

Case Brief: Chapel Hill School Ltd v. Attorney General & Commissioner, Internal Revenue Service

Citation: [2009] J4/25/2009

Date: 22nd July 2009

Court: Supreme Court of Ghana

Coram: Atuguba JSC (Presiding), Akuffo (Ms) JSC, Dr. Date-Bah JSC (Lead), Owusu (Ms) JSC, Baffoe-Bonnie JSC

Flynote

Tax Law — *Income Tax* — **Exempt Income** — **Educational Institution of a Public Character** — *Meaning of "Public Character"* — *Whether a school limited by guarantee is exempt from income tax* — *Effect of conversion from a company limited by guarantee to a company limited by shares* — **Statutory Interpretation** — *Section 3(1)(d) of SMCD 5 and Section 10(1)(d) of Act 592.*

Facts

The Appellant, Chapel Hill School, was originally established as a company limited by guarantee (a non-profit entity). Under this structure, it operated as an educational institution where no profits were distributed to individuals, but were instead reinvested into the school. In 2001, the school was converted into a company limited by shares (a for-profit entity).

The Commissioner of the Internal Revenue Service (IRS) assessed the school for income tax. The Appellant challenged this, claiming it was an "educational institution of a public character" and therefore exempt from tax under the prevailing laws. The High Court and Court of Appeal ruled against the school, equating "public character" with being a "public school" (government-owned). The school appealed to the Supreme Court.

Issues

1. What is the legal meaning of the expression "**educational institution of a public character**" in the context of Ghanaian tax law?
 2. Whether the Appellant qualified for tax exemption during the period it was a company limited by guarantee.
 3. Whether the conversion to a company limited by shares in 2001 changed its tax status.
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Held (Judgment)

The Supreme Court **upheld the appeal in part.**

- **Definition of "Public Character":** The Court held that "public character" does not mean "government-owned" or "public school." Instead, it refers to the **nature of the entity's objects and the destination of its profits**. If an institution's primary object is education and its profits cannot be distributed to private individuals (private gain), it is of a "public character."
- **Exemption for Guarantee Companies:** The Court ruled that while the Appellant was a company limited by guarantee, it was indeed an educational institution of a public character because its regulations prohibited the distribution of profits to members. Therefore, it was exempt from income tax during that period.
- **Loss of Status upon Conversion:** The Court held that the moment the school converted to a company limited by shares in 2001, it **ceased** to be of a public character. As a limited liability company by shares, its profits became available for distribution to shareholders, making it a private profit-making venture.

Relevant Legal Provisions Considered

Statutory Provisions:

- **Income Tax Decree, 1975 (SMCD 5), Section 3(1)(d):** Exempted the income of an educational institution of a public character from tax.
- **Internal Revenue Act, 2000 (Act 592), Section 10(1)(d):** (Later Section 94) Maintained the exemption for educational institutions of a public character provided the income is used for the objects of the institution.
- **Companies Act, 1963 (Act 179):** Regarding the distinction between companies limited by guarantee (non-profit) and companies limited by shares (profit-oriented).

Key Principles:

- **The "Destination of Income" Test:** Determining tax status based on whether funds are locked into the public purpose (education) or available for private extraction.
- **Statutory Purpose:** The law intends to encourage education by exempting institutions that do not operate for private profit.