2016 IL App (2d) 151271-U
No. 2-15-1271
Order filed September 19, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WHEATON DRAMA, INC.,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-MR-1409
	)	
THE DEPARTMENT OF REVENUE OF	)	
THE STATE OF ILLINOIS,	)	Honorable
	)	Bonnie M. Wheaton,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: It was not clearly erroneous for the Department of Revenue to determine that Wheaton Drama was not entitled to a property tax exemption from 2012 real estate taxes under section 15-65 of the Property Tax Code (35 ILCS 200/15-65 (West 2012)), because it was not an institution of public charity and its property was not exclusively used for charitable purposes. Accordingly, we affirmed the circuit court's ruling affirming the Department's decision.

¶ 2 Plaintiff, Wheaton Drama, Inc., appeals from the trial court's order affirming the administrative decision of defendant, the Department of Revenue (Department), denying Wheaton Drama's request for a property tax exemption from 2012 real estate taxes. On appeal, Wheaton Drama argues that the Department erred in ruling that it did not meet the requirements

of section 15-65(a) of the Property Tax Code (35 ILCS 200/15-65(a) (West 2012)) in that it was not a charitable organization and did not use the property exclusively for charitable purposes. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Wheaton Drama owns a theater located at 111 N. Hale Street in Wheaton. On June 7, 2012, Wheaton Drama filed a petition with the Du Page County Board of Review for a non-homestead property tax exemption from 2012 real estate taxes. On July 27, 2012, the Du Page County Board of Review forwarded the application to the Department with the recommendation to deny it. On September 20, 2012, the Department denied the property tax exemption on the basis that the property was not in "exempt ownership" or "exempt use." On November 16, 2012, Wheaton Drama filed an application for a hearing before the Department, pursuant to section 8-35 of the Property Tax Code (35 ILCS 200/8-35 (West 2012)).

¶ 5 An administrative hearing took place on December 17, 2013. There were two witnesses: James Van De Velde, who joined Wheaton Drama in 2004 and served as its president from 2011 to June 2013, and Eileen Gilligan, the organization's treasurer, who joined the group in 2006. The following evidence was adduced.

¶ 6 Wheaton Drama acquired its theater in 1996. The building's main floor consisted of a lobby, restrooms, and a 174-seat theater. The lower level had restrooms, a storage area, and a makeup room. Wheaton Drama was a successor to the "Wheaton Drama Club, Inc.," which was incorporated as a non-profit organization in 1965. Its stated purpose was:

> "to cultivate an interest in dramatic literature and dramatic technique by the presentation of informal readings of plays at regular or special meetings of the Club, and by the production of memorized and fully-staged theatricals for the public at such time as the

> Board of Directors, with the consent of the majority of the members, may deem feasible. The organization [was] not for individual pecuniary profit."

In March 1967, an article of amendment changed the last sentence to add that the organization was "formed exclusively for literary purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954." In 1991, the organization changed its name from Wheaton Drama Club, Inc., to its current name. Wheaton Drama was exempt from income and sales tax.

¶ 7 Wheaton Drama's purpose had not altered from the time it was originally incorporated. It had no shareholders and no stock, and none of its officers were compensated. Anyone could audition for the plays, and anyone could also get involved with set design, set construction, costumes, sound and lighting, and tickets. No one was compensated, but everyone had to be a member to participate in the production due to "insurance issues." Wheaton Drama operated under written bylaws that were in existence since at least 2004. The bylaws gave the Board of Governors the authority to adopt membership fees and dues, and the discretion to vary the fees. Membership was open to the public and currently cost $20 per year. Van De Velde did not recall any fee waivers in 2012, but he did recall times when others had paid the fees for people who wanted to join but could not afford it.

¶ 8 Wheaton Drama put on five major stage productions per year. Normal productions were four performances per week for four weeks. The first Thursday of the opening weekend was a dress rehearsal or "preview" performance. In 2012, Wheaton Drama sent letters to four organizations, consisting of retirement homes and a homeless shelter for veterans, inviting them to attend the first Thursdays free of charge. That year, 329 guests attended for free; their tickets would have otherwise cost $6,132.

¶ 9 Admission was generally $18 or $19 for a Thursday show. For shows on Fridays,

Saturdays, and Sundays, Wheaton Drama charged $20 for a play and $22 for a musical. The ticket prices were based on the cost to put on the production, such as set construction, costume rental, royalties to perform the plays, and the general operating costs of the theater. There was no advertised ticket waiver policy. Gilligan recalled one instance when a student came in asking if there was a student ticket rate. When he learned that there was no such rate, he began to leave. Gilligan let him in free of charge "because it wasn't a sold-out show." She testified that people would sometimes call and ask if there was a lower ticket price. The theater would say that it did not have a lower ticket price. However, if the caller "gave us a story and told us why[,] *** [Wheaton Drama] would just allow it." The bylaws provided that "[i]n the case of financial hardship, the Board [of Governors] shall waive payment of any performance ticket charges upon request."

¶ 10 Wheaton Drama offered week-long summer workshops for high school students and children to learn acting, dance, and "voice and self confidence." There was a $95 fee, and under "a very informal policy," it was waived for families that could not afford it. High school students could also help with the children's workshops and receive reduced tuition to attend the high school class. Over 90 children attended annually. Wheaton Drama provided two scholarships per year to area high schools, one for $1,000 and one for $500.

¶ 11 Wheaton Drama further provided a Santa Claus and Mrs. Claus for the annual Wheaton parade and participated in other parades and activities with the chamber of commerce. It donated tickets to community groups totaling $1,128 in 2012. It lent various organizations props, lighting equipment, and costumes, and it additionally donated props and costumes to a nonprofit resale store.

¶ 12 Wheaton Drama operated on a fiscal year, so its 2012 tax return was for the period of

July 1, 2011, to June 30, 2012. The form listed "Total revenue" as $150,520 and "Related or exempt function revenue" as $126,550. The latter revenue was derived from ticket sales, the children's workshops, playbill advertising, membership dues, and "miscellaneous." Wheaton Drama received $22,773 in contributions. The form listed "Total expenses" as $204,436 and "Program service expenses" as $191,545.

¶ 13 Another tax return covered the period of July 1, 2012, to June 30, 2013. The form listed Wheaton Drama's total revenues as $249,099 and "Related or exempt function revenue" as $222,137. Wheaton Drama received $25,285 in contributions. The form listed "Total expenses" as $232,505 and "Program service expenses" as $210,234. The organization used surplus funds to repair the theater and/or make additional mortgage payments.

¶ 14 On August 8, 2014, the administrative law judge recommended affirming the denial of the exemption. We summarize the relevant portions of his recommendation. The study and promotion of theatrical arts were not endeavors that Illinois courts inherently recognize as charitable. Also, the words "charity" or "charitable" were not in Wheaton Drama's articles of incorporation or in its "mission or most significant activities" as described in its federal "Return of Organization Exempt from Income Tax." Section 15-65 required that a property be exclusively used for charitable purposes in order to qualify for an exemption. An exclusively charitable purpose was not interpreted as the entity's sole purpose, but it did need to be its primary purpose, as opposed to a merely incidental or secondary purpose or effect. Wheaton Drama may have provided some charity in 2012, but it appeared to be secondary or incidental to Wheaton Drama's main purpose, which was the study and promotion of theatrical arts.

¶ 15 Wheaton Drama was a membership-based organization with its members apparently joining because of their mutual interest in the theater, not to assist in the dispensation of charity.

The organization's benefits primarily flowed to its members rather than the public, and in such situations, an exemption will be denied. The only benefit discernible to the local community from Wheaton Drama's activities was that the public could buy a ticket to the theater and enjoy a performance, similar to enjoying a performance from a for-profit, property tax-paying theater. Wheaton Drama's bylaws stated that membership fees could be waived, but Van De Velde was not aware of any waivers in 2012. His statement that others would sometimes step forward and pay the fee would require attributing the act of charity to the individuals paying, as opposed to Wheaton Drama.

¶ 16 The administrative law judge additionally stated as follows. Looking at the relevant factors under *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149 (1968), the factors favoring Wheaton Drama were that it did not have shareholders, did not issue capital stock, did not compensate officers, and did not provide financial profit or gain to anyone connected with it. However, the majority of its funds were not derived from public and private charity, but rather from people paying for its services. In 2012, it obtained 83% to 87% of its revenue from customers paying Wheaton Drama for membership in the organization, to attend a performance, or to enroll in the children's program. Further, revenue exceeded expenses by $16,594 for the period ending June 30, 2013, and excessive revenue was used to make additional mortgage payments on the theater or pay for its upkeep, as opposed to providing more charity. Wheaton Drama also placed obstacles in the way of those who would otherwise avail themselves of its charitable benefits, as it did not have an advertised fee waiver or ticket waiver policy and relied on people to ask and provide a " 'story.' " Wheaton Drama staged five productions per year, and it invited residents of some senior centers to the first Thursday night performance of each play. However, the invitations did not clearly express that the admission would be free; it was not

clear that the residents in the institutions were in need of charity; and, at best, Wheaton Drama dispensed charity on five days a year to 66 patrons in its 174-seat theater. The administrative law judge concluded that Wheaton Drama did not possess sufficient distinctive characteristics of a charitable institution and that its property was not used primarily for charitable purposes.

¶ 17 On August 22, 2014, the Department notified Wheaton Drama that it had accepted the administrative law judge's recommendation. On September 22, 2014, Wheaton Drama filed a complaint for administrative review in the circuit court. The circuit court affirmed the Department's ruling on December 3, 2015. Wheaton Drama timely appealed.

¶ 18 II. ANALYSIS

¶ 19 We begin by setting forth the standard of review. In an appeal to the appellate court following the decision by a circuit court on administrative review, we review the decision of the administrative agency rather than the circuit court's judgment. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010). When the parties dispute an administrative agency's factual findings, we apply a manifest weight of the evidence standard. *Id.* at 387. Where the dispute is an agency's conclusion on a point of law, we review the agency's decision *de novo*. *Id.* An intermediate standard applies for mixed questions of law and fact, which occurs where the dispute pertains to the legal effects of a set of facts, which is the situation here. *Hanks v. Illinois Department of Healthcare & Family Services*, 2015 IL App (1st) 132847, ¶ 19. More specifically, a mixed question of law and fact is present "where the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard." *Provena Covenant Medical Center*, 236 Ill. 2d at 387. We review mixed questions of law and fact for clear error. *Id.* An agency's decision is clearly erroneous only where the reviewing court is left with a definite and firm conviction that the

agency committed a mistake. *Id.* at 387-88. The clearly erroneous standard is considerably deferential. *Id.* at 387.

¶ 20 Section 6 of article IX of the Illinois Constitution allows the legislature to exempt property from taxation if, among other things, it is "used exclusively for *** charitable purposes." Ill. Const. 1970, art. IX, § 6. Thus, "[c]haritable use is a *constitutional* requirement." (Emphasis in original.) *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill. 2d 273, 287 (2004). The legislature used its power to exempt certain property from taxation in section 15-65 of the Property Tax Code, specifically property that is "actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit." 35 ILCS 200/15-65 (West 2012). This requirement is derived from the constitutional requirement, but section 15-65 further requires, as relevant here, that the organization be an "[i]nstitution[] of public charity." 35 ILCS 200/15-65(a) (West 2012). Property tax exemption statutes are to be strictly construed in favor of taxation, and the person asserting the exemption has the burden of proving by clear and convincing evidence that the property's use is within both the constitutional authorization and the terms of the relevant statute. *Provena Covenant Medical Center*, 236 Ill. 2d at 387-88.

¶ 21 The central issue in this case is whether the Department's determination, that Wheaton Drama did not meet its burden of proving that it is an institution of public charity and that its property was exclusively used for charitable purposes, was clearly erroneous. A charitable institution is " 'one which dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the

charitable benefits it dispenses.' " *Willows v. Munson*, 43 Ill. 2d 203, 208 (1969) (quoting *Korzen*, 39 Ill. 2d at 157).

¶ 22 In *Korzen*, our supreme court articulated characteristics for determining whether an organization is a charitable institution (*Provena Covenant Medical Center*, 236 Ill. 2d at 390 (citing *Korzen*, 39 Ill. 2d at 156-57)) and whether property is used for charitable purposes (*Eden Retirement Center, Inc.*, 213 Ill. 2d at 287 (citing *Korzen*, 39 Ill. 2d at 156-57)). See also *Riverside Medical Center v. Department of Revenue*, 342 Ill. App. 3d 603, 607 (2003) (applying *Korzen* factors to determine whether organization "was eligible for a property tax exemption under section 15-65"). The criteria, as restated by the supreme court in *Eden Retirement Center*, are as follows: (1) the charity benefits an indefinite number of people for their general welfare or by reducing the government's burdens; (2) the organization does not have any capital, capital stock, or shareholders, and it does not profit from the enterprise; (3) the funds are derived largely from public and private charity, and the organization holds the funds in trust for the purposes expressed in the organization's charter; (4) charity is dispensed to all who need it and apply for it; (5) there are no obstacles placed in the way of people seeking benefits; and (6) the exclusive, *i.e.*, primary, use of the property is for charitable purposes. *Eden Retirement Center, Inc.*, 213 Ill. 2d at 287 (citing *Korzen*, 39 Ill. 2d at 156-57).

¶ 23 Regarding the last criteria, section 15-65 requires that the property is "actually and exclusively used for charitable or beneficent purposes." 35 ILCS 200/15-65 (West 2012). This phrase means that the property must primarily be used for charitable purposes, as opposed to secondary or incidental charitable benefits. *Provena Covenant Medical Center*, 236 Ill. 2d at 394. In reference to all criteria, our supreme court has defined charity as " 'a gift to be applied *** for an indefinite number of persons, persuading them to an educational or religious

conviction, for their general welfare, or in some way reducing the burdens of government.' " *Provena Covenant Medical Center*, 236 Ill. 2d at 390 (quoting *Korzen*, 39 Ill. 2d at 156-57). The *Korzen* factors are guidelines as opposed to definitive requirements. *Arts Club of Chicago v. Department of Revenue*, 334 Ill. App. 3d 235, 243 (2002).

¶ 24 Wheaton Drama argues that the Department erred in finding that it is not a charitable organization eligible for tax exempt status under section 15-65. Wheaton Drama argues that, in particular, the Department incorrectly stated that the study and promotion of theatrical arts is not inherently charitable. Wheaton Drama cites *Resurrection Lutheran Church v. Department of Revenue*, 212 Ill. App. 3d 964, 967, 973 (1991) (organization primarily used the property for charitable purposes where it presented contemporary dance works, conducted classes in modern dance, offered up to 44 complimentary tickets out of 140 for performances, and offered benefits to 13,000 to 15,000 people each year); *Highland Park Women's Club v. Department of Revenue*, 206 Ill. App. 3d 447, 464 (1990) (the Department had concluded that promotion of the arts was charitable where the organization put on performances, made them readily available to the public through low admission prices, and donated large numbers of tickets); and *Randolph Street Gallery v. Zehnder*, 315 Ill. App. 3d 1060, 1068 (2000) ("[P]ractically and symbolically integrating contemporary art and art education into the spectrum of community activities in a diverse and rebuilding neighborhood is charity."). Wheaton Drama notes that a part of the administrative code dealing with the retailers' occupation tax states that our supreme court has defined a charitable purpose as almost anything which promotes society's well-being, and that to qualify as a charity, the entity must be organized and operated to benefit an indefinite number of the public. 85 Ill. Admin. Code 130.2005(i)(2) (2000).

¶ 25 Wheaton Drama further argues that the Department erred in relying on the fact that it does not use the word "charity" in its mission statement. Wheaton Drama maintains that mission statement language is not dispositive of whether an organization is a charity. See *City of Chicago v. Severini*, 91 Ill. App. 3d 38, 43 (1980) (relying solely on a declaration in a certificate of incorporation that organization was a non-profit would elevate form over substance). Wheaton Drama contends that the Department also found that it did not use its funds to further charitable goals because it used net revenues to fund additional performances and pay down the theater's mortgage. Wheaton Drama argues that this position has also been rejected. See *Lena Community Trust Fund, Inc. v. Department of Revenue*, 322 Ill. App. 3d 884, 891 (2001) (organization could rent space to businesses and use the funds to offset maintenance expenses); *Lutheran General Health Care System v. Department of Revenue*, 231 Ill. App. 3d 652, 664 (1992) (fact that an institution charged fees for services from those who are able to pay does not preclude an exemption where the organization does not make a profit, and it used the funds to further its charitable purpose); *Resurrection Lutheran Church*, 212 Ill. App. 3d at 971-72 (a charitable organization did not lose its tax exempt status merely by charging fees, as long as it did not make a profit and all the funds were used to further its goals).

¶ 26 The Department points out that in determining whether the property is owned by a charity that puts the property to primarily charitable use, it is appropriate to consider the provisions of the organization's charter. *Rotary International v. Paschen*, 14 Ill. 2d 480, 488 (1958); *Rogers Park Post No. 108, American Legion v. Brenza*, 8 Ill. 2d 286, 291 (1956). The Department argues that Wheaton Drama's charter established that it has a "literary purpose" of cultivating an interest in dramatic literature and dramatic technique by presenting informal readings of plays or presenting staged shows. The Department maintains that although these goals are laudable, there

is nothing inherently charitable about such a purpose. *Cf. Rogers Park Post No. 108, American Legion*, 8 Ill. 2d at 291 (the organization's objectives, namely to foster love of country, respect for our civil institutions, and benefit and afford comradeship to its members, were laudable and patriotic but did not constitute charitable purposes). The Department argues that the administrative law judge concluded that Wheaton Drama was using the property for its meetings to read and produce plays, similar to the use of a private club. The Department contends that exemption cases addressing social clubs have made clear that if the primary benefits flow to the organization's member rather than the public, the exemption should be denied. See *Chicago Bar Ass'n v. Department of Revenue*, 163 Ill. 2d 290, 302 (1994) (concluding that the bar association was a professional organization whose headquarters served primarily as a place for its members to meet and dine); *Du Page Art League v. Department of Revenue*, 177 Ill. App. 3d 895, 901-02 (1988) ("While plaintiff does offer some programs to the public and, through its art gallery, the community may receive some benefits in the form of art appreciation and education, we conclude that these benefits are secondary and that plaintiff's primary purpose is to benefit its members."); *Rogers Park Post No. 108, American Legion*, 8 Ill. 2d at 291-92 ("It is apparent from the record before us that the dominant use to which real estate of plaintiff is put is that of a private club rather than a headquarters for the dispensation of charitable relief.").

¶ 27 We agree with Wheaton Drama that institutions for performing arts can qualify as charitable institutions; that such institutions are not required to use the word "charity" in their articles of incorporation and mission statements (though courts can consider the language used in such documents, as per *Rotary International* and *Rogers Park Post No. 108, American Legion*); and that charitable institutions can charge fees in many instances. However, we note that the administrative law judge did not rely solely on the aforementioned contested findings in arriving

at his conclusion that Wheaton Drama was not an institution of public charity and that its property was not primarily used for charitable purposes. Rather, the findings were a part of an examination of the case's facts as a whole. These considerations, as well as the Department's contention that Wheaton Drama primarily benefited its members rather than the public, are subsumed in our analysis of the *Korzen* factors, which we address next.

¶ 28 Wheaton Drama argues that it benefits an indefinite number of people, as required by the first *Korzen* factor. According to Wheaton Drama, the Department took the position that it did not satisfy this factor because it offered only opening weekend Thursday performances for free, implicitly concluding that it had to make every seat publically-available for free in order to serve an indefinite number of people. Wheaton Drama cites *Arts Club of Chicago*, 334 Ill. App. 3d at 244, where the Department argued that the organization did not benefit an indefinite number of people because only members and their guests could eat in the second floor dining room and host parties in the building. The appellate court disagreed, stating that the organization did not have to make every benefit it offered available to an indefinite number of people. *Id.* The court pointed out that the public could view the organization's art galleries six days a week free of charge. *Id.* at 238, 244. The organization also hosted lectures, concerts, and performances that were open to the public, with about half of the programming at no charge. *Id.* The remaining programs cost $10, but there was a fee waiver for those who told the attendant that they could not pay the fee. *Id.* at 238.

¶ 29 Wheaton Drama argues that, as in *Arts Club of Chicago*, its benefits are available to an indefinite number of people through its programs, performances, and classes, even if only members can participate in its productions and attend lectures for insurance reasons. Wheaton Drama argues that, even then, auditions are open to the public and anyone can become a member

for a nominal fee or at no charge. Wheaton Drama maintains that performances are also open to the public and are free every Thursday opening weekend.

¶ 30 The Department argues that the record shows that paid membership is required to participate in Wheaton Drama's activities and that its audiences generally pay for their tickets. The Department argues that this is consistent with the determination that organizational benefits flow primarily to the members and patrons. The Department maintains that those attending the shows do so not to dispense or receive charity, but rather to enjoy a performance, just as they would for a for-profit, property-tax paying theater. The Department asserts that, as Wheaton Drama's articles of incorporation reflect, its members gather to foster their mutual interest in the theatrical arts, which is distinct from the charitable giving purpose required by section 15-65(a). The Department argues that there is also nothing in the record to suggest that the tickets were sold for less than market value, so as to confer a benefit on the public, or that the theater patrons receiving free tickets to the dress rehearsals were in any particular need of charitable giving.

¶ 31 We conclude that the first *Korzen* factor weighs against Wheaton Drama's position. While the general public could audition for the productions and become members of Wheaton Drama, there was a $20 annual membership fee, and Van De Velde did not recall any fee waivers in 2012. He did recall times when others had paid the fees for people who wanted to join but could not afford it, which, as the administrative law judge pointed out, would not qualify as the organization providing charity. As far as the productions, Wheaton Drama invited a limited number of organizations to attend its dress rehearsal/preview night for free, and it did not open that invitation to the general public. Thus, it provided free shows to a restricted number of people on only five nights per year. Moreover, it is not clear from the record that it sold tickets to its dress rehearsals, so it may not have lost any ticket sales from the free viewings. For these

reasons, the instant case is readily distinguishable from *Arts Club of Chicago*, where the plaintiff allowed the public free access to its galleries six days per week and provided numerous free performances. *Arts Club of Chicago*, 334 Ill. App. 3d at 238, 244; see also *Albion Ruritan Club v. Department of Revenue*, 209 Ill. App. 3d 914, 918 (1991) (fact that organization's monthly meetings were not open to the general public, and that its property was not available for use by the general public, weighed against first factor).

¶ 32 It is undisputed that the second *Korzen* factor favors Wheaton Drama, in that Wheaton Drama does not have any capital, capital stock, or shareholders. Its officers are not compensated, and no part of the property is leased.

¶ 33 The third *Korzen* factor is whether the organization's funds are derived largely from public and private charity, and whether the organization holds the funds in trust for the purposes expressed in the organization's charter. *Eden Retirement Center, Inc.*, 213 Ill. 2d at 287. Wheaton Drama argues that the Department erred in finding that its funds were not derived from public and private charity, but instead from fees for services. Wheaton Drama cites *Lutheran General Health Care*, 231 Ill. App. 3d at 663, where the organization's funds were obtained primarily from fees for services, not charitable contributions or grants. The fees were used to pay the physicians' salaries, to lease a property, to purchase physicians' services, to fund research, and for other operational expenses. *Id.* at 664. The organization operated at a deficit, and if it were to generate a surplus, the money was to be used to supplement its research and educational activities. *Id.* The court stated: "We find that because the fees generated are used to further the Foundation's operations, the fact that its primary source of funding is not public or private charity does not require a conclusion that the Foundation is not a charitable enterprise." *Id.* Wheaton Drama further cites *Highland Park Women's Club*, 206 Ill. App. 3d at 454, which

stated that in 1985, the Ravinia Festival Association had receipts of about $4,157,000, including about $3,800,000 from ticket sales. It had operating expenses of $6,536,562, and the deficit was offset by about $2,265,000 in contributions and grants received that year and a transfer of about $120,000 from an endowment fund. *Id.* Wheaton Drama argues that despite the large sums of money generated from ticket sales and merchandise, we found that Ravinia met the *Korzen* guidelines. Last, Wheaton Drama cites *Randolph Street Gallery*, 315 Ill. App. 3d at 1067, where the court stated that most of the organization's revenue came from grants and contributions, and its admission-fee income was negligible.

¶ 34 Wheaton Drama argues that the law is clear that payment for services does not rob an organization of its tax exempt status. It argues that it obtains 83% of its revenue from program services, 3% from membership fees, and 15% from contributions and grants. Wheaton Drama points to testimony that ticket prices are based on a show's cost, in order to break even. According to Wheaton Drama, the Department improperly focused on percentages of revenue received from charitable contributions and grants, instead of looking to how it used its funds. Wheaton Drama asserts that not only does it operate at a deficit, it uses any surplus to pay its operating expenses and pay the mortgage in order to have a space to provide its public performances.

¶ 35 Wheaton Drama's case citations do not undermine the fact that the third *Korzen* factor specifically addresses whether funds are derived largely from public and private charity. See *Du Page Art League*, 177 Ill. App. 3d at 901 (the primary focus for whether an organization is a charity is how it uses funds, but the source of funds is also a factor). Here, according to Wheaton Drama's own figures, it obtains only 15% of its funds from contributions and grants, meaning that this factor weighs against a finding that the property is used for charitable purposes.

Lutheran General Health Care stands only for the proposition that the fact that an organization derives most of its fees from services does not mean that it cannot be a charitable organization; the case does not undermine the plain language of the third *Korzen* factor. In *Highland Park Women's Club*, the Department gave Ravinia an exemption for all of its property with the exception of the parts containing the gift shop, concession stands, and restaurants. *Highland Park Women's Club*, 206 Ill. App. 3d at 456. The court ultimately concluded, "Since the primary use of the Ravinia Park parcel is a charitable use [which the Department had already determined], the entire parcel is exempt, including the portions containing the food facilities and the gift shop." *Id.* at 465. Thus, the context of the case was quite different, and the court did not discuss the application of the individual *Korzen* factors. Moreover, about 35% of Ravinia's 1985 operating expenses were funded through contributions and grants (*id.* at 454), which is more than double the percentage that Wheaton Drama received. Last, in *Randolph Street Gallery*, 315 Ill. App. 3d at 1067, most of the organization's revenue came from grants and contributions.

¶ 36 We consider the fourth and fifth *Korzen* factors together, those being whether charity is dispensed to all who need it and apply for it and whether there are obstacles placed in the way of people seeking benefits. Wheaton Drama argues that the Department found that it put up obstacles to receiving its services because it did not advertise its fee-waiver policy or its free first Thursday performances; people had to notify the organization that they could not pay the full ticket price before free tickets were given; and there was no testimony that costs were waived in 2012. Wheaton Drama argues that case law holds that the failure to advertise a fee-waiver policy is not fatal to an institution's charitable status. See *Randolph Street Gallery*, 315 Ill. App. 3d at 1068 (organization's failure to advertise a pay-as-you-can policy did not "add up to" an obstacle for those seeking benefits, because the organization's admission-fee income was substantially

less than its operating expenses, and because it had a consistent fee-waiver policy); *Highland Park Women's Club*, 206 Ill. App. 3d 447 (Ravinia offered free lawn admissions to certain events through an opportunity program, but its advertising did not mention the program). Wheaton Drama argues that the very existence of its fee waiver policy defeats the argument that it placed obstacles to benefits. Wheaton Drama maintains that its officers testified to instances where people expressed an inability to pay and were exempted from membership fees and/or ticket charges. According to Wheaton Drama, requiring notification of an inability to pay is not an obstacle. See *Arts Club of Chicago*, 334 Ill. App. 3d at 238 (finding organization was entitled to a charitable exemption, even though it required people to ask the door attendant for a fee waiver for paid programming).

¶ 37 We conclude that the fourth and fifth factors weigh against a finding that Wheaton Drama is a charitable institution and that its property is used for charitable purposes. There was a $20 membership fee for the organization, and although Wheaton Drama's bylaws gave its board discretion to vary fees, Van De Velde did not recall any fee waivers in 2012. He remembered other members paying the fees for individuals unable to pay the fee, but, as stated, such charity would not be coming from Wheaton Drama. The bylaws also stated that ticket charges would be waived upon request if there was financial hardship. However, there was no mechanism for the pubic to be alerted to this allowance. *Cf. Riverside Medical Center*, 342 Ill. App. 3d at 608 (considering lack of advertising that organization proved charity care to weigh against organization); *Institute of Gas Technology v. Department of Revenue*, 289 Ill. App. 3d 779, 788 (1997) (there were obstacles to benefits where reduced fee provisions were not contained in course schedules, applications or contracts). Instead, according to Gilligan, if people asked about a lower ticket price the theater would say that it did not have one, and only if someone

gave a "story" was that person given a free ticket. Requiring that an individual in need of charity to proactively supply a "story" is clearly an obstacle. In the case of the student that Gilligan let in for free, she testified that she did so partially because it was not a sold-out show. Moreover, as discussed, the free Thursday night shows were offered only to a few organizations a few times per year, and it was not clear that Wheaton Drama would have otherwise sold tickets for that night.

¶ 38 It is true that the failure to advertise a fee-waiver policy will not, alone, prevent an organization from qualifying as a charitable institution. However, in *Randolph Street Gallery*, 315 Ill. App. 3d at 1067-68, the court did not find the lack of such advertising significant because the organization's admission-fee income was "negligible" and substantially less than its operating expenses, and because it had a consistent fee-waiver policy. Here, in contrast, the vast majority of Wheaton Drama's income was derived from tickets and fee-based programs. Moreover, requiring a "story" and/or a non-sold out show for free admission cannot be viewed as a consistent fee-waiver policy, regardless of the language used in the bylaws. *Highland Park Women's Club* is distinguishable because the Department had already concluded that most of the property was exempt. Moreover, Ravinia had an entire program devoted to providing free tickets to needy citizens, and in 1985 its tickets were distributed among 162 agencies. *Highland Park Women's Club*, 206 Ill. App. 3d 454. In *Arts Club of Chicago*, 334 Ill. App. 3d at 238, the organization required people to ask for a fee waiver for paid programming, but, unlike here, about half of its programs were free, and its galleries were free and open to the public six days per week.

¶ 39 The sixth *Korzen* factor is whether the exclusive or primary use of the property is for charitable purposes. Wheaton Drama argues it does not solely benefit its members. It argues

that the theater is primarily used for a charitable purpose, namely the promotion of the dramatic and performing arts in the community. It argues that anyone can become a member and that nonmembers can also attend arts workshops at the theater. Wheaton Drama further argues that this case in similar to *Arts Club of Chicago*, in that it: provides workshops to children in the community for a waivable fee; provides children scholarships and internships in production and design; allows anyone to become a member and participate in plays; and bases admission prices on the cost of producing the performance rather than for the purpose of making a profit. Wheaton Drama maintains that even the time allocated to members-only activities like workshops and participating in performances is for its stated purpose of promoting and fostering an interest in the arts in the community. Wheaton Drama contends that although the Department focused on the amount of revenue it received from ticket sales as compared to the dollar value of free tickets in finding that Wheaton Drama did not provide enough charity, for fiscal years 2011 and 2012, about 4.9% of all tickets were free. Wheaton Drama argues that in *Highland Park Women's Club*, Ravinia gave out about 9,691 free admissions out of 430,000 attendees in 1985, resulting in only 2.2% of its tickets being free. Wheaton Drama also argues that property can be used primarily for charitable purposes without lessening the government's burden (see *Randolph*, 315 Ill. App. 3d at 1069 (a charitable purpose may refer to almost anything that promotes society's well-being)) and that, even otherwise, it lessens the government's burden by providing students with access to the performing arts.

¶ 40 While Wheaton Drama benefits some individuals other than its members, the evidence shows that the property was most frequently used for meetings and rehearsals for members, which is consistent with Wheaton Drama's stated purposes in its articles of incorporation. *Cf. Du Page Art League*, 177 Ill. App. 3d at 898 901-02 (the plaintiff's primary purpose was to

benefit its members, even though it offered classes for adults and children and its galleries were open to the public without charge). As previously discussed, free tickets to performances were provided only to limited organizations on five days of the year, and though there were technically ticket fee waivers available for any performance, there were significant obstacles in that the policy was not advertised, people seeking the benefit were required to provide a "story," and whether the person received a free ticket could depend on whether the show was otherwise sold out. We have already determined that *Highland Park Women's Club* is largely unhelpful to Wheaton Drama's position because there the Department had already determined that the majority of the property was exempt. Wheaton Drama provided fee-based workshops for children and teens, but even those were limited to one-week periods in the summer months. Accordingly, the sixth factor weighs against Wheaton Drama's position.

¶ 41 It is apparent from the record that Wheaton Drama is a non-profit organization that is an asset to its community. However, the limited question before us is whether it qualifies for a property tax exemption under section 15-65. Considering all of the evidence adduced at the Department's hearing, and our assessment that almost all of the *Korzen* factors weigh against a determination that Wheaton Drama is a charitable institution and that the property is used for charitable purposes, we cannot say that the Department's ruling, that Wheaton Drama was not entitled to a property tax exemption under section 15-65, was clearly erroneous.

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, we affirm the judgment of the Du Page County circuit court, which affirmed the Department's administrative ruling that Wheaton Drama was not entitled to a property tax exemption from 2012 real estate taxes under section 15-65.

¶ 44 Affirmed.