

**IN THE SUPREME COURT OF MISSOURI**

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**No. SC88630**

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**MISSOURI STATE USBC ASSOCIATION , Appellant,**

**v.**

**DIRECTOR OF REVENUE, Respondent.**

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**ON PETITION FOR REVIEW  
FROM THE MISSOURI ADMINISTRATIVE HEARING COMMISSION  
THE HONORABLE JOHN KOPP, COMMISSIONER**

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**APPELLANT'S REPLY BRIEF**

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## **ARGUMENT**

### **1. Introduction**

Appellant’s first argument in the opening brief before this Court, and in the motion for summary determination filed in the Administrative Hearing Commission, was that the Missouri State USBC Association fits squarely within the definition of a “civic organization” under Section 144.030.2(20).<sup>1</sup> Appellant placed this point first for emphasis, because Appellant recognizes (as did the Director for many years) that promoting a recreational activity on a non-profit basis through statewide tournaments that are open to the public is an activity that is plainly “civic” in nature.

In response, the Director has consistently chosen to focus on the issue of whether Appellant is a “charitable organization” within the meaning of Section 144.030.2(19), presumably because she believes that sports and recreation are not the kind of activities that are typically thought of as “charitable.” The Director, however, misapplies this Court’s rulings to the facts of this case, and takes a cramped view of the terms “charitable” and “civic” that is not supported by law and that certainly cannot reflect the legislature’s intention in enacting Sections 144.030.2(19) and (20). Appellant meets the requirements of both exemptions, as well as the exemption for “service organizations” included in Section 144.030.2(20), because it promotes a beneficial recreational activity to the general public just as a city parks and recreation department would do, although on

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<sup>1</sup> All statutory citations are to the Revised Statutes of Missouri of 2000, as amended, unless otherwise noted.

a broader scale, and thereby provides a direct benefit to the many thousands of individuals who participate in its activities and to society as a whole.

## **2. Appellant Serves the General Public and Performs Charitable and Civic Functions**

To meet the requirements of a “civic organization” under Section 144.030.2(20), Appellant’s “purposes and functions must be concerned with and relate to the citizenry at large” and “benefit the community it serves on an unrestricted basis.” *Indian Lake Property Owners Ass’n v. Director of Revenue*, 813 S.W.2d 305, 308 (Mo. banc 1991). Similarly, to be considered a “charitable organization” under Missouri law, Appellant must be “open to the indefinite public.” *In re Rahn’s Estate*, 291 S.W. 120, 128 (Mo. 1926). Appellant meets these criteria by sponsoring recreational activities that are open to the public at large, and by encouraging all people to participate in its activities.

The Director argues that Appellant provides activities only for its “members.” Based on this view, the Director asserts that Appellant serves the private interests of a select and exclusive group of people and therefore cannot be considered “civic” or “charitable.” This is not the case. Appellant’s activities are open to the public. While everyone is encouraged to participate in these activities, obviously only a portion of the citizenry actually do. This is undoubtedly true with respect to the services offered by every civic or charitable organization in this state. Although the individuals who participate in Appellant’s activities are called “members,” this does not mean that Appellant excludes anyone, since anyone can join the organization. L.F. 114. By making its activities available to everyone without regard to race, religion, age, gender,

disability or national origin, Appellant serves “the public.” *See J. B. Vending Co., Inc. v. Director of Revenue*, 54 S.W.3d 183, 186 (Mo. banc 2001). In fact, the actual scope of Appellant’s activities is very broad. Over 75,000 Missourians have chosen to take part in its activities. L.F. 114. For over seventy years, Appellant and its predecessor organizations have organized annual statewide bowling tournaments that bring together thousands of people from all parts of the state. L.F. 115 This underscores the fact that its activities are not aimed at any segment of the community, but at the “citizenry at large.” *Indian Lake Property Owners Ass’n*, 813 S.W.2d 305, 308.

This Court has recognized that the concept of “charity” is not limited “solely to the relief of the destitute,” and should not exclude “humanitarian activities, though rendered at cost or less, which are intended to improve the physical, mental and moral condition of the recipients and make it less likely they will become burdens on society and make it more likely they will become useful citizens.” *Salvation Army v. Hoehn*, 188 S.W.2d 826, 830 (Mo. banc 1945). The federal courts, in construing the term “charity” in the context of the Internal Revenue Code have similarly recognized that “[i]n its broader meaning, charity . . . embraces any benevolent or philanthropic objective not prohibited by law or public policy which tends to advance the well-doing and well-being of man.” *Hutchinson Baseball Enterprises, Inc. v. Commissioner of Internal Revenue*, 696 F.2d 757, 761 (10<sup>th</sup> Cir. 1982). This Court should reject the Director’s attempt to apply an extremely narrow definition to the term “charitable,” because the Director’s position is inconsistent with the plain and ordinary meaning of this term. *See* Resp. Br. at 17 (warning this Court not to adopt the definition applied by the federal government).

The uncontested factual record in this case demonstrates that bowling involves physical activity and social interaction that is beneficial to participants of all ages. L.F. 114-115. It helps senior citizens stay active, both socially and physically. Youth participants learn valuable lessons including coordination, teamwork and cooperation through their participation in bowling. *Id.* Based on these facts it is clear that Appellant bestows a direct benefit on the public by offering individuals an opportunity to engage in an activity that is “intended to improve the physical [and] mental . . . condition” of those that participate. *Salvation Army v. Hoehn*, 188 S.W.2d at 830. This is a charitable function. *Id.* Moreover, even individuals that do not choose to directly participate have the *opportunity* to do so. By increasing the availability of recreational activities, and by providing a beneficial activity to the individuals that choose to participate, Appellant is enhancing the quality of life in this state, and thereby providing a benefit to the community as a whole. *See Franciscan Tertiary Province of Missouri v. State Tax Commission*, 566 S.W.2d 213, 225 (Mo. banc 1978) (explaining that organizations that provide services to various individuals, while benefiting the individuals served, may also be considered to benefit society generally). The Director’s arguments fail to recognize these benefits.

In support of her contention that by serving its “members” Appellant is not engaged in a charitable function, the Director cites *Home Builders Ass’n of Greater St. Louis v. St. Louis County Board of Equalization*, 803 S.W.2d 636 (Mo. App., E.D., 1991). This case involves facts that are clearly distinguishable from those at issue in the instant case, and illustrates the type of member-focused activities that are characteristic of

an organization that is neither “charitable” nor “civic.” The organization at issue, the Home Builders Association, was recognized by the Internal Revenue Service as a Section 501(c)(6) business league. *Id.* at 637. Its members apparently were businesses engaged in home building for profit. The association’s activities were extensive and included: a home warranty insurance program, support services related to the negotiation of labor contracts and labor disputes, financial support of a carpenter apprentice training program, lobbying and support of political candidates, seminars on topics related to property management and home sales, and activities related to marketing and sales of new homes. *Id.* at 637-638. Based on these facts, the trial court found that the primary purpose of the association was to “improve business conditions for its members, enhance the image of the industry and improve profit structure of all members.” *Id.* at 640. The Court of Appeals upheld this finding and ruled that the association’s building did not qualify for the exemption from property tax for property that is “actually and regularly used exclusively for . . . purposes purely charitable and not held for private or corporate profit” under Section 137.100(5).

As these facts demonstrate, the Home Builders Association was principally engaged in providing support services to assist businesses in their commercial, profit-making activities. Although it did engage in some educational functions that the Court recognized as “charitable” activities, these educational functions were not the predominant activities of the Association. *Id.*

The Court of Appeals contrasted the Home Builders Association with the organization at issue in *City of St. Louis v. State Tax Commission*, 524 S.W.2d 839, 845

(Mo. banc 1975), which involved the Engineers' Club of St. Louis. This Court's opinion in the Engineers' Club case notes that almost every case on the subject of tax exemptions for "charitable" organizations presents the question of whether the organization's activities are "self-serving and designed to promote the personal welfare and economic advantages of its own members." *Id.* at 846. In each instance, this question is to be answered "by the facts of the particular record." *Id.* In the instant case, the record demonstrates that unlike the Home Builders Association, Appellant is not engaged in activities designed to enhance the business activities or personal wealth of its members. Nor is the focus of Appellant on a select group of individuals. The uncontested facts of this case demonstrate that Appellant's principal goal is to promote a wholesome recreational activity by encouraging as many people as possible—without discrimination of any kind—to engage in its activities. Appellant is a not-for-profit corporation and nothing in the record suggests that Appellant is motivated by financial gain. Instead, it is clear that the individuals who make up this organization love the sport of bowling and simply wish to share its benefits with the public. This function falls squarely within the meaning of the terms "civic," "charitable," and "service" as used in the Missouri sales tax statutes.

The other cases cited by the Director in support of this argument are also inapposite. In *Woman's Club of Topeka v. Shawnee County*, 853 P.2d 1157, 1165 (Kan. 1993), the Kansas Supreme Court considered a property tax exemption claimed by a club that raised funds for benevolent causes, but used its building to hold bridge parties, style shows, and other social functions. The Court noted there was "some evidence of the

Club’s charitable purpose,” but ruled that the exemption applied only to property used “‘only, solely and purely’ for literary, educational, benevolent and charitable purposes” and the Club’s use of the property did not meet that standard since it included social functions. *State Bd. Of Tax Comm’rs v. Fort Wayne Sports Club, Inc.*, 258 N.E.2d 874 (Ind. App. 1970), involved an organization that owned a soccer facility. The organization used the facility for games for its own soccer team; nothing in the case suggests that the facility was open to the public, unlike the activities sponsored by Appellant. In *National Ass’n of Miniature Enthusiasts v. State Bd. Of Tax Comm’rs*, 671 N.E.2d 218, 222 (Ind. Tax Ct. 1996), the Court applied extremely narrow definitions of the terms “charitable” and “educational” in considering a claim of exemption from property taxes. Although the organization at issue operated a museum for the public, the Court found its purposes were neither charitable nor educational under Indiana law. This result is not consistent with the Missouri courts’ definitions of these terms. Finally, *Maxwell Memorial Football Club v. Pennsylvania*, 336 A.2d 460 (Pa. Commw. Ct. 1975) involved an organization that claimed its activities encouraged participation in the sport of youth football. Its principal activity was holding luncheons where members talked about football. While the Court had no problem agreeing that football was “good for the youth of Pennsylvania,” it found that there was no “clear cause and effect relationship” between the club’s actual activities and any benefits to youth. *Id.* at 463. The Court noted that “[i]t would be enough to show that the [club’s] activities . . . are reasonably calculated to directly achieve a charitable objective,” but the club could not meet this standard. *Id.* at 470-471. The same cannot be said of Appellant, whose activities directly encourage the

public to participate in the sport of bowling by providing opportunities for statewide competitions and awards.

### **3. The Fees Charged by Appellant Do Not Exclude the Public from Appellant's Activities**

Although Appellant charges nominal fees for participation in its statewide tournaments, there is no basis for concluding that these fees effectively deny access to Appellant's activities by the public. Thus, the fact that Appellant collects fees does not change the conclusion that Appellant is serving the public. As this Court explained in *Evangelical Retirement Homes of Greater St. Louis v. State Tax Commission*, 669 S.W.2d 548, 554 (Mo. banc 1984), a charity may accept payment for the services it provides from those who are able to pay. The organization's "public nature" comes into question, however, if its services are not available to both the rich and the poor. *Id.* In the *Evangelical Retirement Homes* case, this Court considered whether a retirement home that required prospective residents to "have sufficient assets to pay an initial endowment of between \$20,000 and \$40,000" with additional assets in reserve, was a "charitable" organization. This Court agreed that these financial requirements "severely limited meaningful access to [the home's] facilities by the great majority of the elderly." *Id.* at 557. Thus the home was not entitled to a charitable exemption from the property tax.

As the Director notes in her statement of facts, to enter one of Appellant's statewide tournament events, a bowler must pay \$20.00. If the bowler is not already a member of the USBC (the national association with which Appellant is affiliated), there is an additional \$20 charge. Resp. Br. 6; Resp. Ex. C. It is clear from the entry

application that all other fees are optional, and are also nominal (for example, it costs only \$5 to participate in the “All Events Handicap” competition, and \$50 for a five-person team to participate in the “Scratch Team” competition”). Resp. Ex. C. Thus for as little as \$40, an individual that is not a member of Appellant can participate in Appellant’s statewide tournament. This nominal amount does not establish that Appellant serves only the rich and excludes the poor from participating in its events. On the contrary, the fact that the participation fees are so low, and that Appellant charges no annual dues demonstrate that Appellant’s activities are designed to encourage wide participation, particularly by individuals of modest means. L.F. 114. Indeed, under Appellant’s by-laws, annual dues imposed by Appellant can never exceed \$1.00 for adults and 25 cents for youth participants. L.F. 114. This fact makes it plain that Appellant is **not** an organization that excludes participants on the basis of wealth.

Contrary to the Director’s assertions, other cases decided by this Court confirm that a “charitable organization” may charge fees for its services, consistent with its charitable status. *See, e.g., Salvation Army v. Hoehn*, 188 S.W.2d 826, 831 (Mo. banc 1945); *Young Men’s Christian Ass’n v. Sestric*, 242 S.W.2d 497, 505 (Mo. banc 1951) (noting that the fact that fees charged by the Y.M.C.A. were more than those charged in the *Salvation Army* case simply shows that the Salvation Army was seeking to benefit a lower income group than the young men who were the beneficiaries of the Y.M.C.A.’s services).

#### **4. Appellant is a Not-for-Profit Service Organization**

The Director notes that in *Anheuser-Busch Employee's Credit Union v. Director of Revenue*, Case No. 90-001646 RS (Mo. Admin. Hearing Comm'n, April 1, 1992), the Administrative Hearing Commission considered the meaning of the term "social service organization" as used in Section 144.030.2(20). The Commission concluded that such an organization must be "concerned with the welfare of human beings as members of society." The Commission also noted that "[a]n organization whose activities are intended to benefit only its own closed and exclusive membership is not a social service organization within the meaning of § 144.030.2(20)." The organization at issue in *Anheuser-Busch Employee's Credit Union* was open only to employees of Anheuser-Busch, Inc., and its subsidiaries and the families of these employees. In contrast, anyone may join Appellant. In addition, Appellant serves the public and provides a benefit to society as a whole by increasing the availability of recreational activities, and by providing a beneficial activity to the individuals that choose to participate, just as a city parks and recreation department would do, although on a broader scale. Appellant thus meets the definition of a "social service organization" within the meaning of Section 144.030.2(20).

#### **5. Appellant's Statewide Tournaments are an Integral Part of Its Civic and Charitable Functions**

At the conclusion of her arguments, the Director states that paying the expenses associated with Appellant's statewide bowling tournaments would not be a charitable, educational or civic function or activity, and thus may not be exempt from sales tax even

if the exemption provided by Sections 144.030.2(19) and (20) apply to Appellant. Resp. Br. at 21-22. This assertion is based on the Director's conclusion that "a bowling tournament is not a charitable, educational, or civic function or activity." Resp. Br. at 22.

As explained above, however, Appellant's tournaments bring together individuals from throughout the state, and allow them to compete on a statewide basis. This increases interest in bowling and is an integral part of Appellant's efforts to promote the sport of bowling in this state. L.F. 115. As also explained above, these competitions are open to the public, and include youth, men, women and senior citizens. *Id.* Like all of Appellant's activities, the tournaments are conducted on a non-profit basis. L.F. 113. The tournaments thus encourage participation in a recreational activity, which for the reasons explained above, is both a civic and charitable function.

### **CONCLUSION**

Appellant is a not-for-profit civic organization within the meaning of Section 144.030.2(20), a charitable organization within the meaning of Section 144.030.2(19), and a not-for-profit service organization within the meaning of Section 144.030.2(20). The Director's final decision denying Appellant's application for a sales/use tax exemption letter, and the Commission's ruling upholding the Director's decision, are: (1) not authorized by law; (2) not supported by competent and substantial evidence; and (3) clearly contrary to the reasonable expectations of the legislature with respect to the meaning of Sections 144.030.2(19) and (20). Appellant respectfully requests that this Court rule that Appellant is an entity that is exempt from Missouri sales and use tax.

Respectfully submitted,

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I hereby further certify that the foregoing brief complies with Rule 55.03 and with the limitations contained in Rule 84.06(b), in that it contains 3,579 words.

I hereby further certify that the labeled disk, simultaneously filed with the hard copies of the briefs, has been scanned for viruses and is virus-free.