

NO. CV 12 6024843S : SUPERIOR COURT  
REGION 9 BOARD OF EDUCATION, : JUDICIAL DISTRICT OF  
EASTON BOARD OF EDUCATION & :  
REDDING BOARD OF EDUCATION :  
v. : NEW BRITAIN  
TOWN OF BETHEL : JUNE 26, 2015

**MEMORANDUM OF DECISION**

This is a personal property tax appeal between Region 9 Board of Education, Easton Board of Education and Redding Board of Education (hereinafter collectively the BOEs) and the town of Bethel (Bethel). There are two key issues:

(1) Who owns the school buses and vans (collectively referred to as buses) that regularly serve the school children in the school districts of the BOEs for the purpose of imposing taxes on the buses garaged in Bethel?;

(2) If the BOEs are determined to be the owners of the subject buses providing transportation for school children, are the BOEs, as municipalities performing a public purpose, exempt from personal property taxes imposed by Bethel?<sup>1</sup>

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Taxation of motor vehicles, such as the subject school buses, is reflected in General Statutes § 12-71 (f) (1)-(2).

General Statutes § 12-71 (f) (1) provides, in relevant part, as follows: “Property subject to taxation under this chapter shall include each registered . . . motor vehicle . . . in the normal course of operation, most frequently leaves from and returns to or remains

On October 1, 2011, Bethel’s assessor assessed 45 school buses that are regularly parked in Bethel on property in the possession of DATTCO,<sup>2</sup> resulting in a personal

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in a town in this state . . . .”

General Statutes § 12-71 (f) (2) further provides that “[a]ny motor vehicle . . . in this state subject to taxation in accordance with the provisions of this subsection shall be set in the list of the town where such vehicle in the normal course of operation most frequently leaves from and returns to or in which it remains. It shall be presumed that any such motor vehicle . . . most frequently leaves from and returns to or remains in the town in which the owner of such vehicle resides, unless a provision of this subsection otherwise expressly provides. As used in this subsection, ‘the town in which the owner of such vehicle resides’ means the town in this state where . . . (B) the owner, if a company, corporation, limited liability company, partnership, firm or any other type of public or private organization, association or society, has an established site for conducting the purposes for which it was created.”

Given the fact that the subject buses “most frequently [leave] from and [return] to” Bethel, the BOEs, being “public . . . organization[s], association[s] or societ[ies]” would come within the provisions of § 12-71 (f) (5) that provides “[t]he owner of a motor vehicle subject to taxation in accordance with the provisions of subdivision (4) of this subsection in a town other than the town in which such owner resides may register such vehicle in the town in which such vehicle is subject to taxation.” It should be noted that owners of motor vehicles in Connecticut are specifically exempted from filing a declaration of taxable personal property required under the general scheme for the taxation of personal property. Connecticut residents are required to register their motor vehicles with the commissioner of motor vehicles. In turn, the commissioner is required to furnish the tax assessors in each town a list of owners’ names and addresses. See Paul Dinto Electrical Contractors, Inc. v. Waterbury, 266 Conn. 706, 720, 835 A.2d 33 (2003).

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This appeal was taken in the name of the BOEs as owners of the school buses. However, it is not clear who Bethel actually assessed as the owner of the school buses for the purpose of this tax appeal. Bethel asserts that the school buses are not owned by the BOEs. Instead, Bethel alleges that ownership is with either DATTCO or by TD Equipment Finance, Inc. (TDEF). See plaintiffs’ 2/2/15 brief, p. 1. Ownership is critical

property tax of \$55,401.34. However, the BOEs claimed ownership of the buses and paid the full amount of taxes under protest.

The BOEs commenced this action in two counts claiming that they owned 45 school buses that were improperly assessed personal property taxes by Bethel on the Grand List of October 1, 2011. Count one is based on General Statutes § 12-117a which permits a taxpayer to directly challenge the valuation placed upon his or her property by the assessor. See Redding Life Care, LLC v. Redding, 308 Conn. 87, 99-100, 61 A.3d 461 (2013). Count two is based on § 12-119 which permits a taxpayer to challenge the illegal action of a municipal assessor. *Id.*, 105.

Since the BOEs' claims relate solely with a claim of exemption from the payment of taxes, the valuation of the buses is not in issue. See Bridgeport v. White Eagle's Society of Brotherly Help, Inc., 140 Conn. App. 663, 670, 59 A.3d 859 (2013): "[W]henver a city levies a tax on property that is subject to a tax exemption, that is an illegal exaction that is amenable to redress in an action brought pursuant to § 12-119."

Initially, the BOEs appealed the assessor's denial of its claim of an exemption from taxes to Bethel's board of assessment appeals (BAA). The BOEs claimed that they

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in a tax appeal since only an owner is entitled to challenge an assessor's determination. See Sheridan v. Killingly, 278 Conn. 252, 264, 897 A.2d 90 (2006).

were exempt from taxation pursuant to General Statutes § 12-81 (4)<sup>3</sup> and (7)<sup>4</sup> as well as § 12- 89.<sup>5</sup>

When § 12-81 (4) refers to property belonging to a municipal corporation of this state, it must be interpreted to include the property of BOEs. As noted in 16B E. McQuillin, *Municipal Corporations* (3d Ed. Rev. 2011), p. 169, “buses owned and used by a school district for transportation of pupils are certainly ‘property’” of the school districts. It should also be noted that the legislature, in General Statutes § 7-462 (b), defined “political subdivision” to include “any town, city, borough, district, school board, board of education . . . or other . . . public agency established by law.”

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General Statutes § 12-81 (4) provides that “property belonging to . . . a municipal corporation of this state and used for a public purpose. . . .” shall be exempt from taxation.

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General Statutes § 12-81 (7) provides that the personal property of a corporation organized exclusively for educational purposes is entitled to a property exemption for tax purposes. See *St. Joseph’s Living Center, Inc. v. Windham*, 290 Conn. 695, 708, 966 A.2d 188 (2009).

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General Statutes § 12-89 provides, in relevant part, as follows: “The board of assessors of each town . . . shall inspect the statements filed with it and required by [§§] 12-81 and 12-87 from scientific, educational, literary, historical, charitable . . . organizations, shall determine what part, if any, of the property claimed to be exempt by the organization shall be in fact exempt and shall place a valuation upon all such property, if any, as is found to be taxable . . . . Any such organization claiming to be aggrieved by the action of the [BAA] may, within two months from the time of such action, make application in the nature of an appeal therefrom to the superior court for the judicial district in which such property is situated.”

As Bethel recognizes, the BOEs come within the term “municipality.” See Heigl v. Board of Education, 218 Conn. 1, 3-4, 587 A.2d 423 (1991); Sweetman v. State Elections Enforcement Commission, 249 Conn. 296, 309-310, 732 A.2d 144 (1999).

#### Ownership of the buses

As to the issue of who owns the buses, Margaret Sullivan, a certified public accountant and director of finance and operations for the BOEs, testified that the BOEs purchased the subject buses for use in transporting school children residing in the subject BOEs’ school districts. According to Sullivan, with the purchase of the buses, the BOEs sought to have more control over them. Sullivan also testified that the BOEs financed the purchase of the buses with TDEF. Sullivan noted that the BOEs engaged DATTCO to manage and operate the buses. According to Sullivan, it was beneficial to the BOEs to purchase the buses as there were savings to them in not having to pay a sales tax as well as being exempt from the payment of property taxes.

DATTCO, as operator of the buses, parks the buses when not in use at a site located in Bethel. Upon hearing that the buses were leased, the assessor imposed a personal property tax assessment on the buses, presumably<sup>6</sup> against DATTCO. Pursuant

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The word “presumably” is used because there was no evidence introduced during the course of the trial to confirm who the assessor considered to be the buses’ owner.

to § 12-71 (f) (4)<sup>7</sup>, Bethel’s assessor placed the buses on the town’s list of personal property.

Although Bethel’s assessor purports to assess the buses in the name of DATTCO, counsel for Bethel argues that the buses are owned by TDEF, a nonresident of Connecticut. On this assumption, Bethel now argues that, pursuant to General Statutes § 12-71 (f) (3), “[a]ny motor vehicle owned by a nonresident of this state shall be set in the list of the town where such vehicle in the normal course of operation most frequently leaves from and returns to . . . .” The town where the buses leave from and return to is Bethel.

The reason that Bethel claims that TDEF is the owner of the buses, and not DATTCO or the BOEs, is based upon its reading and interpretation of a Lease Purchase Agreement (Lease Agreement) dated August 5, 2011 between TDEF, as Lessor, and the BOEs as Co-Lessees. See plaintiffs’ Exhibit 5. The substance of the agreement covers the leasing and financing of 45 school buses to transport school children.

By contending that the BOEs are not the buses’ owners, Bethel interprets the Lease Agreement to be a lease between TDEF as the lessor/owner of the buses and the

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Section 12-71 (f) (4), provides, in relevant part, as follows: “(B) any registered motor vehicle that is being operated, pursuant to a lease, by a person other than the owner of such vehicle . . . shall be set in the list of the town where the person who is operating such vehicle pursuant to said lease resides[.]”

BOEs as the lessees of the buses. Bethel turns to the language and terms in the Lease

Agreement:

a) Section 1 provides that the Lessee agrees to rent the buses from TDEF and the Lessee intends to enter into a contract for transportation services (with DATTCO).

b) The Lessee agrees to make rental payments to TDEF.

c) Section 2 recites: “Lessee agrees and acknowledges that (I) Lessee has selected the Equipment to be acquired by TDEF and rented to Lessee . . . .”

d) Section 3 recites: “During the term of this Agreement, ownership and title of all equipment and any and all repairs, replacements, substitutions and modifications thereto shall remain with TDEF. In the event Lessee has made all rent payments and is not in default hereunder, Lessee shall become the owner of the Equipment upon making the last payment . . . .”

e) Section 4 provides that the Lessee shall have the option to purchase the buses “upon payment in full of all Rental Payments . . . .”

The BOEs counter Bethel’s claim by disputing the town’s interpretation of the Lease Agreement. They argue that the Lease Agreement is neither a lease nor a sale of the buses; it is a financing agreement in which the BOEs have borrowed money from TDEF in order to purchase the subject buses. In support of this contention, the BOEs refer to an amortization schedule for the repayment of the loan, the interest rate and the payments of

principal and interest. See Exhibit B attached to plaintiffs' Exhibit 5.

The BOEs also contend that the title to the buses are in the name of the BOEs; the buses are registered in the name of the BOEs with the department of motor vehicles (DMV); and TDEF is listed as first lienholder on the Certificates of Title for the buses.

Although Bethel claims that the buses were purchased by TDEF (see defendant's 2/2/15 brief, p. 1), the closest either party comes to explain how the buses were acquired from the manufacturer to the ultimate owner is recited in the plaintiffs' 3/9/15 reply brief, p. 3: "Section 2 [of the Lease Agreement] makes clear that the [BOEs] have selected the equipment and that TDEF may put monies borrowed into a purchase fund and the [BOEs] authorize payments of amounts for equipment to the vendors."

The affidavit of Robert Cleveland, Chief Financial Officer of DATTCO, recites that TDEF provided funding in the amount of \$3,284,785.19, listing DATTCO as Dealer and various others as payees (vendors) for the purchase of 45 buses. These facts are consistent with the BOEs' contention that TDEF supplied funds to the BOEs in order to purchase the 45 buses. In the end, the buses would be operated by DATTCO under a lease arrangement.

It is well settled that "[w]hen construing a contract, we seek to determine the intent of the parties from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the

parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract. . . . Extrinsic evidence is always admissible, however, to explain an ambiguity appearing in the instrument. . . . When the language of a contract is ambiguous, the determination of the parties' intent is a question of fact . . . . When the language is clear and unambiguous, however, the contract must be given effect according to its terms, and the determination of the parties' intent is a question of law. . . .

“The court will not torture words to impart ambiguity where ordinary meaning leaves no room for ambiguity. . . . Moreover, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous. . . .

“In contrast, a contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . [A]ny ambiguity in a contract must emanate from the language used by the parties. . . . The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous.”

(Internal quotation marks omitted.) Nation-Bailey v. Bailey, 316 Conn. 182, 191-92, 112 A.3d 144 (2015).

As written, the Lease Agreement, as a contract, is ambiguous because the parties disagree on the subject matter of the contract. Simply put, the plaintiffs contend that the contract is a financing document and Bethel contends that the contract is a lease identifying TDEF as the lessor/owner of the buses.

A key element of the contract that shows it to be a financing document, is the fact that the contract contains the terms of a financing arrangement setting forth an amortization schedule for the repayment of the loan; the interest rate and payments of principal and interest. In addition, Steven Nelson, TDEF's director of operations, acknowledged that TDEF provides financing for its customers to acquire assets. He testified as follows: "We provide the financing for the school district to purchase the buses from whatever vendor they choose. We are only providing the money . . . . [W]e are not in this transaction contemplating to own the buses in any way. It is merely to be the financing source for the school to own the buses . . . . [T]he way we protect our interest in the buses is we file a lien against the title. So, we're a lienholder . . . . We're a nonowner of the buses." (10/22/14 Tr., p. 108.)

The relevant part of the contract that indicates it is a lease is language that the Lessee 1) selected the buses to be acquired by TDEF and 2) agreed to rent the buses from

TDEF. However, Bethel fails to point to any document that would show that the buses were purchased by TDEF from the vendors. If, as Bethel claims, the Lease Agreement between TDEF and the BOEs were a lease, it would be necessary to show how TDEF acquired title to the buses. Bethel has failed to make this showing.

The ambiguity of the language of the contract, as expressed by the BOEs and Bethel, requires an examination of the intent of the parties entering into the contract. As noted above, Ms. Sullivan clearly set forth her understanding that the intent of the transaction with TDEF was to have TDEF provide financing to the BOEs for the purchase of buses which transport school children located within the towns represented by the BOEs. In support of Ms. Sullivan's understanding of the transaction, the BOEs point to the fact that the buses are all registered with DMV as being the owners of the buses and showing TDEF as a lienholder.

It is problematic that Bethel is not a party to the Lease Agreement. Therefore, Bethel is not in a position to speak for TDEF as to what TDEF's intent was at the time it entered into the Lease Agreement with the BOEs.

In this instance, TDEF's intent was fully expressed in the statement of Steven Nelson, TDEF's director of operations, that while TDEF provides the financing for the purchase of the buses, it does not own them. Although parts of the language in the Lease Agreement contained an expression of a lease arrangement rather than a financing

arrangement, it is clear that the Lease Agreement's primary function was to be a financing arrangement between the BOEs and TDEF. As the financing component to the purchase and operation of the school buses, TDEF could not have been the owner of the buses. From a factual determination, the BOEs purchased the buses from the vendors with the financing provided by TDEF and the operation and maintenance of the buses performed by DATTCO.

#### Exemption

The BOEs appealed the assessor's denial of their claim of ownership of the buses and exemption from taxes to Bethel's BAA. The BOEs claimed that they were the owners of the buses and exempt from taxation pursuant to General Statutes § 12-81 (4) and (7) as well as § 12-89.

Bethel argues that, although the BOEs qualify as municipalities, they were not the owners of the buses, and even assuming that the BOEs were the owners, the buses were not exempt from taxation because they are not used for a "public purpose." See defendant's 2/2/15 brief, p. 15.

Bethel cites Laurel Beach Assn. v. Milford, 148 Conn. 233, 235-36, 169 A.2d 748 (1961) and Oxford v. Beacon Falls, 183 Conn. 345, 439 A.2d 348 (1981), for the proposition that although the BOEs may be municipalities, the use must be for the benefit of the general public. Bethel argues that because the buses only benefit the school

children of the BOEs and not Bethel's, it fails to qualify for a tax exemption in Bethel. In the Beacon Falls case, the issue was "whether . . . § 12-81 (4) exempts from taxation real property which the defendant . . . Beacon Falls, owns and uses as a park from which residents of the plaintiff . . . Oxford, in which the park is located, and other members of the general public are excluded." *Id.*, 346. The Beacon Falls court concluded that "when the inhabitants of the municipality in which a park exists are excluded, the park is not 'used for a public purpose' within the meaning of the tax exemption." *Id.*, 347.

General Statutes § 12-81 (4) recites, in relevant part, that "property belonging to, or held in trust for a municipal corporation of this state and *used for a public purpose* . . . shall be exempt from taxation." (Emphasis added.) The distinction here is that § 12-81 (4) requires the municipal property to be "used for a public purpose" whereas the Laurel Beach and Beacon Falls cases involved the public use of municipal property.

As discussed above, the BOEs are required by statute to transport school children residing in their district to and from schools located in their respective districts. "[C]hildren are required by law to attend school and whether they have transportation is a matter of public importance." Board of Education v. State Board of Education, 243 Conn. 772, 778, 709 A.2d 510 (1998). "[E]ducation in itself serves a public purpose." (Internal quotation marks omitted.) Snyder v. Newtown, 147 Conn. 374, 382, 161 A.2d 770, appeal dismissed, 365 U.S. 299, 81 S. Ct. 692, 5 L. Ed. 688 (1960). Contrary to the

holding in Laurel Beach and Beacon Falls which dealt with “public use[,]” it is for the legislature to determine what is a “public purpose.” See Kinney v. State, 285 Conn. 700, 710, 941 A.2d 907 (2008). The public purpose, as expressed in § 12-81 (4), is to provide school children transportation.

The exemption from taxes, as provided for in § 12-81 (4), applies to the BOEs since they fulfill the public purpose requirement of this statute by providing transportation to school children from their homes to their schools, regardless of where the school buses are garaged.

The BOEs also claim exemption from Bethel’s property taxes pursuant to § 12-81 (7) relating to personal property of a corporation used exclusively for educational purposes. Section 12-81 (7) is not an alternative to § 12-81 (4). Whereas § 12-81 (4) is a specific direction from the legislature that provides an exemption for school buses from municipal taxes, § 12-81 (7) refers to non-governmental corporations that exclusively provide “scientific, educational, literary, historical or charitable purposes . . . .” (Internal quotation marks omitted.) See St. Joseph’s Living Center, Inc. v. Windham, 290 Conn. 708, *supra*.

Concluding that the BOEs are the owners of the 45 school buses that are the subject of this appeal, and the fact that the buses are used for the transport of school children, which is a public purpose, the school buses are exempt from the property taxes

imposed by Bethel.

Accordingly, judgment may enter in favor of the plaintiffs without costs to any party.

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Arnold W. Aronson  
Judge Trial Referee