant use." 933 N.E.2d at 596. The Tax Court found that "because the use of the property for union activities was not a *per se* exemption qualifier under Indiana Code § 6-1.1-10-16, Local 6787 needed to provide additional support in order to demonstrate that those activities were indeed educational/charitable in nature." *Id.*, fn. 10.
39. Thus, even if the decisions of the State Board of Tax Commissioners or *Union Building Corporation* could be read to support the Petitioner's contention that union property is exempt when it is used for union purposes, the Tax Court's decision in *6787 Steel Workers Hall* held to the contrary and is now binding. 933 N.E.2d 591. See *State Board of Tax Commissioners v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E. 2d 678, 679 (Ind. 1988), citing *Baker v. Compton*, 211 N.E.2d 162 (Ind. 1965) (An administrative interpretation "would not be binding if it were incorrect.").
40. And, in fact, the Petitioner's interpretation of the *Union Building Corporation* decision is contrary to decisions the Board has issued on union property since 2005. See *Local 692 Operative Plasterers and Cement Masons International Association v. Porter County Property Tax Assessment Board of Appeals*, Indiana Board of Tax Review, Petition No.

64-026-06-2-8-00001 (June 11, 2007) (“Here, the Petitioner failed to submit any evidence supporting the claim for exemption. The Petitioner did not identify any statute that exempts the property of labor union representatives from taxation. Nor are we aware of any such statute. Further, the Petitioner failed to show that its property is “owned, occupied, and used” for “educational, literary, scientific, religious or charitable purposes.”); *International Union of Operating Engineers, Local 150 Building Corporation*, Indiana Board of Tax Review, Petition No. 45-030-02-2-8-00001 *et al* (October 9, 2007) (“The Petitioner assumes that, because IUOE is a union and a non-profit entity, its union offices, land, and outbuildings are exempt. The Petitioner, however, has offered no statute to support a finding that property used for union purposes is exempt.”); *Steelworkers Hall, Inc. v. Porter County Property Tax Assessment Board of Appeals*, Indiana Board of Tax Review, Petition No. 64-016-06-2-8-00113 (May 8, 2009) and *Union Brotherhood of Carpenters and Joiners of America, Local #1043 v. Porter County Assessor*, Indiana Board of Tax Review, Petition No. 64-025-08-2-8-00001 (Dec. 11, 2009). In each case, the Board held that, absent a showing that the property is owned, occupied and predominantly used for an exempt purpose, union property is not exempt.

41. In a related argument, the Petitioner’s representative contends that the doctrine of “legislative acquiescence” prevents the Board from altering what it referred to as a “long adhered to administrative interpretation.” *Petitioner Exhibit 25 at 9*. The Indiana Supreme Court’s decision in *State Board of Tax Commissioners v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E.2d 678 (Ind. 1988), is the controlling case in determining whether the doctrine of legislative acquiescence applies. In that case, the Fraternal Order of Eagles sought a property tax exemption for its property based on its use for charitable purposes or as a fraternal benefit association. The Tax Court granted the exemption on the basis of legislative acquiescence. However, the Tax Court noted that the evidence presented by the Eagles at the hearing did not support the petitioner’s claim for exemption. The Indiana Supreme Court reversed, finding “there can be little doubt that appellee does not qualify for a tax exemption under the provisions of Ind.

Code § 6-1.1-10-23.” 521 N.E.2d at 679. In rejecting the Tax Court’s application of the doctrine of legislative acquiescence, the Supreme Court observed:

If, for instance, in the case at bar the legislature had become alarmed by the fact the taxing authorities were allowing appellee to enjoy a tax free status, what would have been their course of action? The wording of the statute clearly did not apply to appellee’s situation. The taxing authorities simply were not following the statute in that instance. Is the legislature to more firmly enact the same general principle? Are they to pass legislation to specifically correct a single situation?”

*Id.* at 681. According to the Court, “We share Judge Sullivan’s trepidation that to so broaden the doctrine would be to trap administrative agencies in their own mistakes and in the absence of legislative change would force them to continue their errors *ad infinitum*.”<sup>6</sup> *Id.* Thus, the Petitioner’s argument that the Board is bound to a “long adhered to administrative interpretation” that union property is exempt must fail.

42. The Petitioner failed to sufficiently show that its property was entitled to an exemption under Indiana Code § 6-1.1-10-16 or under Indiana Code § 6-1.1-10-23. Nor did the Petitioner prove that the Board was bound by earlier decisions or by the doctrine of legislative acquiescence to find the union’s property to be tax exempt in 2009 and 2010. Where the Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N. E. 2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

## SUMMARY OF FINAL DETERMINATION

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<sup>6</sup> In *Indiana Department of State Revenue v. General Foods Corporation*, 427 N.E.2d 665, 671 (Ind. Ct. App. 1981), Judge Sullivan wrote a concurring opinion in which he observed: "I concur except to the extent that Footnote 1 of the majority opinion implies that once an administrative agency has construed a statute, it may never change its interpretation unless the statute has been amended by the General Assembly. Such implication would require an agency to adhere to an erroneous interpretation of the law and await either a legislative or judicial correction. It is my belief that the law should encourage governmental admission of error and self-generated solutions to problems."

43. The Petitioner failed to raise a prima facie case to support its claim for a property tax exemption. The Board finds in favor of the Respondent and holds that the Petitioner's real and personal property is 100% taxable for the 2009 and 2010 assessment years.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>