

STATE OF MICHIGAN  
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals  
William B. Murphy, Patrick M. Meter and Deborah A. Servitto

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SBC HEALTH MIDWEST, INC,

Supreme Court No. 151524

Petitioner-Appellee,

Court of Appeals No. 319428

v

MTT Docket No. 416230

CITY OF KENTWOOD,

Respondent-Appellant.

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**BRIEF ON APPEAL OF AMICI CURIAE THE BUILDING OWNERS AND  
MANAGERS ASSOCIATION OF METROPOLITAN DETROIT AND  
THE APARTMENT ASSOCIATION OF MICHIGAN**

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**COUNTER-STATEMENT OF JURISDICTION**

The Statement of Jurisdiction on page v of the City of Kentwood's Brief on Appeal, that this Court has jurisdiction over this case, is correct, albeit MCR 7.303(B)(1) and not MCR 7.301(A)(2) establishes jurisdiction.

**STATEMENT OF QUESTION PRESENTED**

The Statement of Question Presented on page vi of the City of Kentwood's Brief on Appeal is accepted with the addition that the Amici Curiae, the Building Owners and Managers Association of Metropolitan Detroit and the Apartment Association of Michigan, believe that the tax exemptions set forth under MCL 211.9(1)(a) are available to a for-profit educational institution.

**I. STATEMENT OF INTEREST OF THE AMICI CURIAE.**

Founded in 1908, the Building Owners and Managers Association of Metropolitan Detroit (“BOMA”) is a professional trade association whose hundreds of members either own or manage commercial real estate, or provide goods and services to the industry. BOMA’s charter encompasses the following nine Michigan counties: Genesee, Lapeer, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne. BOMA’s activities range from professional education and development programs to advocating for government policies that will strengthen Michigan’s real estate markets and the State’s economy.

The Apartment Association of Michigan (“AAM”) represents the owners of approximately 150,000 apartment units throughout Michigan. Founded in 1969, AAM’s members include the builders, developers, owners and managers of multi-family residential housing, and suppliers to the industry. AAM provides legislative and regulatory representation, educational programming, informational resources, networking opportunities, and group benefit programs to the industry.

**II. STATEMENT OF FACTS.**

Amici Curiae, the Building Owners and Managers Association of Metropolitan Detroit and the Apartment Association of Michigan (the “Amici”), accept the Statement of Facts in the Brief of the City of Kentwood (the “City”).

**III. ARGUMENT.**

The Brief on Appeal of the Petitioner-Appellee SBC Health Midwest, Inc. (“SBC”) has provided the Court with ample compelling reasons for affirming the decision of the Court of Appeals. Given that, the Amici will briefly address the aspects of this case that are most important and warrant additional comment.

**A. Standard of Review.**

The Amici adopt the statement of the standard of review as set forth in SBC's Brief on Appeal.

**B. This Court Should Affirm the Court of Appeals Decision Because it Lawfully Enforced the Unambiguous Language of MCL 211.9(1)(a).**

No rule of statutory construction is more important than applying unambiguous statutory language. There is no democracy where judges can disregard and nullify what elected legislators have specified in language that is crystal clear. This principle is universal. It applies wherever government has a legislative branch and a judicial branch.

MCL 211.9(1)(a) ("Section 9(1)(a)") states:

(1) **The following personal property**, and real property described in subdivision (j)(i), **is exempt from taxation**:

(a) **The personal property of charitable, educational, and scientific institutions** incorporated under the laws of this state. This exemption does not apply to secret or fraternal societies, but the personal property of all charitable homes of secret or fraternal societies and **nonprofit** corporations that own and operate facilities for the aged and chronically ill in which the net income from the operation of the **nonprofit** corporations or secret or fraternal societies does not inure to the benefit of a person other than the residents is exempt. [Emphasis added.]

As the Court of Appeals correctly concluded, this language is unambiguous and must be applied as written:

MCL 211.9(1)(a) is not ambiguous. Under the most basic rule of statutory construction, then, we read and apply the actual terms of the unambiguous statute, as is our duty. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 58; 642 NW2d 663 (2002). As indicated by our (sic) Supreme Court:

If the statute's language is clear and unambiguous, then we assume that the Legislature intended its plain meaning and the statute is enforced as written. A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent

of the Legislature as derived from the words of the statute itself. [*Roberts*, 466 Mich at 63].

Applying the unambiguous language of MCL 211.9(1)(a) to the facts at hand, the personal property of petitioner, if it is an educational institution incorporated under the laws of this state, is exempted from taxation. The Tax Tribunal erred in holding otherwise. [Court of Appeals Opinion, App at 465a.]

The language of Section 9(1)(a) yields only one logical conclusion: both non-profit and for-profit educational institutions are exempt.

Additionally, as detailed in SBC's Brief on Appeal, pp 1 and 7-9, the history of the statutory language at issue leaves no room for challenging this conclusion. For over 100 years, this statute and its predecessors have exempted for-profit educational institutions. In Public Act 83 of 1974 and Public Act 140 of 2003, the Legislature added the word "nonprofit" to the last sentence of Section 9(1)(a) and chose not to add it to the language at issue in Section 9(1)(a). The word "nonprofit" is in seventeen other sections of the General Property Tax Act (the "Act"), MCL 211.1 *et seq.*, but it is not in the operative language of Section 9(1)(a).

Furthermore, on multiple occasions this Court has recognized that for-profit educational institutions were exempt under the statutory language at issue. See *Detroit Home and Day School v Detroit*, 76 Mich 521; 43 NW 593 (1889), *Webb Academy v City of Grand Rapids*, 209 Mich 523; 177 NW 290 (1920), and *Detroit v Detroit Commercial College*, 322 Mich 142; 33 NW2d 737 (1948). See SBC Brief on Appeal, pp 11-14.

**C. The City has Misconstrued the Michigan Constitution and the Act.**

The City's position has three premises. The first premise is that under Article 9, § 4 of the Michigan Constitution, educational institutions must be non-profit to be exempt. The second is that educational institutions must be non-profit to be exempt under MCL 211.7n. The third is that because MCL 211.7n does not exempt non-profit educational institutions, Section 9(1)(a)

should be read as if it contained the same non-profit requirement, though clearly it does not. These premises are completely wrong. Indeed, if the language of Section 9(1)(a) can be violated by the judiciary's adding "non-profit" where the Legislature, for over a century, has declined to add it, then Michigan judges will be empowered to legislate from the bench as never before.

**1. The Legislature can Exempt For-Profit Educational Institutions.**

Article 9, § 4 of the Michigan Constitution reads:

Property owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes. [Const 1963, art 9, § 4.]

Simply put, this language mandates the exemptions specified, but it does not in any way restrict the Legislature's exempting property of for-profit educational institutions.

Article 9, § 3 of the Michigan Constitution reads in pertinent part:

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. [Const 1963, art 9, § 3.]

This Court has repeatedly recognized that the Michigan Constitution gives the Legislature almost plenary power to establish tax exemptions, subject only to a rational basis test. See, e.g., *Banner Laundering Co v Gundry*, 297 Mich 419; 298 NW 73 (1941), *Rockwell Spring & Axle Co v Romulus Twp*, 365 Mich 632; 114 NW2d 166 (1962). Thus, the Legislature can exempt for-profit educational institutions under the Act.

**2. For-Profit Educational Institutions are Exempt Under MCL 211.7n.**

SBC's Brief on Appeal, pp 18 - 19, confirms that in 1974 the Legislature did not simply add the word "non-profit" to MCL 211.7n. Rather, the Legislature added "non-profit theater." Put in this context, the most reasonable construction of this amendment is that the Legislature simply intended to exempt "non-profit theaters."

**3. For-Profit Educational Institutions Are Exempt Under Section 9(1)(a) Even If They Are Taxable Under MCL 211.7n**

Critically, Section 9(1)(a), and not MCL 211.7n, is the statute on which SBC seeks exemption. There is no authority for the proposition that in order to be exempt under one exemption statute the exemption claimant has to satisfy all exemption statutes that arguably could apply to the exemption claimant. There is no precedent for this under the Act, or under any of the other tax acts in this State. Whether dealing with exemptions for agricultural properties, non-profit homes, or any other type of exemption under the Act, under the sales and use tax acts, or under any other tax act, there has never been a case in which a taxpayer was denied exemption under an unambiguous statute because it arguably failed to qualify for exemption under a different exemption provision.

Even worse, reversing the Court of Appeals would license Michigan judges to legislate with impunity. Section 9(1)(a) could not be clearer. Plus the statute has a history that could not be more consistent with the existing unambiguous language. The Legislature twice added the word “non-profit” to the sentence that follows the subject language. The Legislature has included the word “non-profit” in numerous sections of the Act, which the Legislature has frequently amended. Yet, the Legislature has never added the word “non-profit” to the subject language. If the word “non-profit” can be read into Section 9(1)(a) where the Legislature has repeatedly refused to add it, the judiciary could legislate from the bench regardless of unambiguous statutes. The citizens of this State could no longer rely on unambiguous statutory language, but instead would be subjected to rulings based on judges legislating from the bench.

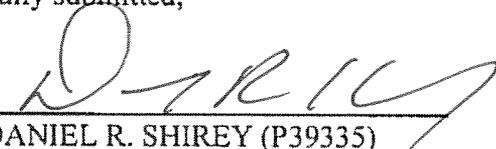
**IV. CONCLUSION AND RELIEF REQUESTED**

For over 100 years the Act has unambiguously exempted the personal property of educational institutions, including for-profit institutions. The Legislature has amended the Act

on numerous occasions and twice added the word "nonprofit" to the sentence that follows the language at issue. The Legislature, however, has not added the word "nonprofit" to the language at issue. The Court of Appeals correctly applied the unambiguous language of Section 9(1)(a). If this Court were to reverse and violate Section 9(1)(a)'s unambiguous language by adding the word "non-profit" from MCL 211.7n, where arguably the word only applies to "non-profit theaters," it would give the judges of this State the ability to decide cases based on their views of what the Legislature should have done, rather than the unambiguous language enacted.

The Amici Curiae, the Building Owners and Managers Association of Metropolitan Detroit and the Apartment Association of Michigan, respectfully request that for all of the reasons given, the Court affirm the Court of Appeals or, alternatively, rule that leave to appeal was improvidently granted and dismiss the City's appeal, and remand this case to the Tax Tribunal for a determination of whether SBC is an educational institution under Section 9(1)(a).

Respectfully submitted,

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