

PT 13-10

Tax Type: Property Tax

Tax Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

SIGMA CHI FOUNDATION,

APPLICANT

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No. 12-PT-0022 (11-16-484)

**Real Estate Tax Exemption
For 2011 Tax Year
P.I.N. 11-18-400-014-0000**

Cook County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. James Ashley Woods, on behalf of Sigma Chi Foundation; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Cook County Parcel, identified by property index number 11-18-400-014-0000 (hereinafter the “subject property”) qualifies for exemption from 2011 real estate taxes under 35 ILCS 200/15-65(a) of the Property Tax Code, which exempts all property owned by a charity and actually and exclusively used for charitable purposes or 35 ILCS 200/15-65(h) which exempts property of historical societies.

This controversy arose as follows: On March 8, 2012, Sigma Chi Foundation (hereinafter the “Foundation”) filed an Application for Non-homestead Property Tax Exemption with the Cook County Board of Review (the “Board”) seeking exemption from 2011 real estate taxes for the subject property. The Board reviewed the Foundation’s Application and

recommended that the exemption be denied. On May 24, 2012, The Department of Revenue of the State of Illinois (the “Department”) accepted the Board’s recommendation in a determination finding that the subject property was not in exempt ownership and not in exempt use in 2011. The Foundation filed an appeal of the Department’s exemption denial. On April 19, 2013, an evidentiary hearing was held with testimony from Mr. Greg Harbaugh, President and Chief Executive Officer, and Mr. Noah Phelps, Director of the Foundation’s Historical Initiative. Following a careful review of the testimony and evidence, it is recommended that the Department’s denial be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt ownership or use during 2011. Tr. pp. 7-8; Dept. Ex. No. 1.
2. The subject property is located at 1726 Hinman Avenue in Evanston, in a building called the “Annex.” The Foundation’s international headquarters is located at 1714 Hinman Avenue, a separate P.I.N., not included in these proceedings. The Annex is open to the general public and there is no fee to enter the Annex. Noah Phelps resides in the Annex on the third floor. He is the caretaker of the property, oversees overnight visitors’ accommodations and provides after-hours services, if needed. He does not pay rent but rent is part of his compensation package. Tr. pp. 27-28, 38, 53, 60-61; App. Ex. Nos. 28, 29 and 30.
3. The “Archives of Sigma Chi” was established in 2005 through a grant from the Foundation. Its primary mission is to preserve records that document the origins,

development, achievements and activities of Sigma Chi Fraternity's (hereinafter the "Fraternity") chapters, members and operations. The Archives collection includes the administrative records, records of governing officers, audio and visual recordings of the Fraternity's programs and events, electronic records, oral histories and a small number of manuscript collections. The Archives is open to Fraternity staff and members and the general public during the hours of 9:00 a.m. to 6:00 p.m., Monday through Friday or by appointment. There is no fee for accessing the research material. The Archives "may assess a nominal fee for photocopying and other processing requests." "The fee is waived for patrons with financial need." Tr. pp. 53-54; App. Ex. Nos. 22 and 23.

4. The Annex is a three-story structure. The first floor contains the Archives including workstations for researchers and staff and an area where collections can be spread out for processing and cataloging and a large media viewing area. The second floor houses "guest rooms for Sigma Chi [members] visiting Chicago on either Fraternity or Foundation business." Each floor also has an area designated for archival storage. Tr. pp. 52-53.
5. The Archives receives items for its collection by donation, either from members or their estates. The Archives also serve as the corporate repository for the Foundation and the Fraternity. There are between 200 and 250 thousand documents and artifacts covering the history of the Fraternity from its founding in 1855 to the present. The Archives has an online database and an online viewer catalog. Tr. pp. 57-58; App. Ex. No. 24.
6. Guests who stay overnight at the Annex are not charged. Overnight guests do not have to be members of the Fraternity. Three rooms are available and are utilized approximately 40 to 50 nights per year. Tr. pp. 59-60.

7. The Foundation was incorporated on November 9, 1939. App. Ex. No. 1.
8. The Foundation is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. The Foundation is exempt from Illinois sales tax as an organization operated exclusively for charitable purposes. Tr. p. 46; App. Ex. Nos. 1, 31 and 32.
9. The Foundation's audited "Financial Statements" for June 30, 2011, Note 1 entitled "Nature of the Foundation," states that the Foundation "solicits financial resources, provides faithful stewardship and engages in exemplary practices in support of Sigma Chi and leadership development." "... [T]he Foundation annually supports educational grants that fund values-based leadership training programs for members of Sigma Chi Fraternity. In addition, the Foundation directly funds academic scholarships and makes grants to support educational facilities at chapter houses in the United States." App. Ex. No. 15.
10. As of November, 2012, the Fraternity has 240 active undergraduate chapters, 133 active alumni chapters, 237,262 living members and 12,560 current undergraduates. Tr. pp. 47-48; App. Ex. No. 34.
11. The Foundation is authorized "to support, aid and strengthen institutions and systems of higher education in the United States and Canada; assist deserving students who are in financial need to continue and complete their college education; to give recognition and encouragement to academic achievement and excellence through the awarding of scholarships, grants, aid, and assistance to deserving students and in carrying out the said purposes to give preference to members of the active chapters of the Sigma Chi Fraternity chartered and existing in American and Canadian colleges and universities; to enhance intellectual growth of students through the establishment and development

of libraries and other scholarly aids; to assist students resident in or graduating from such institutions of higher learning; to encourage the study of values and principles which traditionally have made possible the political, social and economic freedoms of the American and Canadian nations; and to encourage in such students a higher appreciation of the values and sacred obligations of citizenship; to promote the development and enrichment of values-based leadership skills, to support charitable, literary, and educational objectives of the Sigma Chi Fraternity; to encourage responsible participation in and concern for civic, moral, and religious commitments.”

Tr. pp. 9-10, 14; App. Ex. No. 1.

12. The members of the Foundation are composed of the members of the Board of Governors or their duly elected successors. There are currently 16 members on the Board of Governors and the Board is limited to 18 members. Members do not receive any compensation or reimbursement for expenses. The Foundation has a “Conflicts of Interest Policy,” which protects the Foundation’s interest when “it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or Governor.” The policy requires disclosure of any conflict of interest between a member and the Foundation. Disclosure forms are collected on a regular basis. The Fraternity does not have any influence in the selection of the members of the Foundation. The Foundation is not controlled by the Fraternity. Tr. pp. 11-14, 21-22; App. Ex. Nos. 1, 2 and 3.

13. The Foundation provides scholarship support to members of the Fraternity undergraduate and graduate student community. Stipends are awarded for scholarship, leadership and need and approximately 10 to 15% of the scholarships are based on

need. Eligibility for scholarships requires, *inter alia*, “undergraduate member in good standing of Sigma Chi Fraternity.” The Scholarship Application states that “we proudly award Brothers who show outstanding character-in-action, academic motivation, and commitment to their chapters and campuses.” “These scholarships are made possible by the generous donations of your Sigma Chi alumni Brothers to the Foundation.” The Foundation does not provide scholarships to family members of the Governors of the Foundation. The Foundation, which received approximately 555 applications, gave 275 scholarships of \$1,000. Scholarship promotion and application are on-line. Tr. pp. 17-21; App. Ex. Nos. 5, 6, 7 and 8.

14. The Foundation has a “Policy for Maintenance and Acceptance of Charitable Contributions,” which prohibits any donor to a scholarship fund from materially influencing the selection of a scholarship or award recipient. Tr. pp. 21-22; App. Ex. No. 8.
15. The Foundation provides grants to construct or renovate educational space at chapter houses on college campuses under its “Educational Housing Program.” This Program “advances our educational mission by supporting chapter house purchase, renovation, or improvement projects that exceed \$25,000 and provide direct educational benefits to the Fraternity’s collegiate members. Space or items considered for improvement include libraries, study rooms, leadership seminar rooms, computer equipment and infrastructure, educational furniture and materials, storage space for educational materials and expenses to maintain educational space, infrastructure or materials. Tr. pp. 21-24; App. Ex. Nos. 9 and 10.

16. The Foundation provides grants to 501(c)(3) and 501(c)(7) organizations that support the leadership and educational pursuits of undergraduate and graduate members of the Fraternity. The Board of Governors established grant funding priorities in alignment with the Foundation's mission, vision and strategic plan. Grants may be awarded for leadership programs and mentoring programs. The Foundation completes a "Grant Agreement" with all grant recipients. The goal of the Foundation's leadership programs "is to positively impact the hearts and minds of our undergraduate Sigma Chi brothers." The grants are reviewed during the year ensuring "accountability and clear linkage from the donor's expectations to the program's delivery." Tr. pp. 27-31; App. Ex. Nos. 11, 12, 13 and 14.
17. The Foundation provides financial support for the delivery of leadership programming, which provides values-based leadership training to "our undergraduates." The "Leadership Programs Overview" states that through integrated and comprehensive programming, "Sigma Chi continues to progress toward our goal of being the preeminent collegiate leadership development organization, aligned, focused and living our core values." Tr. pp. 15-16; App. Ex. No. 4.
18. As of June 30, 2011, the Foundation received 98% of its total revenue of \$6.6 million from contributions, both "annual giving" and "bequests." Contributions represent donations from alumni and bequests from alumni who have died or others who are recognizing an alumnus who has died. The Foundation does not receive revenue from any government entity. Tr. pp. 31-37, 49; App. Ex. Nos. 15 and 16.

CONCLUSIONS OF LAW:

An examination of the record establishes that the Foundation has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2011 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code (35 ILCS 200/1-3 *et seq.*). The provisions of the Code that govern the disposition of this case are found in Section 15-65. In relevant part, the provision states as follows:

All property of the following is exempt when actually and

exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit.

(a) Institutions of public charity

(f) Historical societies.

Illinois courts have consistently refused to grant relief under section 15-65 of the Property Tax Code, absent appropriate evidence that the subject property is owned by an entity that qualifies as an “institution of public charity,” that the property is “exclusively used” for purposes that qualify as “charitable” within the meaning of Illinois law and that the property is not leased or otherwise used with a view to profit. 35 ILCS 200/15-65.

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"), the Court articulated the criteria and guidelines for resolving the constitutional question of whether an organization is actually an institution of public charity. These guidelines are: (1) the organization’s funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (2) the organization has no capital, capital stock or shareholders and does not provide gain or profit in a private sense to any person connected with it; (3) the charity is dispensed to all who need and apply for it; (4) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (5) the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government. In addition to these factors which are used to assess whether an institution is charitable, an Applicant, in this case the Foundation, must also show that the exclusive and primary use of the subject property is for charitable purposes. Korzen at 156-157. Courts consider and balance the criteria and guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s

burden. DuPage County Board of Review v. Joint Com'n on Accreditation of HealthCare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1965).

The Foundation purchased the subject property, located at 1726 Hinman Avenue in Evanston, by warranty deed on April 4, 1975. App. Ex. No. 28. This building is called the "Annex." The Foundation's international headquarters is located at 1714 Hinman Avenue, a separate P.I.N., not involved in this proceeding. Tr. p. 38.

The Foundation's audited "Financial Statements" for June 30, 2011 state that the Foundation solicits financial resources, provides faithful stewardship and engages in exemplary practices in support of Sigma Chi and leadership development. The Foundation annually supports educational grants which fund values-based leadership training programs for members of Sigma Chi Fraternity. In addition, the Foundation directly funds academic scholarships and makes grants to support educational facilities at chapter houses in the United States. App. Ex. No. 15. The Foundation is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code and exempt from Illinois sales tax as an organization operated exclusively for charitable purposes.. Tr. p. 46; App. Ex. Nos. 1, 31 and 32.

The June 30, 2011, Financial Statements show that the Foundation received 98% of its total revenue of \$6.6 million from contributions, composed of both "annual giving" and "bequests." Contributions represent donations from alumni or bequests from alumni who have died or others who are recognizing an alumnus who has died. The Foundation does not receive revenue from any government entity. Tr. pp. 31-37, 49; App. Ex. Nos. 15 and 16.

According to the Foundation's Bylaws, the organization is authorized "to support, aid and strengthen institutions and systems of higher education in the United States and Canada; assist deserving students who are in financial need to continue and complete their college education; to

give recognition and encouragement to academic achievement and excellence through the awarding of scholarships, grants, aid, and assistance to deserving students and in carrying out the said purposes to give preference to members of the active chapters of the Sigma Chi Fraternity chartered and existing in American and Canadian colleges and universities; to enhance intellectual growth of students through the establishment and development of libraries and other scholarly aids; to assist students resident in or graduating from such institutions of higher learning; to encourage the study of values and principles which traditionally have made possible the political, social and economic freedoms of the American and Canadian nations; and to encourage in such students a higher appreciation of the values and sacred obligations of citizenship; to promote the development and enrichment of values-based leadership skills, to support charitable, literary, and educational objectives of the Sigma Chi Fraternity; to encourage responsible participation in and concern for civic, moral, and religious commitments.” Tr. pp. 9-10, 14; App. Ex. No. 1. I conclude that the Foundation’s funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the Bylaws, above.

The Foundation does not have capital, capital stock or shareholders. Tr. p. 75. The members of the Foundation are composed of the members of the Board of Governors or their duly elected successors. There are currently 16 members on the Board of Governors and the Board is limited to 18 members. Members do not receive any compensation or reimbursement for expenses. The Foundation has a “Conflicts of Interest Policy,” which protects the Foundation’s interest when “it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or Governor.” The policy requires disclosure of any conflict of interest between a member and the Foundation. Disclosure forms are collected on

a regular basis. Sigma Chi Fraternity does not have any influence in the selection of the members of the Foundation.¹ The Foundation is not controlled by the Fraternity. Tr. pp. 11-14, 21-22; App. Ex. Nos. 1, 2 and 3. I conclude that the Foundation does not have capital, capital stock or shareholders and does not provide gain or profit in a private sense to any person connected with it.

I am unable to conclude that the Foundation possesses the other characteristics of a charitable organization according to Korzen. The record of this case shows conclusively that the Foundation does not dispense charity to all who need and apply for it; the Foundation places obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses; and the Foundation's benefits are not derived for an indefinite number of persons, for their general welfare or reducing the burdens on government.

I reach these conclusions because it is clear from the testimony and the evidence that Sigma Chi Foundation primarily exists to provide charity to members of Sigma Chi Fraternity, and the Fraternity is not an "indefinite number of persons." The Foundation's Bylaws state that the Foundation awards scholarship, grants, aid and assistance to deserving students, and in carrying out this purpose, "to give preference to members of the active chapters of the Sigma Chi Fraternity chartered and existing in American and Canadian colleges and universities." App. Ex. No. 1. The Foundation provides scholarship support to members of the Fraternity undergraduate and graduate student community. Eligibility for scholarships requires, *inter alia*, "undergraduate member in good standing of Sigma Chi Fraternity." The Scholarship Application states that "we proudly award Brothers who show outstanding character-in-action, academic motivation, and

¹ It should be noted that 86 Ill. Adm. Code §130.2005(e)(3) states that "nonprofit fraternities and sororities are not considered to be organized and operated exclusively for charitable, religious or educational purposes."

commitment to their chapters and campuses.” “These scholarships are made possible by the generous donations of your Sigma Chi alumni Brothers to the Foundation.”

The Foundation, which received approximately 555 scholarship applications, gave 275 scholarships of \$1,000. Tr. pp. 17-21; App. Ex. Nos. 5, 6, 7 and 8. There is no evidence in the record showing that any scholarship was awarded to a student who was not a member of Sigma Chi Fraternity. It is the “preference” for members of the chapters of the Sigma Chi Fraternity and the awarding of scholarships to “Brothers” which limits who will receive the Foundation’s charity and creates an “obstacle” in the way of those who may need it, but are not members of the Fraternity.

Other charity dispensed by the Foundation is also dispensed for the benefit of Sigma Chi Fraternity members. The Foundation provides grants under its “Educational Housing Program” to construct or renovate education space at Sigma Chi chapter houses on college campuses. The Program’s “Purpose” states that it advances “our” educational mission by supporting chapter house purchase, renovation, or improvement projects that exceed \$25,000 and provide direct educational benefit to the Fraternity’s collegiate members. Space or items considered for improvement include libraries, study rooms, leadership seminar rooms, computer equipment and infrastructure, educational furniture and materials, storage space for educational materials and expenses to maintain education space, infrastructure or materials. Tr. pp. 21-24; App. Ex. Nos. 9 and 10.

The Foundation also provides grants to organizations that support the leadership and educational pursuits of undergraduate and graduate members of the Sigma Chi Fraternity. The Board of Governors established grant funding priorities in alignment with the Foundation’s mission, vision and strategic plan. Grants may be awarded for leadership programs and

mentoring programs. The goal of the Foundation's leadership programs "is to positively impact the hearts and minds of our undergraduate Sigma Chi brothers." The grants are reviewed during the year ensuring "accountability and clear linkage from the donor's expectations to the program's delivery." Tr. pp. 27-31; App. Ex. Nos. 11, 12, 13 and 14. The "Leadership Programs Overview" states that Sigma Chi's leadership programs provide values-based leadership training to "our undergraduates." App. Ex. No. 4. "Our undergraduates" are Sigma Chi Fraternity members.

As of November, 2012, the Fraternity has 240 active undergraduate chapters and 12,560 current students. Tr. pp. 47-48; App. Ex. No. 34. The scholarships, renovation of Sigma Chi chapter houses and sponsorship of leadership programming is not offered to an indefinite number of persons. The scholarships and leadership programming is limited to the 12,560 current Sigma Chi Fraternity students and the renovation is limited to the 240 chapter houses. As the Court noted in Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 744 (4th Dist. 2008), aff'd, 236 Ill. 2d 368 (2010), in order to be considered for a charitable use or purpose, a gift must be a public, rather than a private gift. It must be "general benevolence," rather than "personal bounty to particular individuals." The only way that the public could take advantage of the charity dispensed by the Foundation is by joining Sigma Chi Fraternity. The Foundation's charity is dispensed to "particular individuals," in this case Sigma Chi Fraternity members, and this limitation creates an obstacle in the way of any person, other than Fraternity members, receiving these benefits.

In his closing argument, Counsel for the Foundation cited Arts Club of Chicago v. Department of Revenue, 334 Ill. App. 3d 235, 244 (1st Dist. 2002). According to Counsel, Arts Club "clarified that the organization need not make available every conceivable benefit it offers,

however incidental to its primary purpose, to an indefinite number of people.” Tr. p. 78. The Arts Club was a membership organization and the opportunity to eat lunch in the Club’s dining room and host parties at the Club were available only to members and their guests. But the Club regularly gave “the general public the opportunity to view its permanent [art] collection and temporary exhibits as well as the opportunity to attend various artistic programs and events that it hosts.” The Court concluded that the Club benefited an indefinite number of people. I assume that the Court found that eating lunch in the Club’s dining room and hosting parties at the Club were “incidental” to the Club’s primary purpose of exhibiting its art collection and temporary exhibits to the general public.

But I cannot draw this same analogy with Sigma Chi Foundation. The Foundation was incorporated on November 9, 1939. App. Ex. No. 1. The Foundation’s scholarships, funding of leadership programs and rehabbing of chapter space fulfill its long-held primary purpose, but, unlike Arts Club, the charity dispensed in accordance with the Foundation’s primary purpose is not available to the general public.

The Foundation’s charity, available to the general public, is incidental. The general public may visit the Sigma Chi Archives.² The Archives was established in 2005. I question whether the “general public” would have an interest in visiting the Sigma Chi Archives. When asked about visits from the public, Mr. Phelps testified that “most of the visitors [to the Sigma Chi Archives] are members of the Sigma Chi Fraternity.” Tr. pp. 53-54, 64. In addition, there was testimony that overnight guests who stay at the Annex do not have to be members of Sigma Chi to stay there. According to Mr. Phelps, “in 2010 or 2011,” members of the Susan G. Komen

² The Foundation’s Financial Statements for June 30, 2011, in the Note entitled “Nature of the Organization,” discusses scholarships, renovation of chapter houses and educational grants. The Sigma Chi Archives are not mentioned. App. Ex. No. 15.

“Walk for Breast Cancer” came from Indiana and stayed at the Annex. “None of them were Sigma Chi’s,” but from a “brother fraternity, SAE.” Tr. pp. 59-60. On cross-examination, Mr. Phelps testified that most of the visitors who utilize the sleeping rooms are also members of Sigma Chi Fraternity. Tr. p. 65. I presume that the availability of these free sleeping quarters in Evanston, a suburb close to Chicago is not advertised to the “general public” through hotels.com. Mr. Phelps’ comments about the “brother fraternity” members staying there forces me to conclude that there is a fraternity connection to the free sleeping quarters.

In Arts Club, the Court stated that the Korzen factor at issue “requires us to review whether the Club benefits an indefinite number of people.” *Id.* Unlike Arts Club, every “conceivable benefit” that the Foundation offers, including scholarships, funding of leadership programs and rehabbing of Sigma Chi chapter space, is only available to Sigma Chi Fraternity members. The Foundation’s primary benefits are not for an indefinite number of people but for members of the Sigma Chi Fraternity. The only benefit available to the general public is access to the Sigma Chi Archives. Access to the Archives is an incidental act of beneficence and legally insufficient to establish that the Foundation is “exclusively” or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

Even within the granting of scholarships to Sigma Chi Fraternity members, I must conclude that the Foundation does not dispense charity to all who need and apply for it. Stipends are awarded for scholarship, leadership and need. Eligibility for scholarships requires, *inter alia*, “undergraduate member in good standing of Sigma Chi Fraternity.” The Scholarship Application states that “we proudly award Brothers who show outstanding character-in-action, academic motivation, and commitment to their chapters and campuses.” “These scholarships are made possible by the generous donations of your Sigma Chi alumni Brothers to the Foundation.”

The Foundation, which received approximately 555 applications, gave 275 scholarships of \$1,000. Scholarship promotion and application are on-line. Tr. pp. 17-21; App. Ex. Nos. 5, 6, 7 and 8.

Mr. Harbaugh testified that “need” is a factor in assessing who will receive a scholarship. He was asked “[A]s an estimate, how many awards are given where need is the predominant factor?” He replied that he “would have to hazard a guess,” but “probably in the order of 10 to 15 percent.” Tr. p. 18. This testimony forces me to conclude that the Foundation does not dispense scholarships to all within Sigma Chi who need them. A Sigma Chi student in need of a scholarship could lose out to a Sigma Chi student, who is not in need, but who is “committed to their chapters and campuses” or who has scholarship or leadership potential.

Benefitting an indefinite number of persons, dispensing charity to all who need it and placing no obstacles in the way of those receiving charity are more than just guidelines. They are essential criteria and they go to the heart of what it means to be a charitable institution. Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 743, 750 (4th Dist. 2008), aff’d, 236 Ill. 2d 368 (2010). I am unable to conclude that Sigma Chi Foundation possesses these characteristics. The major part of its charity is available only to Sigma Chi Fraternity members. The Foundation has set up the obstacle of being a Sigma Chi Fraternity member in order to enjoy any of its primary charitable benefits. Even within dispensing those benefits to Fraternity members, only 10 to 15% of the scholarships are based on need.

I am also unable to conclude that the Foundation’s charity lessens a burden on government. It is a *sine qua non* of charitable status that those seeking a charitable exemption are able to demonstrate that their activities will help alleviate some financial burden incurred by the affected taxing bodies in performing their governmental functions. Provena, 236 Ill. 2d 368, 395

(2010). In this case, the affected taxing bodies are located in Illinois. The Foundation caused to be admitted into evidence three letters from University officials acknowledging the Foundation's grants to the chapter houses "to fund certain expenses incurred in connection with the educational spaces in the house." These spaces included study rooms, library facilities and/or specialized areas, such as computer rooms and house-wide computer and internet access, drafting rooms, laboratories and other instructional areas. The three letters, which appear to be form letters requested by the Foundation, state that the provision of the additional facilities by the Foundation "relieve the University of the burden of providing such facilities to students who are members of the chapter." One letter is from Bradley University, a private University in the State of Illinois, and the other two letters are from out-of-state colleges. App. Ex. No. 10. In his closing argument, Counsel for the Foundation stated that "we presented specific evidence that our educational grant program relieves the burden placed on multiple universities to provide student housing and educational facilities." Tr. p. 75.

But Counsel for the Foundation has failed to delineate, and my own research does not indicate, any Illinois statute requiring the State to rehab educational space and to provide "house-wide computer and internet access" for chapter houses. The Foundation cannot be reducing a burden on Illinois government because there is no evidence that Illinois government was "burdened" with providing revenue for the rehabbing projects to which the Foundation donated funds.

In Yale Club of Chicago v. Department of Revenue, 214 Ill. App. 3d 468, 478 (1st Dist. 1991), the Yale Club identified and evaluated applicants to Yale, stimulated interest in Yale among alumni and the public at large and maintained a "Yale presence" in Chicago. The Court noted that an organization designed to benefit Yale exclusively does not appear to dispense its

benefits to an indefinite number of people or all those who need and apply for it. I have reached this same conclusion for the Foundation's benefits which primarily benefit Sigma Chi Fraternity members. In Yale Club, the Court stated that "[T]he State of Illinois and its taxpayers receive no apparent relief from any economic burden by the [Yale Club's] activities." "... [W]e find it hyperbolic to claim as a 'charitable purpose' the benefits reserved exclusively to Yale alumni and students." I see the same hyperbole in the Foundation's claim that rehabbing and rewiring Sigma Chi chapter houses is a charitable purpose that relieves a burden on Illinois government.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994). Because the Foundation has failed to prove that it possesses three of the essential characteristics of a charitable organization according to Korzen, it cannot be found that the Foundation has met its burden of proof that it is, in fact, a charitable organization. Both charitable ownership and charitable use are required for exemption under the statute, 35 ILCS 200/15-65, and without charitable ownership, I cannot recommend an exemption for the subject property.

Assuming *arguendo*, that the Foundation was a charitable organization and that the subject property was in exempt ownership, I am unable to conclude that the subject property is used "exclusively" for charitable purposes. An "exclusively" charitable purpose need not be interpreted literally as the entity's sole purpose; it should be interpreted to mean the primary

purpose, but not a merely incidental or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430, 436 (1st Dist. 1987.). Incidental acts of beneficence are legally insufficient to establish that the applicant is “exclusively” or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

The subject property is located at 1726 Hinman Avenue in Evanston, in a building called the “Annex.” The Annex is open to the general public and there is no fee to enter the Annex. Noah Phelps resides in the Annex on the third floor. He is the caretaker of the property, oversees overnight visitors’ accommodations and provides after-hours services, if needed. He does not pay rent but rent is part of his compensation package. Tr. pp. 27-28, 38, 53, 60-61; App. Ex Nos. 28, 29 and 30.

The Annex is a three-story structure. The first floor is the archives research library including workstations for researchers and staff and a large processing area where collections can be spread out for processing and cataloging and a large media viewing area. The second floor houses “guest rooms for Sigma Chi’s visiting Chicago on either Fraternity or Foundation business.” Each floor also has an area designated for archival storage. Tr. pp. 52-53. Guests who stay at the Annex are not charged. As discussed above, guests do not have to be members of the Fraternity to stay at the Annex. The facility is available 365 nights/year. Three rooms are available and are utilized approximately 40 to 50 nights per year. On cross-examination, Mr. Phelps testified that most of the visitors who utilize the sleeping rooms are also members of Sigma Chi Fraternity. Tr. pp. 59-60, 65.

The “Archives of Sigma Chi” was established in 2005 through a grant from the Foundation. Its primary mission is to preserve records that document the origins, development, achievements and activities of the Sigma Chi Fraternity chapters, members and operations. The

Archives collection includes the administrative records, records of governing officers, audio and visual recordings of the Fraternity's programs and events, electronic records, oral histories and a small number of manuscript collections. The Archives is open to Fraternity staff and members and the general public during the hours of 9:00 a.m. to 6:00 p.m., Monday through Friday or by appointment. There is no fee for accessing the research material. The Archives "may assess a nominal fee for photocopying and other processing requests." "The fee is waived for patrons with financial need." Tr. pp. 53-54; App. Ex. Nos. 22 and 23.

The Archives receives items for its collection by donation, either from members or their estates. The Archives also serve as the corporate repository for the Foundation and the Fraternity. There are between 200 and 250 thousand documents and artifacts covering the history of the Fraternity from its founding in 1855 to the present. The Archives has an online database and an online viewer catalog. Tr. pp. 57-58; App. Ex. No. 24.

35 ILCS 200/15-65(f) allows for exemption of "historical societies" without defining this term. In Vermilion Co. Museum Society v. Department of Revenue, 273 Ill. App. 3d 675, 678-679, (4th Dist. 1995), the Court granted a charitable exemption to an organization that was considered to be "historical." The Applicant's "main purpose" was "to maintain, for public museum purposes, the historic Fithian House and a couple of other historically interesting buildings." School children came to the museum by bus. The Court noted that "a museum established to educate the public qualifies as a charitable museum."

The record in the instant case does not allow me to conclude that the Annex is "historical" in the same sense as Vermilion County Museum Society. Mr. Phelps testified that the "vast majority" of visitors to the Annex are Sigma Chi fraternity members. Tr. pp. 64-65. I can certainly see where documenting the origins, development, achievements and activities of

Sigma Chi Fraternity chapters, members and operations would be of interest to Sigma Chi Fraternity members but the Foundation has failed to show that the Annex is of sufficient interest to the public to warrant its exemption as a “historical society.” If the primary benefit of an organization flows to its members and not the public, then an exemption will be denied. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Chicago Bar Association v. Department of Revenue, 177 Ill. App. 3d 896 (2d Dist. 1988). Additionally, I find no basis under 35 ILCS 200/15-65 for exemption of the guest sleeping quarters or the living quarters occupied by Mr. Phelps. It appears that the dominant use of the Annex is as a “private club rather than as a headquarters for the dispensation of charitable relief.” Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286, 290-91 (1956).

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the charitable exemption will cause damage to public treasuries and the overall tax base. In this case, Sigma Chi Foundation has failed to prove that the subject property, which is used primarily to provide an extensive system of support to Sigma Chi Fraternity members, falls within the limited class of properties meant to be exempt for charitable purposes.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2011 real estate taxes on the grounds that the subject property was not in exempt ownership and not in exempt use should be affirmed, and Cook County Parcel, Property Index Number 11-18-400-014-0000 should not be exempt from 2011 real estate taxes.

November 19, 2013

Kenneth J. Galvin
Administrative Law Judge