

Appeal No. VA04/2/038

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Legal Aid Board

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot No. 1A (Pt. 5th fl.), Sundry Townlands, Centre East, County Borough of Cork

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Joseph Murray - BL

Member

Michael McWey - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 4TH DAY OF OCTOBER, 2004

By Notice of Appeal dated the 5th day of April, 2004, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €152.37 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"(a) that the Board is an office of state and (b) that the Board is a charitable organisation as defined by the Valuation Act 2001."

The appeal proceeded by way of an oral hearing held on the 28th of July 2004 at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. The appellant was represented by Mr. Luan Ó Braonáin, BL, instructed by Messrs Mason, Hayes & Curran, Solicitors. The respondent was represented by Mr. Brendan Conway, BL, instructed by the Chief State Solicitor.

The Property Concerned

The property concerned comprises part of the fifth floor of a modern office building on South Mall, Cork. The rateable valuation of the subject property is €152.37. The quantum of the valuation is not in dispute.

The Legal Issue

Legal submissions on both sides dealt with two issues

- Is the Legal Aid Board an “office of State “ within section 15(3) of the Valuation Act 2001? In other words is the relevant property directly occupied by the State as an “office of State” within the said Act and accordingly exempt from liability for rates.
- Is the Legal Aid Board a “ charitable organisation” within section 3 of the Valuation Act 2001?

Submissions

Office of State

- With regard to the first question the Appellant said that the Board was in effect the State and the State was in direct occupation within section 15 (3). While the Board was independent in the exercise of its functions, the members were appointed by the Minister for Justice who could issue general directives on policy. The staff of the Board are civil servants. The Board is in effect the State. The appellant said it was not helpful to describe the Legal Aid Board as a semi-state body as many such bodies were of a commercial nature. The Legal Aid Board is non-profit making and operates as an office of State and therefore the relevant property is directly occupied by the State.

- The respondent could not accept this argument. The Office of the Attorney General or a Department of State are primary manifestations of the State and buildings occupied by such bodies are directly occupied by the State. In contrast the Legal Aid Board is not a primary manifestation of the State and is not under direct ministerial control. It is a satellite body of the Department of Justice, just like other semi-state bodies. In these circumstances the State is not in direct occupation. An office of State is not a Department of State and is separate from government. He gave examples of the Office of the Attorney General or the Director of Public Prosecutions as offices of State. Moreover, if the legislature wished to exempt the Legal Aid Board from rates liability it would have been listed for exemption under paragraph 12 of Schedule 4.

Analysis

The first issue concerned the rateability of property occupied by the Legal Aid Board as an “office of State” within section 15(3) of the Valuation Act 2001. In this respect two concepts have to be examined.

- What is meant by “office of State”?
- What is meant by “directly” occupied by the State? This will depend on the degree of integration and control, the relationship between the Minister and the particular body concerned.

Constitutional and administrative law deals with the subject of organs of State and other bodies.

- Organs of State
- Departments of State
- Public Bodies which includes “offices of State”

Organs of State are established by the Constitution.

The Constitution is the fundamental law of the land and creates the State.

Ireland (Eire) is a sovereign, independent and democratic State (**article 5 of the Constitution - Bunreacht na hEireann 1937**). The separation of powers is recognised in article 6 with reference to the powers of government as

- legislative
- executive
- judicial

The State is a legal person (**McCauley v Min.Post. Telegraph 1966 IR**). It cannot act or govern by itself, but can only do so through its organs. The powers of government are exercisable ONLY by, or on the authority of, the ORGANS of State established by the constitution, Article 6(2).

Judge Kingsmill Moore, in **McLoughlin V Minister of Social Welfare 1958 IR**, noted that although article 6 did not list the “organs of State established by the constitution” they include (**J.M. Kelly: *The Irish Constitution*, 4th Ed. (2003) p140**)

- The President
- The Oireachtas
- The Government
- The Council of State
- The Courts
- The Comptroller and Auditor General
- The Attorney General

Many crimes were prosecuted in the name of the people at the suit of the Attorney General (AG). Now these functions are carried out by the Director of Public Prosecutions (DPP) based on the Prosecution of Offences Act 1974. This ensures continuity in criminal prosecutions as the Director is a civil servant, unlike the AG who leaves office when the government falls. The DPP, although a creature of statute, could also be referred to as an “organ” of State, as it is an office that is vital to the functioning of the State. The State is a separate legal person from its organs.

Employees who work for the organs of the State, for example the President, are civil

servants of the State, as opposed to employees who work for the government, civil servants of the government. (**G. Hogan & D. Gwynn Morgan: *Administrative Law in Ireland*, 3rd Ed. (1998) p80**) demonstrates independence of the State organs.

Government Departments:

Departments of State

The Ministers and Secretaries Act 1924 establishes a minister, say a Minister for Justice, as a corporation sole, distinct from the temporary incumbent of the office (**G. Hogan & D. G. Morgan p67**). The Minister is not only head of a department, he also personifies the Department and, as a corporation sole, bears a responsibility in law for its every action which extends to branches like the Revenue Commissioners in the case of the Minister for Finance. The main objective of the 1924 Act was to ensure that all central, executive power of the State should flow through ministers responsible to the Dáil. The 1924 Act established 11 Departments of State and this has been increased to 15 with the 1997 Act.

Public Bodies, “offices of State” and “state- sponsored bodies”

These bodies on the other hand differ from Government Departments in that they perform specialised functions at a “distance” from government and ministers. The “distance” depends on the degree of control and autonomy between the various bodies and the minister concerned.

Public bodies are defined according to **Black’s Law Dictionary** as

- An authority, duty or trust
- Conferred by a government
- For a public purpose

(There is a time period for board members).

Judge Hamilton’s definition taken from **Halsburys Laws of England** states “ A *public authority is a body, not necessarily a county council, municipal authority... which has public or statutory duties to perform and which performs these duties ...for*

the benefit of the public and not for private profit.” This definition is too narrow to cover all the public bodies in Ireland, as some State sponsored bodies are commercial by nature and are set up to make a profit. However, the following elements are common to public bodies in varying degrees.

- Public accountability
- Public funding
- Staffing
- Control
- Organisation
- Legal status

There are over 200 public bodies which could be termed as offices, agencies, boards or state companies, compared with some 15 Departments of State. A list of public bodies is contained in the First Schedule, Official Languages Act 2003. Paragraph 1(2) contains Agencies, Boards, State Companies (commercial and non-commercial). These include, inter alia, Aer Lingus Group plc, An Bord Glas, Chester Beatty Library, The Abbey Theatre, Radio Telefís Éireann, Legal Aid Board, The Valuation Office, The Office of the Ombudsman, The National Lottery, and many others.

Not all of the above mentioned bodies are what could be termed “offices of State”

- Much depends on the degree of government control.
- Function: Some are engaged in governmental type business such as law and justice while others are of a commercial nature.
- Staffing: Some public bodies employ “civil servants of the State” as is the case with the Legal Aid Board.
- An office of State is close to the epicentre of Government policy.
- An “office of State” is spelt with a small “o” in section 15(3) and would not appear to have the same legal status as an organ of State.

If the Legal Aid Board is to qualify as an “office of State” there must be a certain level of integration with and control by the State. This will also overlap with the “direct occupation” concept.

- The Legal Aid Board was established under section 3 of the Civil Legal Aid Act 1995.
- Purpose: Its functions are closely associated with the Department of Justice, Equality and Law Reform, namely law and justice in providing free legal aid and advice to a certain class of persons.
- Its functions are more associated with government business than a commercial or cultural public body.
- Staff have State civil service status.
- Sometimes two government ministers may be involved, law and finance.
- Board members hold office for a certain period.
- Ministerial control is much greater than with other public bodies like Aer Lingus.
- The Board, although independent, is so integrated with State business that it may be called an “office of State”.
- Accountability: At the end of the financial year accounts shall be submitted to the Comptroller and Auditor General (section 20).
- Expenses incurred by the Minister in the administration of the Act shall be paid out of monies provided by the Oireachtas (section 39).

Schedule 4, paragraph 12 Valuation Act, 2001

It was argued on behalf of the Respondent that if it was intended to exclude the Board from liability for rates, it would have been listed in paragraph 12 of Schedule 4. The business of the bodies listed in paragraph 12 is totally different in nature from the Board’s business. They are all concerned with the arts, music, painting, theatre and heritage. They are of a class of their own concerned with cultural matters. Their object is to help to promote cultural bodies in Ireland. The Board, on the other hand, is concerned with law and justice and would certainly look out of place if it was included in the list.

Direct Occupation - Analysis

One must look at the relationship between the Minister and the Board. The subject matter has three elements in common with all public bodies:

- Members of the Board are appointed by the Minister
- State funding
- Accountability to the State

Direct occupation will also depend on other elements.

- Control
- Staffing
- Legal status

Control

- **Policy control:** While the Board is a body corporate and independent in its functions the Minister may issue general directives as to policy in relation to legal aid and advice under the provisions of section 7 of the Civil Legal Aid Act 1995. The Board shall comply with any directive under section 7 of the said Act.
- **Property control:** Under section 3(2) of the Act the Board is a body corporate with perpetual succession. Yet it appears that it can only acquire and dispose of land, property or rights in respect of such land or property with the consent of the Minister.
- **Remuneration:** Section 4(c)- Remuneration of the Board must have the consent of the Minister for Justice and the Minister for Finance.
- **Staff:** Section 10- The Chief Executive of the Board who is appointed by the Minister on the recommendation of the Civil Service Commissioners is a civil servant in the “service of the State”. The civil servants who work with the Board have the same classification as those who work in the organs of State. This demonstrates a strong bond between the Board and the State.

- Power to appoint solicitors: Section 11(5)(a)- The Minister may with the consent of the Minister for Finance by order designate solicitors of the Board as civil servants in the Civil Service of the State. This also shows the close relationship with two Government Departments.
- Regulations: Section 37- The Minister may make regulations for the purpose of giving effect to the Act. For example, a regulation may make provision for the establishment, location, and management of the law centres by the Board.

Findings

While recognising that the Board is a separate legal body with perpetual succession with the right to make contracts, and is independent in its functions, there is a considerable degree of ministerial control with the power to make regulations and issue directives to the Board, unlike other State Bodies. In some matters two government ministers may be involved. The Chief Executive of the Board is a “civil servant of the State”, which is not the case with other state bodies like Aer Rianta. It does not have the degree of freedom from Government interference as some commercial State Bodies have, such as Aer Lingus, RTE or the ESB. Also the Board was established as a non-profit public service body. Accordingly, there is a high level of control and integration between the Minister and the Board.

For the reasons aforementioned and considering the Board’s functions, staffing and degree of integration with the State, the Tribunal has come to the conclusion that the Legal Aid Board is an “office of State” within the meaning of section 15(3) of the Valuation Act, 2001, and therefore exempt from paying rates and that it is the State which is in fact in direct occupation of the relevant property.

Charitable Organisations

Submissions

Submissions were made by both parties with regard to the Legal Aid Board being a “charitable organisation” within the meaning of section 3 of the 2001 Act. The appellant claimed that the Deed, Articles of Association or Memorandum of the Board met the requirements of section 3 of the Act and that its objects were

exclusively for “charitable purposes” and not for the purposes of making a private profit.

The Respondent said there was a very heavy burden on the Board to show that they were exempt from rateability under the Act. The Respondent cited many conditions within section 3 which he claimed were not fulfilled. He further went on to say that in case the Tribunal found otherwise, the Board nevertheless did not meet the requirement of “charitable purposes” as decided in case law of Pemsel and Barrington. The Respondent gave much case law on the subject.

Findings

The Tribunal finds that the Board is not a charitable organisation within section 3 of the Valuation Act, 2001. The following conditions were not met:

- Prohibition on distribution of income to members. Section 3(a)(vii) (11)
- Prohibition on the payment of remuneration to members. Section 3(a)(vii) (111)
- Provision for winding up Section 3(a)(viii)
- Provision for disposal of surplus property on winding up to another charitable organisation. Section 3(a)(ix)

The Tribunal concludes that the Legal Aid Board does not qualify as a “charitable organisation” within the meaning of the section 3 of the Valuation Act, 2001. The question as to what constitutes “charitable purposes” need not be addressed.

References:

- *The Irish Constitution*, J.M. Kelly, 4th Edition, (2003) Hogan and White-Lexis Nexis- Butterworths.
- *Administrative law in Ireland*, G. Hogan & D. Gwynn Morgan, 3rd Edition, (1998) Sweet and Maxwell.