

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
EVANSTON CHILD DEVELOPMENT CENTER)	Docket No. 2020-39
FROM A DECISION BY THE UINTA)	
COUNTY BOARD OF EQUALIZATION)	
(2020 Property Tax Assessment))	

DECISION AND ORDER

APPEARANCES

Caleb C. Wilkins and Patrick Kent, Patton & Davison LLC, appeared on behalf of Petitioner, Evanston Child Development Center.

Mark Harris and Tammy Fields, Harris Law Office, P.C., appeared on behalf of Uinta County Assessor Lori Perkins.

SUMMARY

[¶ 1] Evanston Child Development Center (ECDC) appeals from the Uinta County Board of Equalization's decision affirming the Uinta County Assessor's determination that personal property owned by ECDC is not exempt from property taxation. ECDC had sought relief under a statutory tax exemption for property owned by schools. The County Board determined that ECDC is not a "school," as that word is defined in the Wyoming Department of Revenue's rules, because ECDC does not provide instruction that is "of a nature ordinarily provided by the government at taxpayer expense." The State Board, Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Board Member David L. Delicath, reviewed the County Board record, read the parties' briefs, and heard oral argument. Concluding that the County Board's decision is not in accordance with law, we reverse.

ISSUES

[¶ 2] ECDC presents a single issue for our review:

Do the services provided by ECDC relieve the economic burden upon the state to educate, care, and advance the interests of its citizens such that the ECDC qualifies for tax-exempt status as a “school” pursuant to W.S. § 39-11-105(a)(xxv) and Chapter 14, Section 12 of the Rules of the Wyoming Department of Revenue?

(ECDC’s Opening Br. 1).

[¶ 3] Assessor articulates two issues:

- I. Was the County Board’s decision in accordance with the law?
- II. Was the County Board’s decision determining Petitioner failed to prove it provided an educational program which benefits the general public indirectly because it is of a nature ordinarily provided by the government at taxpayer’s expense supported by substantial evidence?

(Br. of Resp’t Uinta Cty. Assessor, 2).

JURISDICTION

[¶ 4] The State Board shall “hear appeals from county boards of equalization[.]” Wyo. Stat. Ann. § 39-11-102.1(c) (2019). An aggrieved taxpayer may file an appeal with the State Board within 30 days of the County Board’s final decision. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2021). The County Board issued its final decision on September 29, 2020. (R. at 0156). ECDC filed its appeal on October 2, 2020. (*Id.* at 0320). Accordingly, we have jurisdiction to decide this matter.

PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶ 5] ECDC is a non-profit corporation that operates in the municipalities of Evanston and Mountain View, both of which are in Uinta County. (R. 0037, 0176).¹ It offers Early Head Start programs for children from birth through age two, Temporary Assistance for Needy Families (TANF) preschool for ages three through five, and 21st Century Learning for school-aged children. (*Id.* at 0178). ECDC also provides after-school enrichment programs, remediation programs, art education, and STEM (science, technology,

¹ The County Board record includes Bates numbered pages 0001 through 0101, followed by hand numbered pages 13-102 through 13-216, and then Bates numbered pages 0133 through 0336.

engineering, and math) programs. (*Id.* at 0185). ECDC has 84 employees and serves more than 500 children. (R. 0191). It is supervised, regulated, and partially funded, by the Wyoming Department of Education. (*Id.* at 0178, 0181, 0215). That department, however, does not license preschools or similar programs. (*Id.* at 0181).

[¶ 6] Until 2020, Assessor and her predecessors in office considered ECDC tax exempt because it was a “government agency.” (R. 0082, 0275, 0283). In 2020, Assessor determined that *Eisele v. Town of Pine Bluffs*, 2020 WY 22, 458 P.3d 46 (Wyo. 2020) meant that ECDC was not tax exempt because its property was not used for a government purpose.² (*Id.* at 0275-77, 0287). Assessor valued ECDC’s personal property at \$20,000, and ECDC appealed that assessment to the County Board. (*Id.* at 0070-71, 0320). ECDC did not contest the dollar amount of the assessment. Rather, ECDC contended that it is a school, and therefore exempt from property tax under Wyoming Statutes section 39-11-105(a)(xxv) (2019). (*Id.* at 0001-3, 0167).

[¶ 7] The County Board’s decision turned on whether the instruction provided by ECDC was – as required by a Department of Revenue rule – “of a nature ordinarily provided by the government at taxpayer expense.” (R. 0154-55); Rules, Wyo. Dep’t of Revenue, ch. 14, § 12(b) (2015). The County Board found that ECDC did not satisfy that requirement and was, therefore, not a school for property tax purposes. (R. 0154-55). ECDC appealed that decision to this Board. (*Id.* at 0320-21).

CONCLUSIONS OF LAW

A. State Board’s review function and burdens of proof

[¶ 8] This Board reviews county board decisions as an intermediate appellate body and treats the county board as the finder of fact. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002). Our standard of review of a county board decision is nearly identical to the Wyoming Administrative Procedure Act standard, found at Wyoming Statutes section 16-3-114(c)(ii) (2019), that a district court must apply in reviewing such decisions. Our review is limited to determining whether a county board’s action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;

² *Eisele* actually has no bearing on this case, and neither party relies on *Eisele* in its arguments.

- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

Rules, Wyo. State Bd. of Equalization, ch. 3 § 9(a)-(d) (2021). “Substantial evidence is relevant evidence which a reasonable mind might accept in support of the [County Board’s] conclusions. It is more than a scintilla of evidence.” *In re Lysne*, 2018 WY 107, ¶ 12, 426 P.3d 290, 294-95 (Wyo. 2018) (quoting *Walton v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2007 WY 46, ¶ 9, 153 P.3d 932, 935 (Wyo. 2007)).

[¶ 9] Because the parties agree about the material facts, this case is entirely about questions of law. We review questions of law de novo and will affirm the County Board’s conclusions of law “only if they are in accord with the law.” *Maverick Motorsports Grp., LLC v. Dep’t of Revenue*, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011) (quoting *Bowen v. State Dep’t of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

[¶ 10] We also apply de novo review to the County Board’s ultimate findings of fact:

When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an “ultimate fact,” we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency’s ultimate factual finding if there is an error in either stating or applying the law.

Basin Elec. Power Coop., Inc. v. Dep’t of Revenue, State of Wyo., 970 P.2d 841, 850-51 (Wyo. 1998) (quoted in *Chevron U.S.A., Inc. v. Dep’t of Revenue*, 2007 WY 79, ¶ 10, 159 P.3d 131, 134 (Wyo. 2007)).

[¶ 11] We recognize “a presumption created against granting exceptions and in favor of taxation.” *PacifiCorp, Inc. v. Dep’t of Revenue, State of Wyo.*, 2017 WY 106, ¶ 11, 401 P.3d 905, 909 (Wyo. 2017) citing *State Bd. of Equalization v. Tenneco Oil Co.*, 694 P.2d 97, 100 (Wyo. 1985). As such, “the burden of establishing an exemption is on the one claiming it.” *Id.* citing *Comm’rs of Cambria Park v. Bd. of Cty. Comm’rs of Weston Cty.*, 174 P.2d 402, 405 (Wyo. 1946). “Moreover, ‘[a]s a general rule, tax exemptions are given a strict interpretation against an assertion of a taxpayer and in favor of the taxing power.’” *Id.* citing *E. Laramie Cty. Solid Waste Disposal Dist. v. State Bd. of Equalization*, 9 P.3d 268, 271 (Wyo. 2000).

B. Is Evanston Child Development Center a school?

[¶ 12] Wyoming law exempts from property taxation, “property used for schools, museums, orphan asylums or hospitals to the extent they are not used for private profit.”

Wyo. Stat. Ann. § 39-11-105(a)(xxv) (2019). “School” isn’t defined in any relevant statute, but the Department has promulgated rules to guide application of the exemption:

(a) The fundamental basis for this exemption is the benefit conferred upon the public by schools, orphan asylums and hospitals, and the consequent relief, to some extent, of the burden upon the state to educate, care and advance the interests of its citizens. Such institutions thus confer a benefit upon the general citizenry of the state and render an essential service for which they are relieved of certain burdens of taxation.

(b) “Schools” means property owned by private educational institutions and used primarily to provide “traditional education” equivalent to public education.³ “Traditional education” means systematic instruction in useful branches of learning afforded through methods common to public schools and educational institutions, directed at an indefinite class of persons, which benefits the general public indirectly because it is of a nature ordinarily provided by the government at taxpayer expense.

Rules, Wyo. Dep’t of Revenue, ch. 14 § 12(a) & (b) (2015).

[¶ 13] We believe the Department’s definitions of “schools” and “traditional education” required ECDC to show that its programs are: 1) systematic instruction; 2) in useful branches of learning; 3) afforded through methods common to public schools; 4) directed at an indefinite class of persons; and 5) of a nature ordinarily provided by the government at taxpayer expense. The County Board found that ECDC satisfied all but the last of those elements. (R. 0153-54). The County Board found that ECDC does not provide instruction of a nature ordinarily provided by the government at taxpayer expense:

While there are lots of things that private persons and institutions, including the Petitioner, do to advance the education, care and interest of the public, it is only when those things provide relief from an economic burden of the state and its citizenry that exemption is allowed. Given that there is no economic

³ Years ago, this Board took issue with the Department’s definition of “schools,” saying:

The Department’s definition of “schools” is grammatically unsatisfactory. The Department does not define a school as an institution, *compare Black’s Law Dictionary*, 8th Edition (2004), p. 1372, or even as the “buildings, classrooms, laboratories, etc. of any such establishment.” *Compare Webster’s New World College Dictionary*, 4th Edition (2002), definition 2, p. 1140. Instead, the Department defines schools as **property owned by private educational institutions**. Substituting this language in the statute, one has an exemption for “Property used for [property owned by private educational institutions], orphan asylums or hospitals etc.,” which borders on nonsense. At the very least, the definition awkwardly comingles concepts of use and ownership.

In re Central Wyoming College, 2008 WL 4375272 * 11, Docket No. 2008-01 (Wyo. State Bd. of Equalization, Sept. 17, 2008). Our opinion hasn’t changed.

burden on the State or its citizenry to provide early childhood education, the State has not been “relieved of certain burdens of taxation.” Accordingly, the Board finds and concludes that Petitioner is not exempt from taxation.

(R. 0154-55). In other words, the County Board went beyond the Department’s definition of “schools” and also incorporated elements of Subsection (a) to require ECDC to show that its programs ease the state’s burden of providing education. Because the state is not lawfully required to provide preschool programs, the County Board concluded that there was no state burden to be eased.

[¶ 14] We are not convinced that the County Board’s reliance on Subsection (a) is warranted. That subsection is an anomaly in the world of administrative rules: it does not require the Department, or anyone else, to do or refrain from doing anything. The language does not tell anyone how, where, or when to do anything. The language does not define, and is not incorporated into the following subsection’s definition of, “schools” or “traditional education.” Rather, it articulates an unnecessary (although possibly correct) explanation of why the legislature chose to exempt schools from property tax.

[¶ 15] Confining ourselves to the Subsection (b) definition of “schools,” our task is to determine whether the County Board erred in finding that ECDC’s educational programs are not “of a nature ordinarily provided by the government at taxpayer expense.”

[¶ 16] ECDC’s Director, Kendra L. West, testified that, “[w]e do align our curriculum with the school district in that we provide *the same curriculum that the school district does* in language arts and mathematics.” (R. 0182) (emphasis added). Director West also testified that, “[w]e have to provide social and emotional and all of the core curriculum - - math, science, social studies, language arts, literacy - - *all the same subjects that the school district offers.*” (*Id.* at 0183) (emphasis added).

[¶ 17] Kimber L. Fessler, the principal of Clark Elementary School in Uinta County, testified that the teaching methods at ECDC are comparable to those in public schools. (R. 0244). Ryan N. Thomas, Superintendent of Uinta County School District Number One, also testified about ECDC:

I was pleasantly surprised my first experiences. These were pre-K classrooms, typically four year olds, and *what I observed was the same techniques that we use in our kindergarten classrooms. Actually, also the curriculum was the same*, but for me what was more important is the techniques that the teachers used preparing kids for kindergarten.

(*Id.* at 0254-55) (emphasis added).

[¶ 18] Director West, Principal Fessler, and Superintendent Thomas all testified that ECDC teaches the same subjects as the public school kindergarten, using the same

curriculum and instructional techniques. The County Board found it dispositive that ECDC's instruction isn't provided to students who would otherwise be receiving instruction in a public school classroom at taxpayer expense. We do not. ECDC doesn't, and needn't, replace public education; rather, it supplements and enhances public education. We conclude, based on uncontroverted evidence, that ECDC's instruction is of a nature ordinarily provided by the government at taxpayer expense.

[¶ 19] Even if we were to accept that ECDC had to demonstrate that it eased the state's burden to provide education, we would still find in favor of ECDC. Superintendent Thomas testified that ECDC equips children to attend public school, and that quality preschool programs help alleviate a financial burden on the school district. (R. 0266-67). Thus, ECDC eases the public schools' burden by preparing young children for public school.

CONCLUSION

[¶ 20] The County Board erred when it found that Assessor's decision was in accordance with law. Because ECDC is a school, as that word is defined by the Department, its personal property is exempt from property taxation.


ORDER

[¶ 21] **IT IS, THEREFORE, ORDERED** the decision of the Uinta County Board of Equalization is **reversed**.

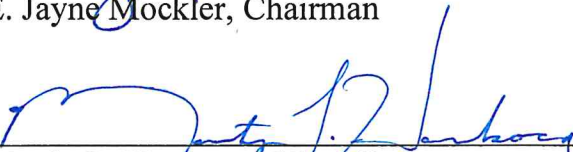
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DATED this 9 day of June 2021.

STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman



Martin L. Hardsocg, Vice Chairman



David L. Delicath, Board Member

ATTEST:



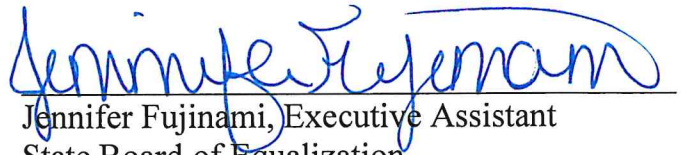
Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 9 day of June 2021, I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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