Published January 28, 2008 08:53 pm - The state's definition of a nonprofit needs to be updated.

My View: Legislature should revisit nonproft law

By Tony Filipovitch

One of my favorite Yiddish stories is about a rabbi who was counseling a married couple who were quarreling. His assistant overheard him assuring each one separately, “Of course, you are right.” So the assistant questioned the rabbi afterwards, “I heard you say that each was right, but that cannot be!” “You know,” replied the rabbi, “you are right!”

The Minnesota Supreme Court filed a ruling on Dec. 6 in the case of Rainbow Child Care Centers vs. Goodhue County. Writing for the majority, Chief Justice Russell Anderson found that if a nonprofit organization does not provide goods or services free (or at considerably reduced rates), it should not be exempt from property taxes. Justice Sam Hanson, writing the dissent, argued that free (or substantially reduced) provision of goods and services should not be the determinant for nonprofit property tax exemption. And they both are right.

Anderson pointed out that the property tax exemption for nonprofits is restricted by state statute to “institutions of pure public charity” (along with other institutions, like public schools, public hospitals, colleges and universities, churches and houses of worship). Based on a 1965 Minnesota Supreme Court statement that “(c)harity is broadly defined as a gift…,” the chief justice argues that not all charitable nonprofits (as the term is used by the IRS) are “pure public charities”; for that to happen, the organization must give something away. A worthwhile purpose, even on a nonprofit basis, is not sufficient by itself. The opinion goes on to explain that the gift does not have to be entirely free; where a fee is charged, a “substantially reduced” fee for recipients of charity would qualify.

Hanson, on the other hand, argued that it is the purposes that make an institution purely charitable, even if the services are provided for a fee. As happened in this case (child care provider in Red Wing), often there are no comparable “for-profit” competitors to establish a basis for determining whether a fee is “substantially reduced” from a fair-market price.

The chief justice makes a good point — the Legislature used language that targeted only certain ones of the “charitable” organizations listed in the IRS Code Section 501(c)3. In addition to public charities, the IRS code includes religious and educational institutions (which are listed separately in the statute), along with institutions which focus on science, public safety testing, literature and the arts, and preventing cruelty to children or animals. If we as a state wish to provide property tax exemptions for, say, an animal shelter run by a Humane Society, perhaps the problem lies with the Legislature and not the court.

But Hanson has a point, too. If “charity” is broadly defined as a gift, this is not the same as requiring that the gift be to the end-user of the service. An art museum, for example, receives the art on display as a gift (either as a donated object or as funds donated to enable purchase of an object), and the community shares equally in that gift even if there is an admission fee. One could make a similar case for an animal shelter — the community provides gifts to the shelter to feed and care for the animals, even if the end user (the adopting family) pays a fee for the animal they take home.

Hanson also has a point when he argues that a test for “substantially reduced fees” is rarely straightforward. In the case of Rainbow Child Care Center, there were only two other child care centers in the city (and there were significant differences between them and the program provided at Rainbow), and they also were both nonprofits. There was no “fair-market” price that could be determined in this case since there was no private market.

A study by the Minnesota Council on Foundations in the 1990s found that, even in cases where there is a mixed market (for-profit and nonprofit provision), the mix of services and programs are almost always significantly different between the two sectors. For example, Mankato’s Envision 2020 called for “creating a space for the arts community.” Should the Carnegie and the Amy Frentz Arts Centers be treated as the other office buildings downtown, or as “pure public charities”?

The property tax exemption for nonprofits goes back to the time when almost all of the nonprofits were churches or church-affiliated (or at least, that was the fiction). But times have changed, and our policies have not necessarily kept pace. Much of greater Mankato’s Envision 2020 calls on the region’s nonprofits to foster and enhance the quality of life that we enjoy in common, since our local governments increasingly are stretched just to provide basic services. If we are going to continue to rely on the nonprofit sector for “quality of life” issues, we must demand that the Legislature revisit the law and state our intentions more carefully.

*Tony Filipovitch is a professor of urban studies at Minnesota State University and teaches and publishes research in nonprofit leadership and management.*

Available online at <http://www.mankato-freepress.com/letters/local_story_028205352.html?keyword=topstory>