

**PT 06-22**

**Tax Type: Property Tax**

**Issue: Educational Ownership/Use**

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

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**LOYOLA UNIVERSITY,  
Applicant**  
  
**v.  
THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

No. 04-PT-006  
(03-16-1338)  
PIN 17-03-223-004  
John E. White,  
Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Gregory Lafakis, Liston & Lafakis, appeared for Loyola University; John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue

**Synopsis:**

This matter arose after Loyola University (Loyola) protested the Illinois Department of Revenue's (Department) denial of its application for a non-homestead property tax exemption for part of 2003, for property Loyola owned and which is situated in Cook County, Illinois. The issue is whether the property was subject to the exemption authorized by § 15-35 of the Illinois Property tax Code, 35 ILCS 200/15-35.

The hearing was held at the Department's offices in Chicago. Loyola presented documentary evidence consisting of books and records and other documents, as well as the testimony of a witness. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the exemption be denied.

**Findings of Fact:**

1. Loyola is an Illinois not-for-profit corporation that provides post-secondary education in a university setting. *See* Applicant Exhibit (Ex.) 2 (copy of trustee's deed for property at issue); Hearing Transcript (Tr.) p. 11 (testimony of Timothy McGuriman (McGuriman)).
2. McGuriman is Loyola's associate vice president for auxiliary services. Tr. pp. 11-12 (McGuriman). McGuriman manages and oversees the auxiliary operations of Loyola in support of its academic mission. Tr. p. 12 (McGuriman).
3. Loyola has two campuses in Chicago, the Lake Shore Campus and the Water Tower Campus. Tr. pp. 14, 16-17 (McGuriman).
4. Loyola owns property situated at 837-39 North State Street in Chicago, which property is in the immediate vicinity of Loyola's Water Tower campus. Applicant Ex. 2 (copy of trustee's deed for property). Those two addresses are housed in a single story brick building. Applicant Ex. 1-A (photo of 837-39 North State Street streetfront).
5. The property at issue is 837 North State Street. Applicant Ex. 1-A; Tr. pp. 13-14 (McGuriman).
6. Loyola does not seek an exemption for the half of the building with the street address of 839 North State Street. Tr. pp. 13-14 (McGuriman).
7. Loyola began to use the property to house a mailroom and printing/copy center on September 1, 2003. Tr. p. 14 (McGuriman).
8. Prior to September 1, 2003, Loyola had leased the property at issue for profit. *See* Tr. p. 15 (McGuriman).
9. The interior of the property contains a work area of approximately 1,550 square

- feet, with approximately 1,000 square feet being used for Loyola's printing/copy center and 550 square feet being used for the mailroom. Applicant Ex. 3 (hand-drawn sketch of interior work space of property); Tr. pp. 15-16 (McGuriman).
10. Loyola does not operate the printing/copy center and mailroom. Tr. pp. 16-17 (McGuriman).
  11. Instead, and during the year at issue, Loyola contracted with Archer Management Services (Archer) to provide mail services to all of the university. Applicant Ex. 4; Tr. pp. 16-17 (McGuriman). Archer provides mail services on the property, as well as at other areas of the Loyola campuses. Applicant Ex. 4, pp. 1-3, ¶ 2.
  12. Also during the year at issue, Loyola contracted with Danka Office Imaging Company (Danka) to provide equipment and services at various locations throughout the university, including on the property. Tr. pp. 17-20 (McGuriman); *see also* Applicant Ex. 5 (copy of a 6-page Amendment #1 to Service Agreement between Danka and Loyola, dated 1/16/04 (Danka Amendment)), Schedule 1 (copy of 3/31/00 Service Agreement between Danka and Loyola (Danka Agreement)).
  13. The Danka Agreement identifies Danka as an independent contractor. Applicant Ex. 5, Schedule 1, pp. 3-4, ¶ 5.0. The Archer Agreement similarly identifies Archer as an independent party, and that the contract between it and Loyola does not constitute a joint venture, partnership or business organization of any kind. Applicant Ex. 4, Schedule 1, pp. 5-6, ¶ 3(g).
  14. Regarding the Archer Agreement, Archer agreed to perform the following services for Loyola at the Water Tower campus:

- Receive and process U.S. Postal Service mail delivered from the Fort Dearborn Post Office;
- Process incoming mail (internal and external) and accountable mail and packages and slot incoming mail to specific department names;
- Perform first mail run beginning no later than 11:30 a.m. to deliver and pick up internal mail and U.S. mail from department mailbox locations;
- Perform final mail run (pick-up only) between 2:00 p.m. and 5:00 p.m. to pick up internal mail and U.S. mail from department mailbox locations and leave “last pickup of the day” cards;
- Slot professors' mail into to sort bins located outside of the Mail Center Facilities (herein defined) at the Water Tower Campus and complete all designated routes;
- Deliver accountable mail and packages at 2:00 p.m., scan using the Pac-Trac Tracking System, and obtain signatures;
- Process outbound mail and meter using the Pitney Bowes Paragon System;
- Record department daily postage utilization and charge back to the departments' cost center;
- Provide centralized receiving services for deliveries;
- Prepare certified and registered mail for pickup;
- Slot meeting/announcement materials as requested;
- Prepare first class mail for pickup by U.S. Postal Service at a designated location in Siedenburg Hall;
- Prepare all mail qualifying for presort discounts for pickup by Prosort Presort Services;
- Prepare outgoing express items for pickup;
- Provide computerized outbound overnight courier shipment programs; and
- Fill miscellaneous requests required to support University employees with their office service needs.

Applicant Ex. 4, pp. 2-3, ¶ 2(a)(ii); Tr. pp. 21-22 (McGuriman).

15. Archer agreed to perform mail services at the property from 8:30 a.m. to 5:30 p.m., Monday through Friday, and that it would observe Loyola's holiday schedule. Applicant Ex. 4, pp. 2-3, ¶ 2(b)(ii); Tr. p. 21 (McGuriman).
16. Archer employed personnel to provide mail services at the property, as well as 4

- management employees, who worked off-site. Applicant Ex. 4, pp. 2-3, ¶ 3(a). Two Archer employees worked on site at the property as full-time clerks. *Id.*, ¶ 3(a)(ii).
17. In the event Archer's employees caused damage to the property, Archer agreed to repair the property, at Archer's expense, to Loyola's reasonable satisfaction. Applicant Ex. 4, pp. 2-3, ¶ 4(b).
  18. Archer owned and provided some equipment used on the property and Loyola owned and provided some equipment Archer used on the property. Applicant Ex. 4, pp. 7, 13, ¶ 4(e)-(f).
  19. Loyola agreed to provide "all postage and ... supplies which are necessary for the reasonable operation of the Mail Center Facilities." Applicant Ex. 4, p. 7, ¶ 4(g).
  20. For accounting and budgetary purposes, Loyola allocates to the department that mails out items the respective postage costs associated with its mailings. Tr. pp. 23-24 (McGuriman).
  21. For the period between March 1, 2003 and June 30, 2004, Loyola agreed to pay Archer a management fee of \$313,200 to provide mail services. Applicant Ex. 4, p. 7, ¶ 5. Loyola agreed to pay the management fee on a monthly basis, in the amount of \$19,575, upon the receipt of an invoice from Archer. *Id.* Additionally, Archer agreed to make its employees available for overtime work at a rate of \$32 per hour per person for any manager, and a rate of \$28 per hour per person for any clerk. Applicant Ex. 4, p. 3, ¶ 2(b).
  22. Loyola did not itemize the amount it agreed to pay Archer to provide mail services to the show the amount associated with those charges allocable only to

Archer's operations on the property. *Id.*

23. During the period at issue, Danka provided equipment and services on the property, pursuant to a 3/31/00 Service Agreement between Danka and Loyola (Danka Agreement). Applicant Ex. 5, Schedule 1 (copy of Danka Agreement); Tr. pp. 17-20 (McGuriman).
24. The Danka Agreement provided, *inter alia*, as follows:

A1.0 Central Print/Copy Services

Vendor [Danka] will provide facilities management services for Customer's [Loyola] centralized reprographic and offset printing division which provides services for various departments of Loyola University of Chicago, including its Loyola University Health System and Loyola University Medical Center affiliates.

A2.0 Services

The Services to be provided at each campus will include the following:

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- b. Water Tower Campus (WTC) consists of black & white reprographic, networked color, and binding capabilities. \*\*\*

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A4.0 Labor Allocation

Vendor's Site Manager

The Site Manager will be responsible for Customer satisfaction and day-to-day operational issues for all 4 locations. He/She will be the primary Vendor liaison for all issues regarding the account.

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The WTC Copy Center shall be staffed by Vendor employee(s) including:

- 1 Copy Operator
- 1 Copy/Customer Support Associate

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A5.0 Operations Overview

5.1 Customer will appoint a representative (the "Manager of Printing Services") to interface with Vendor on matters and concerns pertaining to the parties' performance of obligations contained in the Facilities Management Services Agreement and in the Statement of

Work documents.

5.2 Vendor shall assign a site manager (the “Site Manager”) to act as the primary contact person to address all Customer concerns regarding equipment, personnel issues, scheduling, special requests and all other matters pertaining to the parties’ performance of obligations contained in the Facilities Management Services Agreement and in the Statement of Work documents. The site manager will be responsible for Customer satisfaction and day-to-day operational issues for all 4 locations. He/She will be the primary Vendor liaison for all issues regarding the account.

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b. WTC

I. Black & White Reprographics

Vendor provides analog black & white reprographic services in the WTC copy center

II. Finishing/Binding

Vendor provides finishing services including stapling, GBC and tape binding.

III. Delivery

Vendor will deliver these completed jobs to the end user whenever appropriate. Vendor will prepare, when requested, completed copy and print jobs for shipping and delivery by Customer’s shipping vendor or Customer’s mail services department.

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5.5 Form Management Services

Vendor will assist Customer with Customer’s form management program. Vendor will utilize its expertise at other Vendor’s accounts to enhance Customer’s implementation of its form management program. Vendor will develop a database program to maintain a list of all forms and develop an easy to order process for these forms. This database and easy to order program will be migrated to a web based system.

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A6.0 Tracking and Reporting Methods

Vendor will provide operating reports on a monthly basis to the Customer within ten business days after the last calendar day of the month. Monthly reports will include on-time performance for completion of copy/print jobs, total impression counts for press, black & white reprographics and color reprographics, and a list of all jobs (Account #, Department, Job #, Number of Impressions and

other relevant data pulled from the Printing Services Request Form). The tracking system will be a customized version of Estimator 2000 developed exclusively for use at all Customer campuses. All incoming jobs will be quoted and tracked from the Customer Service Desk. The Estimator 2000 system will provide all reports and billing information. Convenience Copier monthly reporting will include actual meter usage by machine, service history logs and uptime by machine.

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#### A7.0 Marketing Plans

Vendor will assist the Customer in marketing the services of its print shop and copy centers through joint meetings, open houses, and focus group meetings. Vendor will annually provide a “calenderized” plan to Customer’s representative for approval.

The marketing program for Customer will follow a major 3-point approach: establish a WEB page; network full-color, and black and white copiers at the Medical Center campus; train and educate students and staff on enhancing their material with color and utilizing the networked copier/printer.

#### HIGHLIGHTS:

- i. Account Manager: An account manager has been assigned directly to Customer
- ii. Implementation: Vendor will train Customer’s staff on installation of printer drivers for the DocuTech, Canon IR600 and color copiers. Follow up training will be provided to the end users as needed.
- iii. Training: Vendor will conduct seminars on utilizing full and sport color in a range of printed media. Utilizing Customer’s networked copier/printers will also be discussed. These seminars will be presented quarterly the first year and twice per year in subsequent years.
- iv. Flyers: A variety of flyers will be used to promote the training programs and remind students, faculty and staff of available resources — particularly the spot color capabilities of the IS-70 at Lake Shore Campus.
- v. WEB Page: Vendor will create and maintain a Web Page, approved by the Customer, on Customer’s Intranet and Internet servers. The initial approach is to promote the services of the “Printing Services Department” and in the near-



term future add capabilities of receiving print jobs, form orders, requests for service on copiers and faxes, etc.

- vi. Vendor will consult with end users on an “as needed” basis. Marketing efforts will involve both formal and informal approaches to the “end user” to measure customer satisfaction, to conduct a needs assessment and to identify better utilization of their copier equipment. Such marketing representatives shall cooperate with Customer’s Printing Services Department staff and will keep such staff fully informed on all aspects of such marketing representative’s job-related activities.

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Applicant Ex. 5, Schedule 2 (Ex. A, Facilities Management Services Statement of Work), pp. 9-18.

25. For the first year of the Danka Agreement, Loyola agreed to pay Danka a monthly management fee of \$73,000 for printing services, and \$2,500 for key-op services. Applicant Ex. 5, Schedule 2, p. 19, ¶ A10.0(a). The monthly printing services fee increased during the second year to \$73,900, and the parties agreed that the monthly fee would decrease to \$67,500, in the event Loyola elected to furnish a facility on its Lake Shore campus, and once Danka commenced services on that facility, for the first year of service. *Id.*
26. Loyola also agreed to pay overtime to Danka’s employees when needed, and upon Loyola’s request. Applicant Ex. 5, Schedule 2, p. 19, ¶ A10.0(c).
27. Loyola did not itemize the amount it agreed to pay Danka to provide printing and copy services to show the amount associated only with Danka’s operations on the property. *See id.*
28. Prior to September 1, 2003, Loyola’s Water Tower campus mailroom and copy

- center had been located in a basement level area of a Loyola-owned building on Pearson Street, which held academic classrooms and offices. Applicant Ex. 4, p. 6, ¶ 4(a) (allowing Archer personnel access to the mail center facilities in Siedenburg Hall to perform its obligations with respect to the Archer Agreement); Applicant Ex. 5, Schedule 1, p. 9, ¶ A2.0 (“The WTC Copy Center is located at 41 East Pearson Street ....”); Tr. p. 14 (McGuriman).
29. Loyola, Danka, and Pitney Bowes Management Services, Inc. (Pitney Bowes) are the parties to the Danka Amendment. Applicant Ex. 5, p. 1.
30. The Danka Amendment severed the original Danka Agreement into two separate contracts, which the parties denominated as the Copier Fleet Agreement and the Pitney Agreement. Applicant Ex. 5, Schedules 1 (Copier Fleet Agreement) & 2 (Pitney Agreement). Pursuant to the Danka Amendment, Pitney Bowes took over the print shop and copy center facilities management services previously provided by Danka, and Danka retained its obligations regarding the copier fleet. *Id.*, p. 1, ¶ 1; Tr. pp. 18, 25-26 (McGuriman).
31. The services Danka, and after 2003, Pitney Bowes, provided at the copy center include services related to Loyola’s copyright clearance program. Tr. pp. 26-27 (McGuriman). That program involves (1) the record-keeping associated with Loyola obtaining the rights and/or permission to make copies of copyrighted works for use in classes, and (2) the record-keeping associated with Loyola’s corresponding duty to determine the amount of royalties owed to the copyright holders, and to document Loyola’s payment of such royalties. *Id.* Danka also performed the actual reprinting or copying of such materials at the property. *Id.*

32. Danka's services also involved printing the various university letterheads and other types of printed materials, e.g., business cards, informational brochures for Loyola conferences and/or meetings, materials sent to prospective students, etc. Tr. p. 28 (McGuriman).
33. Loyola keeps a sign placed in the window of the property that states: "Loyola University Chicago[,] Water Tower Campus[,] Copy Center and Mailroom Services[,] For Loyola University Chicago Faculty and Staff Only[.]" Applicant Exs. 1-B, 1-C (photos of sign placed in window of property); Tr. p. 29 (McGuriman).
34. Notwithstanding that sign, Loyola acknowledges that Loyola students use and pay for copying and printing services provided by Danka at the property. Department Ex. 3 (copy of 6/29/04 McGuriman Supplemental Affidavit of Use); *see also* Applicant Ex. 5, Schedule 2 (Ex. A), pp. 17-18 (Marketing Plans).
35. During the period when the Department was reviewing its application, Loyola submitted a Supplemental Affidavit of Use, in which McGuriman averred, in part, "The finances of the copy center are as follows: for FY 2004 the copy center had a total revenue stream of \$51,480 (\$26,000 in payroll and \$32,000 in plant expenses). In FY 2005 the entire operation will be outsourced and the expenses associated will be budgeted at \$32,000 in plant expenses (all payroll is eliminated with the outsourcing) with the expected revenue of \$16,380." Department Ex. 3.
36. The Supplemental Affidavit further provided: "Faculty, needing to have copy work done, generally use departmental budget dollars to pay for it. Payment is made to the vendor through a monthly statement. Students needing copy work

done generally pay cash or use Rambler Bucks (a form of debit card), though this tends to be a minimal amount.” Department Ex. 3.

**Conclusions of Law:**

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is “property used exclusively ... for school ... purposes.” Ill. Const. Art. IX, § 6 (1970).

Pursuant to the authority granted under the Illinois Constitution, the General Assembly enacted § 15-35 of the Property Tax Code (PTC), which provides, in relevant part:

Sec. 15-35. Schools. All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any state of the United States. \*\*\*\*\*

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35 ILCS 200/15-35; Swank v. Department of Revenue, 336 Ill. App. 3d 851, 857, 785 N.E.2d 204, 209 (2d Dist. 2003) (“we agree ... that the plain language of section 15-35 limits tax exemption to property used for ‘school purposes ....’”).

The Department denied the exemption application here after determining that the property was not in exempt use. Department Ex. 1. Since there is no dispute that Loyola owned the property at issue (Applicant Ex. 2), Loyola has the burden to show that the

property was not sold or leased or otherwise used with a view to profit and that the property was used exclusively for school purposes. Chicago Patrolmen's Assoc. v. Department of Revenue, 171 Ill. 2d 263, 271, 664 N.E.2d 52, 56 (1996) (“The burden of proving the right to exemption rests upon the party seeking it.”).

The Department argues that Loyola uses the property with a view towards profit since, by outsourcing the printing and mail services conducted on the property, Loyola reduced its costs of operating. Tr. p. 42 (closing argument). Specifically, counsel argued that, “Although the Applicant’s witnesses testified that Loyola didn’t realize a profit from the operation of the copying center by Pitney Bowes, that of course is not necessary. It’s beyond dispute that a reduction in cost of operation has a direct effect on a bottom line. ... The Department’s position is that by entering into the service agreement, the applicant otherwise used the property with a view to profit.” *Id.* Thus, the Department’s position here is clear— Loyola used the property for profit because it entered into an agreement whereby it reduced its expenses associated with the activities conducted on the property.

Loyola responds that the Department’s position is inconsistent with the plain meaning of the statute. *See* Tr. pp. 42-43 (closing argument). It asserts that the legislature could not have intended the term profit to mean that an exempt organization could never seek to reduce its expenses or risk the loss of a tax exemption. *Id.* (“[I]f [the Department’s position] is a proper interpretation of the this statute, it would mean that our legislature contemplated that Loyola University should not seek any efficiencies at all in its operation but that it would continue to inefficiently operate whatever function in

support of its educational services. To me that's not a plain meaning of the statute."). I agree.

In DuPage Co. Bd. of Review v. Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 654 N.E.2d 240 (2d Dist. 1995), the Illinois appellate court set forth a good explanation of the meaning of profit, as used in Illinois' property tax exemption statutes. There, the court was called upon to review the Department's determination, following an administrative hearing, that an organization was entitled to a property tax exemption based on charitable use. The circuit court reversed. While reviewing the correctness of the exemption decision, the appellate court addressed whether the applicant met one of the guidelines usually necessary for concluding that property is subject to a charitable exemption:

The circuit court's conclusion that the Joint Commission fails to meet the second guideline is based on the following dictionary definition of "profit": "the sum remaining after all costs, direct and indirect, are deducted from the income of a business." Employing this dictionary definition of "profit", the circuit court reasoned that, although "the financial practices of the [Joint Commission] are desirable from a business standpoint," the Joint Commission's surplus of income of \$203,075 in 1988, together with its accumulated surplus over the years in the fund balance, created a "profit."

The circuit court's reliance on a dictionary definition of "profit" contradicts our supreme court case law interpreting "profit" as it relates to a not-for-profit corporation. Our supreme court has noted that the determining feature of "profit" with respect to a charitable institution is whether there is inurement of benefit to a private individual. (*People ex rel. County Collector v. Hopedale Medical Foundation* (1970), 46 Ill. 2d 450, 452-53, 264 N.E.2d 4.) This court has interpreted "profit" in regard to eligibility for a real estate tax exemption as a benefit inuring to members that is not available to nonmembers. See *Du Page Art League*, 177 Ill. App. 3d at 901, 127 Ill. Dec. 287, 532 N.E.2d 1116 (the plaintiff's

members impermissibly profited from the organization because only members were allowed to show and sell their art work in the organization's galleries, giving “a distinct advantage not afforded to nonmembers”).

In the present case, the circuit court erroneously believed that at some point a fund balance ceases to be a fund balance and becomes a “profit.” In other words, institutions worthy of tax exemption should have minimal or nonexistent fund balances. Conditioning tax exemptions on high-risk money management fails to serve the interests of charitable organizations and their beneficiaries.

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Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d at 470-71, 654 N.E.2d 246-47.

Joint Commission stands for the proposition that a not-for-profit’s receipt of excess income, that is, more revenue or income than expenses, does not transform the organization into one that is operated for profit. Here, the Department’s position clearly seems to construe profit using a definition that is similar to the one rejected by the appellate court in Joint Commission. Indeed, the Department goes further than the circuit court did in Joint Commission, when it argues that it does not even matter whether Loyola realized excess income from its ownership of the property. Tr. p. 41 (“[Profit] does not necessarily mean, in the accounting sense, an excess of revenue over expenses. ... The courts have held that there is no requirement that an applicant using property with a view to profit actually make a profit.” The Department’s position is that Loyola should be deemed to have earned a profit merely because it has received the benefit of reducing its expenses associated with outsourcing the administrative functions conducted on the property. *See* Tr. p. 41 (“There is no definition for profit within the context of the statute. The Department believes that the term ought to mean benefit or gain.”). The Department’s position, in effect, substitutes expense reduction for profit.

But again, profit, as used in Illinois' property tax exemption statutes, does not mean the benefit a property owner receives as a result of reducing its expenses associated with owning and using property. *See* Joint Comm. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d at 470-71, 654 N.E.2d 246-47. The Department's position could lead to mischief, and even to absurd results. To use a real-world example, Loyola might well enter into an agreement that required its staff employees to pay a greater percentage of medical insurance premiums, which percentage Loyola had previously paid for such employees. That situation seems to fit the same parameters that are present in this case — the applicant enters into an agreement whereby it reduces its expenses associated with the activities conducted on the property. Would Loyola's execution of that agreement mean that Loyola began to use, for profit, the property on which its staff worked?

Perhaps the most paradoxical example of how the Department's "benefit equals profit" position could lead to an absurd result involves Loyola's agreement to hire someone to help it apply for a property tax exemption. If successful, the exemption would obviously reduce Loyola's expenses regarding whatever activities it conducted on the property. Thus, and by extending the Department's position to its illogical extreme, evidence that an organization has obtained an exemption for property could be used as proof that the applicant was using the exempt property for profit. I agree with Loyola's counsel that the legislature could not have intended the term profit to mean what the Department says it means.

While I reject the Department's reasoning why I should conclude that Loyola uses the property for profit, that does not mean that I conclude that the property is entitled to



the sought-after exemption. That is because the record establishes that the property was being used for profit — just not by Loyola.

The documents of record clearly establish that Archer and Danka used the property for commercial profit. The contracts themselves support this conclusion, and the Cook County Board of Appeals’ Statement of Facts presages it. That statement provides:

“Public hearing held 7-2-04: Attorney Ellen Berkshire appeared & submitted supplemental affidavit & Service Agreement reflecting insufficient school control of commercial activity in direct competition with other commercial enterprises and managed by private commercial party. Non-exempt use.

Department Ex. 2 (Part 7: County Board of Review statement of facts, line 28).

First, Danka and Archer were the only entities that were regularly and physically occupying the property, and actually using it to provide services. Archer and Danka both agreed to have two of its full-time employees (for a total of four) on the property to provide services during operating hours. Applicant Ex. 4, pp. 2-3, ¶ 3(a)(ii); Applicant Ex. 5, Schedule 2, pp. 4, 11. But Loyola had none of its personnel regularly and physically on the property during operating hours, which was the whole point of Loyola’s intent to privatize the services being conducted on the property. In Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 66-67, 273 N.E.2d 371 (1971), the Illinois Supreme Court held that it would “be unreasonable to require that space must actually be physically occupied at all times to be in ‘use’ within the meaning of the constitutional and statutory provisions relating to exemption, or that those provisions require continuous use at all times during the year.” Here, the property was regularly occupied and used

throughout the period, but it was actually being occupied and used by Archer and Danka, and not by Loyola.

Further, the Agreements make it clear that Archer and Danka used the property not as agents of Loyola, but as independent contractors that were, by written agreement, *not* operating under Loyola's authority and control. Applicant Ex. 4, Schedule 1, pp. 5-6, ¶ 3(g); Applicant Ex. 5, Schedule 1, pp. 3-4, ¶ 5.0. This means that Archer's and Danka's actual use and regular occupancy of the property may not be deemed to be the use and occupancy by Loyola, as would be the case if Archer and Danka were acting as Loyola's agents. See Subway Restaurants of Bloomington-Normal, Inc. v. Topinka, 322 Ill. App.3d 376, 383, 751 N.E.2d 203, 209 (4<sup>th</sup> Dist. 2001) (independent contractor that sold food to students on university-owned property was not acting as agent of university).

Here, Loyola decided to dedicate property it owns to be used by two independent contractors that Loyola hired to provide certain administrative services for it, and for its students and staff. Loyola had previously performed such functions itself, at another property that also held academic classrooms and offices. There is no evidence in this record that Archer and/or Danka are not-for-profit corporations and, since all debatable questions are to be resolved in favor of taxation and against exemption, I infer the opposite to be true. It is, therefore, reasonable to conclude that Archer and Danka entered into the separate agreements with Loyola to provide the privatized administrative functions on the property with the perfectly rational intent to make a profit. I have already concluded that, whatever the rationale underlying Loyola's decision to privatize the functions conducted on the property, that decision does not constitute profit *to it*. But the other side of the privatization coin in this instance is that Loyola knew and agreed

that, once privatized, it would be the for-profit, independent contractors that were actually using and occupying the property, and not Loyola, the exempt landowner.

I acknowledge that, unlike the leases at issue in Subway Restaurants, the agreements in this matter do not convey to Archer or to Danka any possessory interest in the property. However, the statute at issue precludes exemption if the property is being used for profit. 35 ILCS 200/15-35. The documentary evidence clearly establishes that Archer and Danka are the entities that are actually and primarily using and occupying the property, and that they use and occupy the property with the intent to operate their businesses for a profit.

Finally, while it appears that Archer's sole customer at the property is Loyola, that is not true for Danka, whose paying customers also include Loyola's students, regardless of whether such students purchase copies and/or printing services for school use. Department Ex. 3. The Marketing Plans provisions within the Danka Agreement reflect that Danka agreed to assist Loyola to market the services of its print shop and copy centers to Loyola's students and staff. Applicant Ex. 5, Schedule 2 (Ex. A, Facilities Management Services Statement of Work), pp. 17-18. Since, during the period at issue, Danka was being paid to operate Loyola's print shop and copy centers, Danka was agreeing to help Loyola ensure that Danka continued to have services to perform for Loyola and for its staff and students. Those provisions were clearly designed to help Danka commercially. The Danka Agreement describes the amounts Loyola agreed to pay Danka for its services on the property and elsewhere, but nowhere in this record is there an accounting of the total amount that Danka received for using and providing services on the property.

**Conclusion:**

I conclude that Danka and Archer were the primary users of the property, and that they used the property for commercial profit. They use the property not as agents of Loyola, but as independent parties. Therefore, I recommend that the Director finalize the Department's denial of Loyola's exemption application for the period from September 1, 2003 through December 31, 2003.

Date: 5/24/2006

John E. White  
Administrative Law Judge