

Permissive Exemption Court Cases

From [PAD Court Case Summaries](#)

Platte River Whooping Crane Maintenance Trust, Inc. v. Hall County Board of Equalization, 298 Neb. 970, 906 N.W.2d 646 (2018). The Nebraska Supreme Court held that the Platte River Crane Maintenance Trust, Inc. (Crane Trust) is a charitable organization and that its property in Hall County was used exclusively for charitable purposes due to the mental, social, and physical benefits to the public; in particular, the scientific and educational activities taking place on the subject property provided a mental benefit to the public. The Court also found that the State, through the Legislature's declaration of a public policy favoring conservation of species of wildlife, was relieved from performing the activities that the Crane Trust had undertaken. The Court further found that the subject property, despite the lease of some land for cattle grazing, was not being used for financial gain or profit to either the owner or the user.

Harold Warp Pioneer Village Foundation v. Ewald, 287 Neb. 19, 844 N.W.2d 245 (2013). The Nebraska Supreme Court held that the motel and campground are exempt. The issue is not whether "lodging" is an educational use in an abstract sense, but, rather, whether these specific lodging facilities were reasonably necessary to accomplish the educational purpose of the Foundation in the operation of its museum. Just as the grazing and farming lands were reasonably necessary to the charitable and educational purposes of the boys' ranch in *Lariat Boys Ranch* and the childcare facility was reasonably necessary to accomplish the charitable purposes of the hospital in *Immanuel, Inc.*, the operation of the motel and campground by the Foundation is reasonably necessary to the accomplishment of its educational mission.

Fort Calhoun Baptist Church v. Washington County Board of Equalization, 277 Neb. 25, 759 N.W.2d 475 (2009). The Nebraska Supreme Court ruled the property the church leased to Fort Calhoun Community School District was for religious and educational purposes within the meaning of Nebraska Revised Statute § 77-702. the property was being used exclusively for religious or educational purposes. The Nebraska Supreme Court concluded that the property owned by the Church was used exclusively for religious and/or educational purposes because the school used the fellowship hall, restrooms, and areas for ingress and egress Monday through Friday during school hours, unless the use would interfere with a wedding, funeral, or election. This use was educational and was an exempt use. The remainder of the time, the Church used the property for religious purposes, which was also an exempt use.

McClellan v. Bd. Of Equalization, 275 Neb. 581, 748 N.W.2d 66 (2008). The Nebraska Supreme Court ruled the taxpayers lacked standing to seek direct review of the exempt status and the district court lacked jurisdiction over the petition in error that is the subject of the appeal. The Court ruled a "petition in error" and an "appeal" to TERC are the same and the difference in name does not make it a difference in fact. TERC has jurisdiction over appeals rather than the district court. Therefore, the case was dismissed.

St. Monica's v. Lancaster Bd. Of Equalization, 275 Neb. 999, 751 N.W.2d (2008). The Nebraska Supreme Court affirmed the denial of application for property tax exemption filed by St. Monica's. The Nebraska Supreme Court ruled that because St. Monica's was not using the property for an

exempt purpose as of the date of its application, it was not entitled to an exemption. Intention to use property in the future for an exempt purpose is not a use of the property for exempt purposes. Further, ownership of property is not evidence of use under statute.

Bethesda Found. v. Buffalo County Bd. Of Equalization, 263 Neb. 454, 640 N.W.2d 398 (2002). Bethesda argued that assisted living facilities currently provide services equivalent to those provided by nursing homes and that nursing homes have been granted property tax exemptions. The Nebraska Supreme Court ruled that Cambridge Court is owned and used exclusively for charitable purposes within the meaning of Neb. Rev. Stat. § 77-202 in that the primary or dominant use of the property is for charitable purposes.

Bethesda Foundation v. County of Saunders, 200 Neb. 574, 264 N.W.2d 664 (1978). The Nebraska Supreme Court ruled in Good Samaritan that nursing homes are charitable institutions, noting that the concept of charity was broad enough to include practical enterprises for the good of humanity operated at a moderate cost to those who receive benefits. We found that nursing homes are analogous to hospitals which are universally classed as charitable institutions. The issue is whether the Ash Manor property is being owned and used for financial gain or profit to either the owner or user. Bethesda's association with the companies was for the purpose of minimizing Bethesda's costs and did not in fact result in financial gain or profit to either Bethesda or the officers of Bethesda. The Nebraska Supreme Court ruled that Ash Manor is not being operated for financial gain or profit and is operated like a nursing home and is therefore tax exempt.

Nebraska Conference Assn. of Seventh Day Adventists v. Board of Equalization, 190 Neb. 658, 211 N.W.2d 613 (1973). The issue presented is whether the location and operation of the two factories upon the academy campus destroy the tax-exempt status of all the remaining property of the school which would otherwise be tax exempt. The Nebraska Supreme Court has consistently held that property owned and used exclusively for educational, religious, or charitable purposes and not owned or used for financial gain or profit to either the owner or user is tax exempt. If property is partly exempt and partly nonexempt, the value of the nonexempt portion is subject to taxation. The corollary is that the value of the exempt portion of the property is not subject to taxation. We have separated the taxable property from the tax-exempt property in many cases similar to that now before us.

The Nebraska Supreme Court ruled the factories were not tax exempt and to be separated from the part of the property that was tax exempt.

Berean Fundamental Church Council, Inc. v. Board of Equalization, 186 Neb. 431, 183 N.W.2d 750 (1971). The question presented to the court is whether Christian Supply Center (Center) is used exclusively for educational or religious purposes. Center sells educational and religious materials to the Christian denomination but also to the general public. Center's inventory is available from regular commercial outlets. Center is a profit-making enterprise in direct competition with other bookstores handling educational and religious supplies.

The Nebraska Supreme Court ruled that Center was not tax exempt because the appellant did not meet their burden of proving Center was used exclusively for a religious or educational purpose. The criteria is not what appellant is seeking to accomplish with its property, but rather what is actually done with that property. The fact that Center is handling materials of an educational or

religious character does not make it tax exempt. If that were so, every religious bookstore would be entitled to tax exemption.

OEA Senior Citizens, Inc. v. County of Douglas, 186 Neb. 593, 185 N.W.2d 464 (1971). The Nebraska Supreme Court affirmed the district court's denial of tax-exempt status to OEA Senior Citizens, Inc. for a retirement home (Manor). Nebraska law requires a finding that the property is used exclusively for charitable purposes. The word "exclusively" as used in the Constitution is one of general understanding. Its meaning is so clear that it requires no interpretation but only application. The test then under our law is whether Manor's dominant purpose may be classified as exclusively charitable within the meaning of those terms to qualify for tax exemption. The fact that some of its residents have been unable to pay all the charges assessed does not make Manor a charitable institution. Every profit-oriented nursing home will have some uncollectible accounts. submit that its operations were the same as many privately operated homes for the elderly for profit. The Nebraska Supreme Court ruled Manor's dominant purpose is to provide housing facilities for members of the teaching profession, and its medical care center is merely incidental to that purpose and does not by virtue of that fact change its dominant purpose or qualify it for tax exemption.

Christian Retirement Homes, Inc. v. Board of Equalization, 186 Neb. 11, 180 N.W.2d 136 (1970). The issue before the Nebraska Supreme Court is what part of Eastmont Manor, a retirement home, is tax exempt. The district court found that the chapel and medicenter were exempt, but the rest of the property was subject to taxation.

The primary or dominant use of the property, other than the chapel and medicenter, is to provide housing for elderly persons. The average age of the residents of the home is about 74 years. At the time of admission, the applicants must be physically able to maintain themselves in their own apartment. They are required to sign an occupancy agreement, pay an entrance endowment, and pay a monthly food and service charge. Applicants are required to furnish a financial statement and show that they will be able to pay the monthly fees. The occupancy agreement provides that an occupant's residency shall not be terminated solely by reason of the inability of an occupant to pay the monthly fees, if such a dispensation can be granted without impairing the ability of the home to operate on a sound financial basis. The monthly food and service charge is intended to cover the actual operating costs of the home. The residents are required to eat one meal a day in the dining room but are entitled to eat all of their meals there if they desire. Food service in the apartments is available when necessary, and emergency nursing service is always available.

The Nebraska Supreme Court ruled the primary use of the property is to provide housing for elderly persons. The plan is to operate the home at cost, with the residents providing the funds necessary to operate the home and retire its debt. Although the operation of the home includes many worthy charitable aspects, the ownership and use of the property, currently, is not exclusively charitable.

Union College v. Board of Equalization, 183 Neb. 579, 162 N.W.2d 772 (1968). Union College operated 5 industries which employed students at Union College and Union College asserts they should be tax exempt. The 5 industries were not used to provide vocational education and the students received no scholastic credit for the work they performed even though their work is rated and recorded. The students receive a normal wage credited to their student account at the central. The managers are members of the faculty but do not teach any subjects while the students work. The industries had a net operating gain which was reinvested in the industries. The Nebraska

Supreme Court ruled that industries operated and maintained primarily for the purpose of providing student employment, while commendable, is not a direct use of property for educational purposes and not tax exempt.

Evangelical Lutheran Good Samaritan Soc. v. County of Gage, 181 Neb. 831, 151 N.W.2d 446 (1967). Evangelical Lutheran Good Samaritan is a nonprofit corporation that runs two institutes in Gage County like nursing homes. Practically all of the residents are aged persons who require assistance for their mental and physical well-being, with apparently a few residents who are mentally subnormal. The residents are supervised 24 hours a day to see that they are supervised and receive necessary care according. The residents are housed, fed, and given any required medication. They are also assisted in shaving, bathing, dressing, and when required the services of doctors are obtained. The residents are charged for the services rendered and either the resident, resident's family, or county welfare department make payments.

Nursing homes are in a large measure analogous to hospitals. Hospitals are employed in the treatment of individuals of all ages who become ill and also supply facilities for surgery. Nursing homes do not have surgical facilities and do not provide care for the young, their services being limited to a large extent to the aged, the infirm, and to individuals who are mentally subnormal, but they provide the same care that hospitals furnish to patients convalescing from surgery or being treated for illnesses not requiring surgery. Formerly all institutions furnishing services of this nature, including both hospitals and nursing homes, were providing care for many patients without compensation and extended charity in the sense of alms-giving or free services to the poor.

The courts have defined 'charity' to be something more than mere almsgiving or the relief of poverty and distress and have given it a significance broad enough to include practical enterprises for the good of humanity operated at a moderate cost to those who receive the benefits. Based on the facts and that this nursing home being akin to a hospital, the Nebraska Supreme Court ruled the property was tax exempt.

Lincoln Woman's Club v. City of Lincoln, 178 Neb. 357, 133 N.W.2d 455 (1965). The district court entered a judgment finding taxes are void except for the portion of the basement used as a caretaker's apartment. The issue is whether the property is tax exempt.

The Lincoln Woman's Club was formed in 1894 and incorporated in 1907 as a nonprofit corporation. Its articles of incorporation provide in part that: "The objects and purposes for which this corporation and club is formed and exists are educational, religious and charitable." The articles also provide that upon dissolution, the assets of the corporation are to go for educational or charitable purposes. The club has approximately 300 members of whom over 100 are life members, having paid \$100 each; and approximately 200 who pay annual dues of \$ 6. There are no restrictions on membership based on race, creed, color, or age, and no formal application for membership is required. The club has no paid officers, and no member or officer receives any remuneration for any services performed. The club has six departments: American citizenship, Bible, bridge, fine arts, home, and Kensington. Each department has the privilege of picking some charitable organization or other project for which it wants to work. The club also receives funds from a food booth at the state fair.

The evidence made it clear that no tea, luncheon, or party was held except in connection with one of the programs in the building. There is no evidence in the record that any social functions are more than incidental to the primary purposes and objectives of the club. The record also shows that the building involved has no facilities as such for reading or relaxation by the members and is

closed except when some activity of the club is going on. The mental or emotional response of individuals to an activity certainly cannot be a judicial criterion in determining whether the activity is "religious," "educational," or "charitable." The Nebraska Supreme Court agreed with the district court and ruled that the property, except for the caretaker's apartment, was tax exempt.

Nebraska Conference Assn. v. Board of Equalization, 179 Neb. 326, 138 N.W.2d 455 (1965). The Conference Association operates a denominational grade and high school 1 mile east of Shelton, Nebraska, in Hall County. The facility is known as the Platte Valley Academy. The issue is whether all tracts of land are used for educational purposes and tax exempt. The Nebraska Supreme Court ruled that Tract VI and residence No. 11 are subject to taxation. Residences 1 through 10 are exempt.

The school principal testified that as far as academic use is concerned, the acquisition of the 93 acres was not essential to the operation of the academy. The evidence clearly indicates that the purchase of Tract VI was for the purpose of increasing the income for the Platte Valley Academy and was not for the primary purpose of providing educational facilities for the school. The school principal testified that as far as academic use is concerned, the acquisition of Tract VI, the 93 acres, was not essential to the operation of the academy. The evidence clearly indicates that the purchase of Tract VI was for the purpose of increasing the income for the Platte Valley Academy and was not for the primary purpose of providing educational facilities for the school.

Platte Valley Academy has 11 residences. Most the residences housed students or teachers. Residence No. 11 is located on Tract VI and houses the Spanish and history instructor but was described by the principal as not functional because of its distance from the school. All classroom preparation and counseling for the instructors occurs at the school and not at the residence hall.

YWCA v. City of Lincoln, 177 Neb. 136, 128 N.W.2d 600 (1964). The issue is whether the Young Women's Christian Association (YWCA) used Miller Hall primarily for accomplishing the charitable purpose of the organization or is instead related to the organization but not an integral part of carrying out the charitable purpose of the organization.

The purpose of the organization, as stated in the articles of incorporation, is "to associate and maintain young women in personal allegiance and loyalty to Jesus Christ as Saviour and Lord; to inculcate and promote growth in Christian character and service, through physical, social, mental and spiritual training, organizing them into a social force for the extension of the Kingdom of God. Such accomplishment to be effected by and through educational, religious and charitable work and the means proper and appropriate thereto." Miller Hall was provided for the young girls as a safe and secure environment they could stay but were charged an annual fee to stay at the residence. Miller Hall was historically operated at a loss.

The Nebraska Supreme Court ruled that the courts have defined 'charity' to be something more than mere alms-giving or the relief of poverty and distress and have given it a significance broad enough to include practical enterprises for the good of humanity operated at a moderate cost to those who receive the benefits. The use to which a building is used in carrying out its work must, be characterized, in its general aspect, as charitable, and used for charitable purposes, except in so far as some part thereof may be used for purposes foreign to or inconsistent with its dominant purpose. The Nebraska Supreme Court ruled Miller Hall was used primarily for accomplishing its charitable purpose and was tax exempt.

County of Douglas v. OEA Senior Citizens, Inc., 172 Neb. 696, 111 N.W.2d 719 (1961). The issue is whether the property was used exclusively for charitable purposes.

The property provided low-cost housing. Each occupant was charged for his or her part of operation, maintenance, amortization on the property, and for the costs of meals. The residents had no right to remain in occupancy without payment for occupancy from some source if the residents could not pay.

The Nebraska Supreme Court ruled this property was not owned and used exclusively for charitable purposes.

Doane College v. County of Saline, 173 Neb. 8, 112 N.W.2d 248 (1961). The issue is whether the president's house and faculty housing units were used exclusively for educational purposes.

Doane College required the president to live in the house as part of his contract at no charge to the president. In addition to being the living quarters of the president of the college, the president's house is the center for the reception of new faculty members, foreign visitors, the trustees, and their families. It is used as housing for prospective faculty members and foreign visitors on their visits to the campus and it is used extensively for student group meetings and conferences, senior receptions, and freshmen orientation receptions. The president uses one room for a library and a study where he carries on his work outside of his regular office hours. The Nebraska Supreme Court ruled that the president's house primary use is for educational purposes and is tax exempt.

The faculty housing units consisted of two apartment buildings with four housing units each. They were rented for a monthly charge to faculty at a fair market value. The housing units were not operated for financial gain or profit. However, the housing units did not house all the faculty and the units were in direct competition of other units in the community that could house faculty. The Nebraska Supreme Court ruled that any educational purpose was incidental and the primary use of the faculty housing units were not for educational purposes.

Nebraska Conf Assn. of Seventh Day Adventists v. County of Hall, 166 Neb. 588, 90 N.W.2d. (1958). The issue is whether Platte Valley Academy (Academy), owned by the Nebraska Conference of Seventh Day Adventists, is used exclusively for an educational purpose and tax exempt.

The Academy is a religious school located east of Shelton, Nebraska. The Academy has 83 students in grades 9 through 12. The school offers vocational training for boys in the field of agriculture and farming mechanics and girls are offered instruction in home economics, bookkeeping, shorthand, and typing. The Academy is an accredited school and graduates students who meet the requirements.

The area is a well-balanced unit and a highly developed farm. It is irrigated by 7 wells. The farm is fully equipped for a successful operation. It has shops for the care and repair of its machines and for the upkeep of its buildings and facilities. The entire products of the farm and the proceeds of any part thereof that are sold are used and received by the school and are expended on the cost of its operation. The land, all it produces, and everything derived therefrom is used exclusively for educational purposes. As each subsequent purchase of land was made it became a part of the farm for the benefit exclusively of the school and has since been used only for that purpose. Substantially everything about the operation and activities carried on contributes to the training, education, and advantage of the students of the school.

The Nebraska Supreme Court ruled the Academy is used exclusively for educational purposes and should be tax exempt.

Iota Benefit Assn. v. County of Douglas, 165 Neb. 330, 85 N.W.2d 726 (1957). The issue is whether a fraternity house for medical students is used primarily for educational reasons and tax exempt. The property in question is owned by the Iota Benefit Association and used by Iota Chapter of Phi Rho Sigma, a national fraternity the membership in which is limited to medical students, as a fraternity house. The fraternity paid \$2,700 per year for use of the home and was responsible for upkeep of the inside of the house. The fraternity house consists of three floors and a basement. On the first floor is a large living room, dining room, and kitchen. On the second and third floors are 19 rooms each of which is usually occupied by one or two men for living purposes, which includes study. There are also two bathrooms and a dormitory on the upper two floors. The basement also has two rooms in which members live and contains a storeroom, recreation room, and bathroom. The Nebraska Supreme Court ruled that the fraternity house is not being used exclusively for an educational purpose and is not tax exempt. The Nebraska Supreme Court included in their ruling that historically the Court considers the primary purpose of a college fraternity house is to furnish a private house determined the property was used for member as a home while attending college and was not used for charitable or educational purposes.