

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION**

**ASSOCIATION OF AMERICAN
MEDICAL COLLEGES,**

PETITIONER,

v.

DISTRICT OF COLUMBIA,

RESPONDENT.

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**Case No. 2013 CVT 011856
Judge Erik P. Christian**

ORDER

This matter is before the Court on consideration of the following: (1) the District of Columbia’s *Motion to Dismiss or, in the Alternative, for Summary Judgment*; and (2) Petitioner Association of American Medical College’s *Cross-Motion for Summary Judgment*.

I. BACKGROUND

The central mission of the Association of American Medical College (“AAMC”) is to “serve and lead the academic medicine community in order to improve the training of physicians and the health of all,” and generally “advance medical education in the context of advancing health related knowledge and the provision of excellent health care.” Statement of the Facts (“SOF”) ¶ 2; *see also* SOF Ex. 26 (2012 Bylaws, Art. II). Among its various duties, AAMC administers the Medical College Admissions Test (“MCAT”) and operates standardized application systems, such as the American Medical College Application System (“AMCAS”) and the Electronic Residency Application Service (“ERAS”). SOF ¶ 3.

AAMC’s membership includes 158 accredited medical schools in the United States and Canada, approximately 400 teaching hospitals, and 71 academic and scientific medical societies.

SOF ¶ 5; *see also* SOF Ex. 24 (Bonham Decl.). These members are organized into three Councils: the Council of Deans, the Council of Teaching Hospitals and Health Systems, and the Council of Faculty and Academic Societies. SOF ¶ 5. The Council of Deans includes the dean or the equivalent academic officer of each medical school member. SOF ¶ 5; *see also* SOF Ex. 26 (2012 Bylaws, Art. IV, Sec. 1). The Council of Teaching Hospitals and Health Systems includes one representative from each teaching hospital and health systems member. *Id.* The Council of Faculty and Academic Societies includes two representatives from each academic society member and two representatives from each medical school member. *Id.* All but seven teaching hospitals and one academic society are tax-exempt under 26 U.S.C. § 501(c)(3). SOF ¶ 29. The Internal Revenue Service (“IRS”) is aware of the non-tax-exempt members and has ruled that it does not adversely affect AAMC’s tax-exempt status. *Id.* ¶ 30; *see* SOF Ex. 31 (Letter from the Internal Revenue Service, July 31, 1985).

The internal structure of AAMC includes two groups: the Assembly and the Board of Directors (the “Board”). The Assembly is constituted as follows: (1) the Medical School Members are represented by the Council of Deans, along with twelve members of the Organization of Student Representatives, in the Assembly; (2) the Council of Faculty and Academic Societies designates a number of members equal to the number of members of the Council of Faculty and Academic Societies or the number of the Council of Deans, whichever is fewer, plus twelve members of the Organization of Resident Representatives, to serve in the Assembly; and (3) the Council of Teaching Hospitals and Health Systems designates a number of members equal to the number of members of the Council of Teaching Hospitals and Health Systems or the number of the Council of Deans, whichever is lesser, to serve in the Assembly. *See* SOF Ex. 26 (2012 Bylaws, Art. VI, Sec. 2). The Assembly’s powers are limited to removal

of a Board member, modification of the dues structure (upon recommendation by the Board), amendment of the bylaws, and any other matters the Board deems appropriate. SOF ¶ 6; *see also* SOF Ex. 26 (2012 Bylaws, Art. VI, Sec. 1). However, all corporate powers are exercised by the Board. AAMC's bylaws provide that AAMC's affairs, including property and finances, shall be managed and overseen by the Board. *See* SOF Ex. 26 (2012 Bylaws, Art. VIII, Sec. 1).

The Board consists of seventeen members: ten *ex officio* members and seven members who are directly elected by the Board. SOF ¶ 7; *see also* SOF Ex. 26 (2012 Bylaws, Art. VIII, Sec. 2). Six of the *ex officio* members are elected by the members through their Councils. SOF ¶ 7. Each Council selects its own chair and chair-elect; the chair and chair-elect then serve on the Board. SOF ¶ 7; *see also* SOF Ex. 26 (2012 Bylaws, Art. VIII, Sec. 2). Three of the *ex officio* members include the Chair of the Board, the Chair-elect of the Board, and the immediate Past Chair of the Board, each of whom is selected by the Board. SOF ¶ 7. The tenth *ex officio* member is the President of AAMC, who serves as Chief Executive Officer of AAMC; the President is also selected by the Board. *Id.*; *see also* SOF Ex. 26 (2012 Bylaws, Art. VII, Sec. 2). The Board retains the ability to vote on the seven non-*ex officio* Board members directly; however, the elected members must include a number of current or former medical school Deans such that at least five of the Board members are current or former Deans. SOF ¶ 7; *see also* SOF Ex. 26 (2012 Bylaws, Art. VIII, Sec. 2). The Board must also include one medical student, one resident physician, and one member of the public. SOF ¶ 7; *see also* SOF Ex. 26 (2012 Bylaws, Art. VIII, Sec. 2). The seven non-*ex officio* members are recommended to the Board by the Nominating and Leadership Development Committee (the "Nominating Committee"). SOF Ex. 26 (2012 Bylaws, Art. VIII, Sec. 2). The Board is charged with appointing the members of the Nominating Committee. SOF Ex. 26 (2012 Bylaws, Art. IX, Sec. 1). The Immediate Past Chair

of the Board also serves as the Chair of the Nominating Committee. SOF Ex. 26 (2012 Bylaws, Art. VII, Sec. 1). The Board is also empowered to “fill or leave vacant any at-large position vacancy that may arise between elections cycles at its discretion.” SOF Ex. 26 (2012 Bylaws, Art. VIII, Sec. 2).

The parties conflict about two aspects: daily activities and control. With respect to daily activities, AAMC argues that the Councils are the functional and voting divisions through which its members exercise day-to-day control. SOF ¶ 5. The District of Columbia (the “District”), however, contends that it is in fact the Board, and not the members, that have control over the daily activities of AAMC. With regards to control, AAMC admits that a number of Board members are not elected by the member institutions or the Assembly; however, AAMC alleges that the Assembly has authority and control over AAMC. SOF ¶ 10. AAMC points to the bylaws which dictate that the Board has the power to select eleven of the seventeen members of the Board, subject to the removal power of the Assembly, and the Assembly retains plenary power to remove any Board member at any time. SOF ¶ 6; *see also* SOF Ex. 26 (2012 Bylaws, Art. VI, Sec. 1).

AAMC is recognized by the Internal Revenue Service as a tax-exempt charitable organization under 26 U.S.C. § 501(c)(3). SOF ¶ 1. The District granted AAMC three previous exemptions: (1) in 1987 for its location at One DuPont Circle, NW, Washington, D.C. 20036, (2) in 1990 for its location at 2450 N Street, NW, Washington, D.C. 20037, and (3) in 1996 for its location at 2501 M Street, NW, Washington, D.C. 20037. *Id.* ¶ 12. On August 31, 2011, AAMC applied for an exemption pursuant to § 47-1002(17) and (18) for real property located at 616 New York Avenue, NW, Washington, D.C. 20001 (the “Subject Property”). The request was denied by the Office of Tax and Revenue (“OTR”) on June 17, 2013. On August 22, 2013,

AAMC submitted documents for reconsideration, but was again denied by the OTR on November 8, 2013. On December 12, 2013, AAMC initiated the instant matter with the District. Two months later, on February 12, 2014, the District filed a motion to dismiss or in the alternative, for summary judgment. In response, on March 28, 2014, AAMC filed a cross motion for summary judgment and opposition to motion to dismiss or, in the alternative, for summary judgment.

II. STANDARD OF REVIEW

D.C. Super. Ct. R. Civ. P. 56 (2012)¹ governs motions for summary judgment. Summary judgment is an appropriate remedy if there are no material facts at issue and the moving party is entitled to judgment as a matter of law. *Lamphier v. Washington Hosp. Ctr.*, 524 A.2d 729, 731 (D.C. 1987). The moving party has the burden to clearly demonstrate the absence of any genuine issue of fact, and all inferences which may be drawn from the facts are resolved against the movant. *Doolin v. Envtl. Power, Ltd.*, 360 A.2d 493, 496 (D.C. 1976). Once the moving party has met its burden, the nonmoving party must offer specific facts admissible in evidence demonstrating a genuine issue for trial; mere allegations and denials set forth in pleadings are not enough. *Miller v. Greater Se. Cmty. Hosp.*, 508 A.2d 927, 928 (D.C. 1986). Mere conclusory allegations are not enough to stave off summary judgment. *Linen v. Landford*, 945 A.2d 1173, 1177 (D.C. 2008). Rather, if the moving party supports its motion with deposition responses or other evidence submitted under oath, the opposing party may not rely on general pleadings or a denial; the opposing party must respond by providing material facts under oath which raise genuine issues of fact for trial. *Wines v. Mfrs. & Traders Trust Co.*, 935 A.2d 1078, 1085-86 (D.C. 2007). Summary judgment is appropriate when, taking all reasonable inferences in the

¹ D.C. Super. Ct. R. Civ. P. 12-I(k) and 56 are applicable to actions brought before the Tax Division. D.C. Super. Ct. Tax R. 3 (2012).

light most favorable to the nonmoving party, a reasonable juror could not find for the nonmoving party under the appropriate burden of proof. *Wallace v. Skadden, Arps, Slate, Meagher & Flom, LLP*, 799 A.2d 381 (D.C. 2002).

III. DISCUSSION

AAMC seeks an exemption under D.C. Code § 47-1002(17) (2012) which provides an exemption for the following property:

Buildings belonging to organizations which are charged with the administration, coordination, or unification of activities, locally or otherwise, of institutions or organizations entitled to exemption under other the provisions of §§ 47-1002, 47-1005, and 47-1007 to 47-1010, and used as administrative headquarters thereof.

D.C. Code § 47-1002(17). AAMC alleges that the Subject Property qualifies under this exemption because it has had a principal office in the District since 1987, and that it had received a tax exemption for its property since it began operations in the District. AAMC is also seeking an exemption under D.C. Code § 47-1002(18), which provides an exemption for “grounds belonging to and forming a part of the property of such institutions or organizations.” *Id.* § 47-1002(18).

In order to qualify for an exemption under § 47-1002(17), AAMC needs to prove that (a) it is charged with the administration, coordination, or unification of activities of other institutions or organizations; (b) those other institutions or organizations are entitled to real property exemptions under District of Columbia law; and (c) the Subject Property will be used as its administrative headquarters. *District of Columbia v. Helen Dwight Reid Educ. Found.*, 766 A.2d 26, 33 (D.C. 2001) (“*Heldref*”). If the Subject Property is exempt under § 47-1002(17), then the adjoining grounds will also qualify for the exemption under § 47-1002(18).

a. Whether AAMC is Charged with the Administration, Coordination, or Unification of the Activities of Other Institutions or Organizations.

In order to satisfy the first element, the organization must administer, coordinate, or unify the activities of other organizations or institutions. D.C. Code § 47-1002(17); *accord Heldref*, 766 A.2d at 33. “[T]he sine qua non of the first element of § 47-1002(17) is that institutions entitled to exemption from property tax must retain at least some significant direction or control over the activities which are being administered, coordinated or unified on their behalf. Otherwise the activities are not *their* activities.” *Heldref*, 766 A.2d at 34. The construction of D.C. Code § 47-1002(17) must be tied closely to the specific language of the statute. *Id.* at 35.

In *Heldref*, the Court determined that the petitioner organization did not qualify for tax exempt status because its publication activities were not controlled by its member organizations. *Id.* at 34. The colleges and universities formerly published periodicals; however, when these organizations sold the periodicals to the Helen Dwight Reed Educational Foundation (the “Foundation”) they also transferred the publication activities. *Id.* Once the schools divested themselves of the periodicals, the publication activities belonged to the Foundation. *Id.* Conversely, in *Conference of Major Religious Superiors of Women, Inc., v. District of Columbia*, 348 F.2d 783, 784 (D.C. Cir. 1965). The Court concluded that the petitioner organization “operated as a clearing house of information and ideas for the various religious communities across the country,” for which it held meetings at which representatives of these communities participated and provided advice as to how the communities could best be organized and operated. *Id.*

Like *Heldref*, in which the member organizations have created an entity to conduct an activity which they previously did themselves, the main activities of AAMC were once the

responsibility of member institutions. Also, as in *Heldref*, by turning the activities over to AAMC, the member institutions divested themselves of this responsibility. Thus, the Court must determine whether the member institutions retained significant direction or control.

In this case, the Court cannot find that the member institutions retained any significant direction or control. In *Heldref*, no such control existed when the publishing activities were outsourced to the Foundation because the colleges and universities failed to maintain control over the Foundation. 766 A.2d at 34. Here, as in *Heldref*, the member institutions have transferred various administration and placement tasks to AAMC. Also, as in *Heldref*, this divestment made preparation of the MCAT, AMCAS, and ERAS the activity of AAMC; the member institutions did not retain or exercise control over these projects. *See Heldref*, 766 A.2d at 34 (“Those educational institutions may be chief beneficiaries of the Foundation’s willingness and ability to [publish academic periodicals] But such facts do not make *Heldref* publications the activities of colleges and universities, because those institutions do not retain or exercise direction or control over their publication.”). There is no evidence that the member institutions retained control over the drafting, publication, or maintenance of the MCAT, AMCAS, or ERAS. Even if employees or other officials of the member institutions assisted in those publications, this would be insufficient to show that the work necessary to complete the MCAT, AMCAS, or ERAS is the activity of the member institutions. *See Heldref*, 766 A.2d at 34 (faculty members from schools serving “critical editorial functions” for publications produced by the Foundation did not transform the Foundation’s activities into those of the colleges and universities). Thus, the Court finds that AAMC does not administer the activities of the member institutions; its work on behalf of its member institutions is now properly considered the work of AAMC, just as the publication activities in *Heldref* were solely those of the Foundation.

This alone would not be fatal to AAMC's claim. As alluded to in *Heldref* and *Conference of Major Religious Superiors of Women*, if the member institutions retained some significant control over AAMC, the activities of AAMC could still be considered the activities of the member institutions. However, the Court cannot find that the member institutions retained any significant control over AAMC. If member institutions direct or control the organization seeking tax exempt status, the member institutions may be considered to have retained indirect control of their activities. See *Heldref*, 766 A.2d at 35 (“Nor do those institutions direct or control the Foundation itself, which would be another way for the publications of the Foundation to constitution, indirectly, their activities.”). While this is a closer question, the Court again must find that the member institutions did not assert any significant direction or control over AAMC. The Board manages the affairs of AAMC. It is charged with management of property and financial affairs of AAMC. While the three Councils make the proposals for membership, it is ultimately the Board that votes on membership status. The Assembly's powers are limited to removal of a Board member, modification of the dues structure (upon recommendation by the Board), amendment of the bylaws, and any other matters the Board deems appropriate. The record reflects that the Board chooses its own membership and controls most of AAMC's activities, while the Assembly's ability to influence policy is restricted. While this is appreciably more control than exerted by the colleges and universities in *Heldref*,² this level of control is insufficient. The selection process is performed through the Nominating Committee, of which the members are chosen by the Board. The current structure allows the Board to run AAMC without constraint by limiting access to who may join the Board and preventing the Assembly's direct involvement over the Board's activities; the members only have direct control of six ex

² In *Heldref*, the only evidence of control was the participation by academics associated with the colleges and universities in “critical editorial functions.” 766 A.2d at 34.

officio Board members, of which they are further limited because they may only pick a chair and chair-elect for their Council to serve on the Board. Finally, three of the voting members on the Board are not affiliated with the member institutions and are selected solely by the Board: one medical student, one resident physician, and one member of the public. The Board is essentially an independent entity, with the majority of the Board selected by the Board itself, not by the member institutions. Thus, the members do not directly elect any members of the Board, and only have divided control over six of the seventeen members. Even though the structure of the Board may provide some level of participation by members, by restricting the power of the member institutions to a point where they do not have meaningful input, the member institutions cannot be said to have retained significant direction or control. That the Assembly has the authority to remove a member of the Board is of little import: it is the Board that selects its members, there is no direct election of Board members by the Assembly, and the Assembly can only remove a member of the Board after that member has already been selected.

AAMC's structure and activities indicate that AAMC acts more like an independent institution, similar to the Foundation in *Heldref*, than a mere administrator, coordinator, or unifier organization contemplated under D.C. Code § 47-1002(17). It is not the members, but the Board, that has control over the activities of AAMC, and the member institutions provide minimal oversight over AAMC. Without this supervision, AAMC cannot claim that the member institutions retained at least some significant direction or control over the activities of AAMC and thus cannot satisfy the first prong of *Heldref*. Therefore, AAMC is not entitled to an exemption under D.C. Code § 47-1002(17).

b. Whether the Member Institutions or Organizations are Entitled to Real Property Exemptions Under District of Columbia Law.

Even if the Court agreed that the member institutions of AAMC did have significant direction and control over AAMC, the Court finds that the current membership is fatal to Petitioner's argument. The second element of *Heldref* requires that all members qualify under D.C. Code § 47-1002(17) for tax-exempt status. Although seven teaching hospitals and one academic society do not qualify for tax-exempt status, AAMC pleads for a de minimus exception. AAMC argues that these for-profit organizations were once nonprofits and that they continue to offer the same teaching and charitable work as they did prior to their change in status.

To support the de minimis request, AAMC relies on an IRS interpretation from 1985 that permitted AAMC to keep its tax exempt status even though a few members had become nonprofits. Tax exemption under 26 U.S.C. § 501(c)(3), however, does not provide the basis for tax exempt status under the District's property tax laws. *See Heldref*, 766 A.2d at 32 (quoting *Nat'l Medical Ass'n v. District of Columbia*, 611 A.2d 53, 56 (D.C. 1992)) (finding that a separate analysis is necessary even though an organization received tax exempt status under 26 U.S.C. § 501(c)(3) and District of Columbia sales and use taxes because "each type of tax has its own 'independent and distinct criteria for exemption.'"). The statute does not provide any exceptions; the language clearly states that the organization must be one that manages the activities "of institutions or organizations entitled to exemption under other the provisions of §§ 47-1002, 47-1005, and 47-1007 to 47-1010." D.C. Code § 47-1002(17). Prior cases required that all members qualified for tax exemption status. *See Conference of Major Religious Superiors of Women*, 348 F.2d at 786 ("A prima facie showing was thus made that these communities would be individually entitled to exemption under D.C. Code § 47-801a(n)(1961) as 'religious corporations or societies.'"). As the Court previously noted, the construction of

D.C. Code § 47-1002(17) must be tied closely to the specific language of the statute. *See supra* Section III.a; *accord Heldref*, 766 A.2d. at 35.

Although the activities of these specific teaching hospitals and academic society have not changed, the statute does not provide an exception and instead requires that all member organizations be tax exempt. Therefore, AAMC does not satisfy the second prong of *Heldref* and cannot be entitled to an exemption under D.C. Code § 47-1002(17).

c. Whether the Subject Property Will be Used as AAMC's Administrative Headquarters.

AAMC alleges that it intends to use the Subject Property as its administrative headquarters. The District argues that the Subject Property fails to meet this standard because AAMC held thirty-nine out of seventy-five events at this location during the relevant time period; thus, because just over half of AAMC's events were held at the Subject Property, AAMC cannot claim that the Subject Property will serve as its administrative headquarters. This issue represents a genuine issue of material fact. However, because the Court finds that AAMC has failed to satisfy prongs (a) and (b) of the *Heldref* analysis, the Court does not need to review this element.

IV. CONCLUSION

AAMC provides useful services to its member institutions, which include medical schools, teaching hospitals, and academic and scientific institutions. However, because AAMC's structure fails to comply with the strict requirements outlined in D.C. Code § 47-1002(17) and *Heldref*, the Court cannot find that it is entitled to a real property tax exemption for real property located at 616 New York Avenue, NW, Washington, D.C. 20001. AAMC's member institutions failed to retain significant direction or control over AAMC, and AAMC's membership includes nonexempt members. Therefore, the Court finds that AAMC is not

entitled to tax exempt status under D.C. Code § 47-1002(17) or D.C. Code § 47-1002(18). Because AAMC has only outlined a claim for relief under D.C. Code § 47-1002(17) and D.C. Code § 47-1002(18), this matter is closed.

WHEREFORE, it is this 8th day of June, 2015,

ORDERED, that Respondent's *Motion to Dismiss or, in the Alternative, for Summary Judgment* is **GRANTED**; and it is

FURTHER ORDERED, that Petitioner's *Cross-Motion for Summary Judgment* is **DENIED**; and it is

FURTHER ORDERED, that Petitioner American Association of Medical Colleges is not entitled to a real property tax exemption under D.C. Code § 47-1002(17) (2012); and it is

FURTHER ORDERED, that this case is **CLOSED**.

SO ORDERED.



ERIK P. CHRISTIAN
J U D G E
(Signed-in-Chambers)

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