

STATE OF MICHIGAN
IN THE SUPREME COURT

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

On appeal from the Michigan Tax Tribunal
Tribunal Judge Steven H. Lasher

SBC HEALTH MIDWEST, INC.,

Supreme Court No. 151524

Petitioner/Appellee,

Court of Appeals No. 319428

v

Michigan Tax Tribunal No. 416230

CITY OF KENTWOOD,

Respondent/Appellant.

**AMICI CURIAE BRIEF OF MICHIGAN MUNICIPAL LEAGUE, MICHIGAN
TOWNSHIPS ASSOCIATION, MICHIGAN ASSOCIATION OF COUNTIES AND
MICHIGAN ASSESSORS ASSOCIATION IN SUPPORT OF THE
CITY OF KENTWOOD**

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STATEMENT OF JURISDICTION

On March 19, 2015, the Court of Appeals issued an unpublished opinion in *SBC Health Midwest, Inc v City of Kentwood*, Docket No. 319428 (COA Opinion).¹ On December 23, 2015, this Honorable Court issued an Order granting leave to appeal.² In its Order, this Honorable Court directed that “[t]he parties shall address whether the tax exemptions set forth under MCL 211.9(1)(a) are available to a for-profit educational institution.” This Amici Curiae Brief is submitted by Amici Curiae Michigan Municipal League, Michigan Townships Association, Michigan Association of Counties and Michigan Assessors Association pursuant to MCR 7.312(H).

¹ City of Kentwood Brief on Appeal Appendix 463a.

² *SBC Health Midwest, Inc. v City of Kentwood*, 498 Mich 956, 872 NW2d 495 (2015).

STATEMENT OF QUESTION PRESENTED

1. WHETHER THE TAX EXEMPTIONS SET FORTH UNDER MCL 211.9(1)(a) ARE AVAILABLE TO A FOR-PROFIT EDUCATIONAL INSTITUTION?

The City of Kentwood answered: NO

The Michigan Tax Tribunal answered: NO

Petitioner/Appellee answered: YES

The Court of Appeals answered: YES

Amici Curiae Answer: NO

STATEMENT OF FACTS

Amici Curiae concur with the Statement of Facts set forth in the City of Kentwood's Brief on Appeal and incorporate it by reference herein.

STATEMENT OF INTEREST OF AMICI CURIAE

The Michigan Municipal League (MML) is a nonprofit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of 524 Michigan local governments, of which 478 are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates its Legal Defense Fund through a board of directors. The purpose of this Legal Defense Fund is to represent the member local governments in litigation of statewide significance. Municipalities have an interest in the proper construction and application of the property tax law, both procedural and substantive. All Cities and Townships are the assessing units which administer the property tax through the actions of assessors and the local boards of review and as the respondents in most property tax appeals. This brief amici curiae is authorized by the Legal Defense Fund's Board of Directors.³

The Michigan Townships Association (MTA) is a Michigan nonprofit corporation whose membership consists of in excess of 1,235 townships within the State of Michigan joined together for the purpose of providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws of the State of Michigan. The Michigan Townships Association, established in 1953, is widely recognized for its years of experience and

³ The Board of Directors' membership includes: the President and Executive Director of the Michigan Municipal League and the officers and directors of the Michigan Association of Municipal Attorneys; Lori Grigg Bluhm, City Attorney, Troy; Clyde J. Robinson, City Attorney, Kalamazoo; Randall L. Brown, City Attorney, Portage; Catherine M. Mish, City Attorney, Grand Rapids; Eric D. Williams, City Attorney, Big Rapids; James O. Branson, III, City Attorney, Midland; James J. Murray, City Attorney, Boyne City and Petoskey; Robert J. Jamo, City Attorney, Menominee; John C. Schrier, City Attorney, Muskegon; Thomas R. Schultz, City Attorney, Farmington and Novi; and William C. Mathewson, General Counsel, Michigan Municipal League.

knowledge with regard to municipal issues. Through its Legal Defense Fund, the Michigan Townships Association has participated on an amicus curiae basis in numerous state and federal cases presenting issues of statewide significance to Michigan townships.

Michigan Association of Counties (MAC) is a nonprofit organization consisting of the 83 counties in Michigan. Each constituent County derives a substantial portion of its revenue, typically over 50% of its general fund, from general *ad valorem* property taxes, and special millages. The member Counties rely on revenues derived from an assessment administrative process that is fair to all taxpayers, equitable in determining the tax burden, and generating revenues that are predictable and stable. The proper valuation of property and the proper grant of property tax exemptions is crucial to the stability of each County's public budget and the services provided thereby.

The Michigan Assessors Association (MAA) is comprised of more than 1,500 members including Michigan assessing officials and officers from cities, townships, counties, and State assessing officers. The MAA strives to improve the standards of assessment practice; to provide a clearing house for the collection and distribution of useful information relative to assessment practice; and to promote justice and equality in the distribution of the tax burden. The MAA frequently works with legislative staff on issues pertinent to property assessment across the State. Members of the MAA have offered testimony before committees of the House and Senate. The MAA keeps in close contact with local units of government across the State regarding current issues in the area of property assessment. The MAA annually conducts several continuing education courses regarding property tax assessment for both members and non-members featuring a curriculum which is approved by the State Tax Commission. Assessor members of the MAA are responsible for *ad valorem* tax assessment in the State.

Proper resolution of this case is of major importance to municipal property tax administration, property tax levying entities, and jurisprudence in the state. The General Property Tax Act (GPTA)⁴ provides a comprehensive system for the assessment of real and personal property for ad valorem tax purposes, for the exemption of certain types of properties, for the collection of property taxes and for administration of such laws. Within this system, each township and city assessor is charged with annually establishing the assessment of all parcels of property in the municipality⁵ and, in doing so, must determine the taxable status.⁶ In determining the taxable status of real and personal property, assessors annually consider numerous claims for property tax exemption including those from purported charitable, educational, and scientific institutions.⁷

In this case, this Honorable Court has directed that “[t]he parties shall address whether the tax exemptions set forth under MCL 211.9(1)(a) are available to a for-profit educational institution.” This issue directly impacts the Amici Curiae MML, MTA, MAC, and MAA, through their interest in proper and equitable ad valorem property tax administration and the tax revenues received by property tax levying entities. With the level of involvement in property tax administration by the Amici Curiae it can be said without a doubt that it has been generally understood and applied that the property tax exemptions under MCL 211.9(1)(a) have not been available to for-profit entities. Therefore, this Honorable Court’s consideration of this issue is of great importance. Any determination that for-profit educational entities can avail themselves of the property tax exemptions under MCL 211.9(1)(a) will negatively impact those interests of the Amici Curiae. Such ruling will undoubtedly create a slippery slope of property tax exemption

⁴ MCL 211.1 et seq.

⁵ MCL 211.10(1).

⁶ MCL 211.2(2).

⁷ MCL 211.9(1)(a); MCL 211.7n; MCL 211.7o(1).

claims under MCL 211.9(1)(a) by for-profit charitable, educational, and scientific institutions and spill over into other exemption provisions long thought of as exclusively preserved for nonprofit entities (i.e. MCL 211.7n). Such a ruling would also certainly cause harm to the continued formation of nonprofit entities in this State that exist for the betterment of society. The Amici Curiae are hopeful that their experience and knowledge in this area of law will be beneficial in assisting this Honorable Court in reaching the proper conclusion that the property tax exemptions under MCL 211.9(1)(a) are not available to for-profit educational entities. The following legal argument supports this conclusion.

ARGUMENT

I. THE TAX EXEMPTIONS SET FORTH UNDER MCL 211.9(1)(a) ARE NOT AVAILABLE TO A FOR-PROFIT EDUCATIONAL INSTITUTION

A. Introduction

The case at bar specifically involves consideration of a claimed exemption from personal property tax by a for-profit post-secondary school under MCL 211.9(1)(a).⁸ The general understanding of assessors throughout the state in the performance of their property tax assessing function has been that the property tax exemptions for charitable, educational and scientific institutions under MCL 211.9(1)(a) were not available to for-profit entities. It is noteworthy to highlight that this general understanding and interpretation has been applied for at least many decades and has not met with court challenge until now. The few for-profit educational entities that exist throughout the state have presumably understood the effect of their for-profit corporate selection, weighed the pros and cons, and lived with the resulting consequence that their property was taxable.⁹ For-profit educational institutions cannot have it both ways. It is business 101 and axiomatic that the purpose of a for-profit corporation is to make a profit to distribute or otherwise benefit the shareholders; this being the corporate profit motive. This is in direct opposition to the purpose of a nonprofit institution with its sole motive to carry out its cause, whether it be educational, scientific, or charitable.¹⁰ Promotion of these nonprofit causes by provision of property tax exemptions is a worthy intent of the legislation. This nonprofit concept is further bolstered by recognizing the interrelationship between MCL 211.9(1)(a), Article 9, Section 4 of

⁸ MCL 211.9(1)(a) in relevant part exempts from property tax: “[t]he personal property of charitable, educational, and scientific institutions incorporated under the laws of the state.

⁹ It should be noted that even though there are numerous private schools throughout the State these schools have almost all chosen to operate as a non-profit. Their sole purpose is for education and profits presumably benefit the educational cause or students.

¹⁰ See Webster’s New Collegiate Dictionary (1976), for definitions of institution (p 599) and organization (p 809) as respectively follows. An institution is “an established organization or corporation (as a college or university) esp. of a public or eleemosynary character”. An organization is an “ASSOCIATION, SOCIETY < tax exemptions for charitable~s >”.

the Michigan Constitution of 1963,¹¹ MCL 211.7n¹², and MCL 211.7o¹³, and then harmonizing these provisions.

The Michigan Tax Tribunal properly upheld the generally understood intent of MCL 211.9(1)(a) in finding that for-profit charitable, educational and scientific institutions do not qualify for the exemption. The Court of Appeals Opinion sailed off course when it failed to give proper deference to the Tax Tribunal's interpretation, failed to properly apply proper interpretive standards for tax exemption legislation, and determined that the personal property tax exemption under MCL 211.9(1)(a) is available to for-profit educational institutions. Upon granting leave, this Honorable Court has directed that "[t]he parties shall address whether the tax exemptions set forth under MCL 211.9(1)(a) are available to a for-profit educational institution."

Amici Curiae contend that a determination that the tax exemptions under MCL 211.9(1)(a) are not available to for-profit educational institutions is supported by the specific statutory language, case law, and harmonizing the Constitutional and GPTA statutory property tax exemption scheme. If decided otherwise, this issue will cause serious negative consequences to municipal property tax administration, to the tax revenues received by property tax levying entities, and to the public services provided therefrom. A determination that a for-profit educational institution qualifies for tax exemptions under MCL 211.9(1)(a) would represent a seismic shift in how the exemption is currently administered by the Michigan Tax Tribunal and

¹¹ Article 9, Section 4 of the Michigan Constitution of 1963 provides that: "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."

¹² MCL 211.7n provides in part that: "Real estate or personal property owned and occupied by non-profit theatre, library, educational, or scientific institutions incorporated under the laws of the state with the buildings or other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act...."

¹³ MCL 211.7o, *infra*, also provides for real and personal property tax exemptions for non-profit charitable institutions.

Michigan assessors. This would also create a slippery slope with an influx of other personal property and/or real property exemption claims coming (i.e. charitable, educational or scientific institutions under MCL 211.9(1)(a) and MCL 211.7n), would end up causing substantial harm to the establishment of nonprofits (i.e. no need to form for property tax exemption purposes if they receive the same benefits as a for-profit entity), and ultimately would end up creating substantial property tax revenue loss. Such determination will result in property tax exemption statutes that are vulnerable to abuse and misuse.

The MML, MTA, MAC and MAA are all hopeful that when this Honorable Court reviews relevant statutory language in light of proper interpretive principles, case law, in harmony with other provisions of the GPTA and Michigan Constitution, it will reverse the Court of Appeals Opinion and determine that a for-profit educational institution does not qualify for personal property tax exemption under MCL 211.9(1)(a). Amici Curiae concur with the arguments set forth by the City of Kentwood in their Brief on Appeal and Reply Brief. The within argument is intended to further enlighten this Honorable Court.

B. Standard of Review

The Michigan Supreme Court in *Briggs Tax Service, LLC v Detroit Public Schools, et al*, 485 Mich 69, 75; 780 NW2d 753 (2010) expressed the standard of review in Tax Tribunal cases as follows:

“The standard of review of Tax Tribunal cases is multifaceted. If fraud is not claimed, this Court reviews the Tax Tribunal’s decision for misapplication of the law or adoption of a wrong principle. We deem the Tax Tribunal’s factual findings conclusive if they are supported by ‘competent, material, and substantial evidence on the whole record’. But when statutory interpretation is involved, this Court reviews the Tax Tribunal’s decision de novo.” (Footnotes omitted). (Emphasis added)

The issue herein as directed by this Honorable Court involves statutory interpretation regarding whether the tax exemptions set forth under MCL 211.9(1)(a) are available to a for-profit educational institution. This issue is therefore reviewed de novo. It is important to note, however, that this Honorable Court should give deference to the Michigan Tax Tribunal's correct determination of this issue as the Tax Tribunal has special knowledge and vast experience regarding interpretation of the GPTA and more specifically, application of property tax exemptions provided for therein.¹⁴

C. General Rules of Statutory Interpretation Do Not Support the Exemption of For-Profit Educational Institutions.

The issue before this Honorable Court turns on statutory review and interpretation. “The primary goal of statutory interpretation is to give effect to the intent of the Legislature.”¹⁵ “[A] reviewing court should focus first on the plain language of the statute in question . . .”¹⁶ “If the statute is unambiguous on its face, the Legislature will be presumed to have intended the meaning expressed and judicial construction is neither required nor permissible.”¹⁷

Courts “must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.”¹⁸ Courts “interpret th[e] words in [the statute in] light of their ordinary meaning and their context within the statute and read them harmoniously to give effect to the statute as a whole.”¹⁹ “[I]n seeking meaning, words and clauses will not be divorced from those which precede and those which

¹⁴ *Maxitrol Co. v Dep’t of Treasury*, 217 Mich App 336, 370; 551 NW2d 471 (1996).

¹⁵ *In re: MCI Telecommunications*, 460 Mich 396, 411; 596 NW2d 164 (1999).

¹⁶ *Fisher Sand & Gravel Co. v Neal A. Sweebe, Inc.*, 494 Mich 543, 560; 837 NW 2d 244 (2013).

¹⁷ *In re: MCI Telecommunications, supra*, 411.

¹⁸ *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012) citing *State Farm Fire & Cas. Co. v. Old Republic Ins. Co.*, 466 Mich 142, 146; 644 NW2d 715 (2002).

¹⁹ *Johnson, supra*, 177 citing *People v. Peltola*, 489 Mich 174, 181; 803 NW2d 140 (2011).

follow.”²⁰ “Statutory interpretation requires courts to consider the *placement* of the critical language in the statutory scheme.”²¹ “All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning”.²²

This Honorable Court has articulated a contextual principle regarding ambiguity as follows:

“A word is not rendered ambiguous, however, merely because a dictionary defines it in a variety of ways. (Citation omitted). Rather, the doctrine of *noscitur a sociis* requires that the term 'liquidation' be viewed in light of the words surrounding it. (Citation omitted). "Contextual understanding of statutes is generally grounded in the doctrine of *noscitur a sociis*: '[i]t is known from its associates,' see Black's Law Dictionary (6th ed.), p. 1060. This doctrine stands for the principle that a word or phrase is given meaning by its context or setting.” *Brown v Genesee Co. Bd. of Comm'rs* (After Remand), 464 Mich 430, 437, 628 NW2d 471 (2001), quoting *Tyler v Livonia Schs*, 459 Mich 382, 390-391, 590 NW2d 560 (1999)²³.

This Honorable Court has further addressed contextual understanding through use of the rule of “*in pari materia*” as follows:

“In addition, when this Court construes two statutes that arguably relate to the same subject or share a common purpose, the statutes are *in pari materia* and must be read together as one law, even if they contain no reference to one another and were enacted on different dates. The object of the *in pari materia* rule is to give effect to the legislative purpose as found in harmonious statutes. If statutes lend themselves to a construction that avoids conflict, then that construction should control.”²⁴

In addressing the threshold question of ambiguity, this Honorable Court has held that:

²⁰ *Sanchick v. State Bd. of Optometry*, 342 Mich 555, 559; 70 NW2d 757 (1955).

²¹ *Johnson, supra*, 177 citing *United States Fidelity & Guaranty Co. v. Mich. Catastrophic Claims Ass'n* (On Rehearing), 484 Mich 1, 12; 795 NW2d 101 (2009).

²² *Briggs Tax Service, LLC v Detroit Public Schools, et al*, 485 Mich 69, 77, 780 NW2d 753 (2010), citing MCL 8.3a.

²³ *Koontz v Ameritech Services, Inc.*, 466 Mich 304, 317-318; 645 NW2d 34 (2002).

²⁴ *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998) (citations omitted).

“A term is ambiguous ‘when it is *equally* susceptible to more than a single meaning,’ *Lansing Mayor v Pub. Service Comm.*, 470 Mich 154, 166, 680 NW40 (2004), not when reasonable minds can disagree regarding its meaning.”²⁵

Further, "ambiguity is a finding of last resort".²⁶

Armed with the above rules of statutory interpretation, the plain language of MCL 211.9(1)(a) should first be analyzed to determine legislative intent. Applying the concept of *noscitur a sociis* the words educational institutions should not be looked at in a vacuum but rather begin to take meaning by being associated with charitable institutions and scientific institutions. These associated terms are further contained in other property tax exemption provisions of the comprehensive GPTA (MCL 211.7n and MCL 211.7o) and help guide our better understanding of educational institutions using both the *noscitur a sociis* rule and the *in pari materia* rule. Expanding out the interpretive rules even further also brings in Article 9 Section 4 of the Michigan Constitution of 1963 to assist in understanding the meaning of educational institutions in MCL 211.9(1)(a). If MCL 211.9(1)(a) is read with this analysis it leads to the incontrovertible conclusion that a for-profit educational institution cannot receive exemption under MCL 211.9(1)(a). This analysis will be expanded on in following arguments. The veracity of this conclusion is further amplified when considered in light of the following special rules regarding interpretation of property tax exemptions and application of case law.

D. Special Interpretive Rules Regarding Property Tax Exemptions Do Not Support the Exemption of For-Profit Educational Institutions.

The GPTA provides that “all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.” MCL 211.1. It is undisputed that the subject property would be subject to property tax if the claimed exemption is not applicable.

²⁵ *Toll Northville Ltd., v Township of Northville*, 480 Mich 6, 15 fn 2; 743 NW2d 902 (2008).

²⁶ *Lansing Mayor*, supra at 165, citing *Klapp v Limited Insurance*, 468 Mich 459, 474; 663 NW2d 447 (2003) (Emphasis added).

Exemption statutes are subject to a rule of strict construction in favor of the taxing authority. Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp, 416 Mich 340, 348; 330 NW2d 682 (1982). “The rule to be applied when construing tax exemptions was well summarized by Justice Cooley as follows:

[I]t is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant.” *Michigan Bell Telephone Company v Department of Treasury*, 229 Mich App 200, 207; 582 NW2d 770 (1998), quoting *Detroit v Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, *Taxation* (4th ed.), § 672, p 1403.

Justice Cooley’s summarization has often been cited and should be accorded much more than mere judicial gloss as afforded by the Court of Appeals Opinion. The exemption statute in this case, MCL 211.9(1)(a) must be strictly construed in favor of the City of Kentwood, because an exemption removes the burden on the exempt property owner to share in the support of local government. *Golf Concepts v Rochester Hills*, 217 Mich App 21, 26; 550 NW2d 803 (1996). A tax exemption is the antithesis of tax equality. *Id.* Any exemption under MCL 211.9(1)(a) that would cover for-profit educational institutions must be set forth in clear and unambiguous terms. Any uncertainty must be decided in favor of the City with narrow interpretation of the statute.

Rather than applying these strict rules of interpretation in favor of the City and deferring to the learned wisdom of the Tax Tribunal, the Court of Appeals Opinion opted to improperly discard these rules and broadly interpret the exemption to cover for-profit educational institutions. The intention to allow this type of exemption cannot be inferred and certainly the legislature could have specifically expressed application to for-profit entities if it intended.

E. MCL 211.9(1)(a) Does Not Avail Its Property Tax Exemption to For-Profit Educational Institutions.

As indicated, analysis of the question presented begins with a review of the plain language of MCL 211.9(1)(a) and proceeds from there. As part of the tax scheme in the GPTA, MCL 211.9(1)(a) exempts the following personal property from ad valorem taxation:

“The personal property of charitable, educational, and scientific institutions incorporated under the laws of the state. The 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 or operate facilities for the aged and chronically ill in which the net income from the operation of the nonprofit corporations where secret or fraternal societies does not inure to the benefit of a person other than the residents is exempt.”(emphasis added)

Nothing from the language above clearly indicates –or indicates at all- that the exemption applies to for-profit educational institutions. A property tax exemption must be specifically expressed, it cannot be inferred.

Further, the statute plainly applies to the property of certain “institutions”. An ordinary meaning of institution as set forth in Webster’s Dictionary, supra, is “an established organization or corporation (as a college or university) esp. of a public or eleemosynary character”. Within this definition of institution is the word organization which is defined as “ASSOCIATION, SOCIETY < tax exemptions for charitable~s >”. These definitions connote a nonprofit entity and clearly not a for-profit entity. As discussed in the introduction, a for-profit company is

organized principally for returning a profit to its shareholders, certainly not what we would think of as eleemosynary.

Nonprofit institutions on the other hand easily fall within this definition as their purpose is not to return profit to the owners but rather to pursue a cause as its principal function. If a nonprofit saves money on tax payments it has more money for its cause (i.e., education) as opposed to more money to distribute to shareholders. An educational entity makes a choice whether to incorporate as for-profit or nonprofit. There are consequences to this choice, one of which is the availability and applicability of property tax exemptions. You cannot “run with the hare and hunt with the hounds”.²⁷

It is interesting to note that amendments over time to MCL 211.9 did not require additional nonprofit language to be added to the first sentence because a charitable, scientific, or educational “institution” would in all cases be not for-profit. The legislature clearly used the word institution for a reason. Further, assessors have generally considered this language as excluding for-profit claimants and the Tax Tribunal has reached the same conclusion in more than one instance as noted in the City’s brief.

Next using the rule of *noscitur a sociis*, we expand out from the words educational institution to see what meaning is given by its context or the words around it. The terms directly associated with educational institutions under MCL 211.9(1)(a) are charitable institutions and scientific institutions. Certainly it can be seen that by being associated with charitable and scientific institutions there would be a general understanding that the educational institution exemption would be of a similar nature. Otherwise, educational institutions would be placed in a separate sentence. We know from *Wexford Med Group v City of Cadillac*, 474 Mich 192, 203;

²⁷ *City of Ann Arbor v University Cellar, Inc.*, 401 Mich 279, 289; 258 NW2d 1 (1977).

713 NW2d 734 (2006) that a charitable institution must be nonprofit. It would, therefore, only follow that contextually the other associated exemptions for educational institutions and scientific institutions would also carry forward this nonprofit standard. In *Wexford*, this Honorable Court applied the nonprofit standard to charitable institutions under MCL 211.9(a) (the predecessor to MCL 211.9(1)(a)) even though MCL 211.9(a) did not expressly state a nonprofit requirement.²⁸ The same requirement should apply to educational institutions. This understanding is in harmony with the above-referenced definitions of institution and organization and in contextual association with charitable institutions.

Taking a wider view, the Court of Appeals erred in failing to recognize that MCL 211.9(1)(a) is part of a comprehensive statutory scheme regarding real and personal property taxation and as such, its provisions must be read *in pari materia*. The provisions in the GPTA most certainly relate to one another and are thoroughly intertwined. Section 9 of the GPTA principally deals with personal property tax exemptions, while Section 7 principally deals with real property tax exemptions. These provisions, however, are intertwined and have some overlap. For example, MCL 211.7n contains provisions that exempt both real and personal property and overlaps with the educational and scientific institution exemptions for personal property under MCL 211.9(1)(a).

This Honorable Court has previously recognized the interrelationships between GPTA Section 7 and Section 9 when reviewing a charitable institution exemption request for real and personal property by taking together MCL 211.7o and the “corollary statute addressing personality, MCL 211.9(a)”, in consideration of one set of standards for both Sections.²⁹ This *in*

²⁸ *Wexford, supra*, 215.

²⁹ *Wexford, supra*, 199. See also *Wexford, supra*, 215 where this Honorable Court applies the requirement that a charitable institution must be non-profit to both statutory provisions.

pari materia relationship between Section 7 and Section 9 of the GPTA is further acknowledged with regard to scientific institutions under both Section 7 and Section 9.³⁰ In applying the *in pari materia* rule, it can be seen that the charitable institution personal property exemption provided for in MCL 211.9(1)(a) is the same charitable institution for real and personal property exemption under MCL 211.7o(1).

MCL 211.7o(1) provides that:

“(1) Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.

* * *” (Emphasis added)

In *Wexford*, this Honorable Court applied the same test to both Section 7 and Section 9 of the GPTA even though MCL 211.9(a) did not specifically state “nonprofit” as a pre-qualifier to charitable institutions. This Honorable Court stated that:

“... certain factors come into play when determining whether an institution is a ‘charitable institution’ under MCL 211.7o and MCL 211.9(a). Among them are the following:

- (1) A ‘charitable institution’ must be a nonprofit institution.
- (2) A ‘charitable institution’ is one that is organized chiefly, if not solely, for charity.
- (3) A ‘charitable institution’ does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
- (4) A ‘charitable institution’ brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the

³⁰ *American Concrete Institute v Michigan State Tax Commission*, 12 Mich App 595, 607-608; 163 NW2d 508 (1968). The concept of *in pari materia* most certainly applies in relation between Section 7 and Section 9 of the GPTA.

burdens of government.

- (5) A ‘charitable institution’ can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A ‘charitable institution’ need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.” (Emphasis added.)³¹

Educational institutions are similarly associated with charitable institutions and scientific institutions under MCL 211.9(1)(a) and while obviously are not the same entities, they do by context and common understanding share a similar nature (nonprofit). The clear legislative intent is that the exemption is not available to for-profit companies.

In further harmonizing MCL 211.9(1)(a) with other GPTA exemption provisions, we must next look to MCL 211.7n, which provides for both real estate and personal property exemptions as follows:

“Real estate or personal property owned and occupied by **nonprofit** theatre, library, educational, or scientific institutions incorporated under the laws of the state with the buildings or other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act. In addition, real estate or personal property owned and occupied by a nonprofit organization organized under the laws of the state devoted exclusively to fostering the development of literature, music, painting, or sculpture which substantially enhances the cultural environment of a community as a whole, is available to the general public on a regular basis, and is occupied by it solely for the purposes for which the organization was incorporated is exempt from taxation under this act.” (Emphasis added)

Both MCL 211.7n and MCL 211.9(1)(a) provide for personal property exemptions for educational institutions and scientific institutions. These sections of the GPTA must be read together and the nonprofit qualifier must be applicable to both. The applicability of the nonprofit

³¹ *Wexford, supra*, 215.

qualifier is unquestioned as the Court of Appeals recognizes the various related personal property tax exemption provisions stating that:

“Petitioner argued to the tax tribunal that it was entitled to be exempt from personal property taxes under MCL 211.9(a) which protects nonprofit charitable, educational or scientific institutions. It should be noted that personal property tax exemptions are also provided for such institutions under MCL 211.7n and MCL 211.7o. Section 7n exempts personal property owned and occupied by a nonprofit theatre, library, educational or scientific institution, while personal property owned and occupied by charitable institutions is exempt under section 7o.”³²

It is apparent from the above that these types of uses qualifying for personal or real property exemption (i.e., charitable, educational and scientific) were purposely placed contextually together in a number of statutes. The nonprofit exemption qualifier is a common bond for these types of charitable, educational or scientific institutions even though not specifically stated in MCL 211.9(1)(a). MCL 211.9(1)(a), MCL 211.7n and MCL 211.7o must all be read in harmony. If MCL 211.9(1)(a) were interpreted to allow for a for-profit educational institution to receive an exemption, this would be in direct conflict with MCL 211.7n which requires the exemption claimant to be nonprofit. The rules of construction require an interpretation in harmony rather than one that creates a statutory conflict.

Indeed, it would be unconstitutional if taxpayer under MCL 211.9(1)(a) was exempt from taxation as a for-profit educational institution while a similar for-profit educational institution is held taxable under MCL 211.7n. This Honorable Court has indicated that:

“Similarly, under the Uniformity of Taxation Clause of the Michigan Constitution, the controlling principle is one of equal treatment of similarly situated taxpayers. (citations omitted). As a practical matter, in cases involving taxing statutes, there is no discernible difference between the equal protection and uniformity of taxation clauses.”³³ (Citations Omitted)

³² *Kalamazoo Aviation History Museum v City of Kalamazoo*, 131 Mich App 709, 712; 346 NW2d 862 (1964).

³³ *Armco Steel Corp v Dept. of Treasury*, 419 Mich 582, 592; 358 NW2d 839 (1984).

The Court of Appeals Opinion leads to non-uniformity in taxation. To avoid such a result, the nonprofit requirement in MCL 211.7n and MCL 211.7o must be applicable to charitable, educational, and scientific institutions in MCL 211.9(1)(a).

It should be emphasized that in most every property tax exemption case decided under MCL 211.7o, MCL 211.7n and MCL 211.9(1)(a), the exemption claimant is nonprofit and the Courts are called upon to analyze other qualifications for the exemption. With regard to the educational institution exemption under MCL 211.7n, this was the case in the Michigan Supreme Court case of *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980). In *Ladies Literary Club* the claimant was nonprofit so that question did not need to be addressed. This Honorable Court did hold that an educational institution claimant under MCL 211.7n must:

- (1) Fit into the general scheme of education provided by the state and supported by public taxation, and
- (2) Contribute substantially to the relief of the educational burden of government.³⁴

While the nonprofit nature of the Ladies Literary Club was not addressed, such nonprofit standard fits nicely into the test. A nonprofit educational institution would fit into the general scheme of education provided by the State and supported by public taxation. A for-profit educational institution would not similarly fit into this general scheme. The educational scheme of this State is based upon nonprofit educational institutions. This allows for the sole motive to be education rather than the maximization of profit or the conferring of private benefit to stockholders.

Last but certainly not least, taking an even wider view of the intent behind the exemption for educational institutions under MCL 211.9(1)(a), the over-arching umbrella of Article 9,

³⁴ *Ladies Literary Club, supra*, 755-756.

Section 4 of the Michigan Constitution of 1963 requires a nonprofit educational property tax exemption in law. Said Article 9, Section 4 provides that:

“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.”

It necessarily follows from this requirement from the Michigan Constitution that nonprofit educational organizations will be exempt from property tax with both MCL 211.7n and MCL 211.9(1)(a) both carrying forward this constitutional exemption. No evidence suggests that these provisions are intended to expand the exemption to for-profit entities. A determination that the tax exemption set forth under MCL 211.9(1)(a) is not available to a for-profit educational institution is in harmony with this constitutional provision along with MCL 211.7o, MCL 211.7n and MCL 211.9(1)(a). The plain language of these laws supports this conclusion and to determine otherwise creates irreconcilable conflicts. The Petitioner in this case has not met its heavy burden to prove that the exemption language includes its for-profit educational institution.

CONCLUSION

For the reasons set forth above, Amici Curiae respectfully request that this Honorable Court reverse the Court of Appeals Opinion and determine that the property tax exemption under MCL 211.9(1)(a) is not available to a for-profit educational institution.

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Respectfully submitted,

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