

JUDICIAL DEFINITION OF RELIGIOUS USE IN ZONING CASES

In 1971, the Christ Episcopal Church in Manhasset, New York and the Long Island Jewish Medical Center jointly operated a "drug center"¹ in the Church's parish house. The drug center was designed to provide counseling and guidance for non-addicted youths in the early stages of experimentation with marijuana and other soft drugs.² Finances, supervision and a paid staff³ were provided by the Medical Center, while both the Church and the Medical Center undertook certain security measures. The minister remained in daily contact with the participating youths and the staff. Those accepted as participants were from homes in the immediate neighborhood of the Church, as well as in surrounding communities. Evidence of how many of the participants were members of the Church's congregation was not presented.

In *Slevin v. Long Island Jewish Medical Center*,⁴ neighbors of the Church filed an injunction suit claiming that operation of a drug center was not a religious use and, therefore, illegal under current zoning provisions. Both parties conceded that the local zoning ordinance authorized the construction of the Church and any buildings on the church property that were used "exclusively for religious purposes."⁵ The Church and Medical Center contended that operation

1. Defendants attempted to label the activity as a "day care center" since such a center was construed as an acceptable religious use in *Unitarian Universalist Church v. Shorten*, 63 Misc. 2d 978, 314 N.Y.S.2d 66 (Sup. Ct. 1970). Plaintiffs claimed that the nomenclature did not accurately characterize the activity since the only youths participating were those involved with the use of the milder forms of drugs. The court agreed with plaintiffs' contention and used the term "drug center" throughout the opinion. *Slevin v. Long Island Jewish Medical Center*, 66 Misc. 2d 312, 313, 319 N.Y.S.2d 937, 940 (Sup. Ct. 1971).

2. The drug center was not equipped with residential facilities, an overnight staff, medicines or drugs for the detoxification of addicted drug users. Therefore, the addicted drug user or the user of hard drugs was excluded from the program. Careful screening of all potential participants and certain security measures were adopted to exclude the addicted drug user.

3. The staff consisted of medical, social, psychiatric, vocational and educational counselors.

4. 66 Misc. 2d 312, 319 N.Y.S.2d 937 (Sup. Ct. 1971).

5. The Church property was in a "Residence B" district as designated by a Town of North Hempstead building ordinance. This classification authorized

of a drug center was a use for religious purposes and legal under current zoning laws. The Supreme Court of Nassau County, New York, denying in part plaintiffs' motions for summary judgment, held the drug center to be a religious use for purposes of zoning.⁶

On its face, *Slevin* is an important continuation of the New York line of cases which have broadly defined religious use for zoning purposes as "conduct with a religious purpose."⁷ In New York, the only criterion for defining religious use is the determination of whether that use is an activity with a religious purpose. An activity with a religious purpose is any conduct which is in accordance with the doctrines, practices or regulations of a religious organization.⁸

By utilizing a broad definition of religious use, the New York courts appear to have one objective—to avoid limiting the activities of a church or religious organization to merely conducting worship services. In the landmark decision, *Community Synagogue v. Bates*,⁹ the court stated:

A church is more than merely an edifice affording people the opportunity to worship God. Strictly religious uses and activities are more than prayer and sacrifice and all churches recognize that the area of their responsibility is broader than leading the congregation in prayer.

It is true that the religious aim of strengthening the congregation through fellowship may not be permitted to be perverted into a

churches and other buildings used only for religious purposes, specifying the permissibility of parochial schools and parish houses. *Id.* at 313, 319 N.Y.S.2d at 941.

6. Plaintiffs contended that if the drug center was a religious use, it was still a threat to the public health, safety, morals and welfare of the community because of its proximity to a school and the public library. The allegation claimed the health and morals of children were endangered. The court held that there were not sufficient facts to rule on this issue; therefore, the case was remanded to the trial court for a review of the facts in this area. *Id.* at 319-21, 319 N.Y.S.2d at 947-48.

7. 66 Misc. 2d at 316, 319 N.Y.S.2d at 943.

8. *In re Community Synagogue v. Bates*, 1 N.Y.2d 445, 453, 136 N.E.2d 488, 493, 154 N.Y.S.2d 15, 21-22 (1956); *In re Faith for Today, Inc.*, 11 App. Div. 2d 718, 204 N.Y.S.2d 751 (1960). *See also* *Shaffer v. Temple Beth Emeth*, 198 App. Div. 607, 197 N.Y.S. 841 (1921) (where the court took judicial notice that the modern church involved more activities than merely performing sacrifices and leading worship); *In re Garden City Jewish Center*, 2 Misc. 2d 1009, 157 N.Y.S.2d 435 (Sup. Ct. 1956).

9. 1 N.Y.2d 445, 136 N.E.2d 488, 154 N.Y.S.2d 15 (1956).

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justification for establishing a place of entertainment, such as a country club.¹⁰ (Emphasis added.)

Recognizing that the activities of any religious organization may transcend the traditional roles of prayer and worship, New York courts have placed only one requirement on the religious use of property: that such use be justified as incidental to the doctrines, practices, creed or rules of a religious denomination or organization.

The significance of the *Bates* decision was its impact on subsequent New York decisions. Utilizing the reference in *Bates* to the establishment of a country club as a perversion of the definition of religious use,¹¹ New York courts displayed a willingness to find most church-associated activities which fell between the specified limits of leading worship and establishing a country club to be religious uses.

The decisions subsequent to *Bates* were rendered in two phases. The earlier decisions held that a variety of activities provided for the use of the members of a particular congregation or religious sect were religious uses under the zoning ordinances.¹² This interpretation was deemed to include secular functions, such as the operation of radio, television and publishing facilities, because a particular religious organization utilized these means to spread its doctrine.¹³ In the later decisions, culminating in the *Slevin* opinion, the courts construed the definition of religious use to include activities which were not contemplated for the sole use of a single congregation or parish.¹⁴ In two of the later cases the definition has even included activities not under the exclusive control and supervision of a religious organization.¹⁵ Thus, in the *Slevin* decision, the court found that a commu-

10. *Id.* at 453, 136 N.E.2d at 493, 154 N.Y.S.2d at 22.

11. *Id.*

12. The activities in the following cases were held to be religious uses: *Diocese of Rochester v. Planning Bd.*, 1 N.Y.2d 508, 136 N.E.2d 827, 154 N.Y.S.2d (1956) (parish house and convent); *Temple Israel v. Plaut*, 10 Misc. 2d 1084, 170 N.Y.S.2d 393 (Sup. Ct. 1957) (recreational facilities and gymnasium); *In re Garden City Jewish Center*, 2 Misc. 2d 1009, 157 N.Y.S.2d 435 (Sup. Ct. 1956) (social and community service groups).

13. *In re Faith for Today, Inc.*, 11 App. Div. 2d 718, 204 N.Y.S.2d 751 (1960).

14. *Westbury Hebrew Congregation, Inc. v. Downer*, 59 Misc. 2d 387, 302 N.Y.S.2d 923 (Sup. Ct. 1969); *Diocese of Central New York v. Schwarzer*, 23 Misc. 2d 515, 199 N.Y.S.2d 939 (Sup. Ct. 1960).

15. *Unitarian Universalist Church v. Shorten*, 63 Misc. 2d 978, 982, 314 N.Y.S.2d 66, 70 (Sup. Ct. 1970); *Westbury Hebrew Congregation, Inc. v. Downer*, 59 Misc. 2d 387, 388, 302 N.Y.S.2d 923, 925 (Sup. Ct. 1969).

nity drug center jointly operated by a church and a hospital was permissible under the zoning exception permitting the religious use of property.

Decisions in several other states follow the reasoning of the New York courts in broadly construing religious use to be "conduct with a religious purpose."¹⁶ However, a few jurisdictions, notably Texas and New Jersey, have looked to other criteria in construing religious use. The lower courts in both those states have formulated narrow definitions of the term "church," thus limiting the definitions of religious use and religious purpose.¹⁷ In several decisions, these courts have construed the term "church" in its general and traditionally accepted meaning.¹⁸ The New Jersey lower court held that the usual meaning of church was a place where people gathered for worship and conducted such services and administrative work as pertained to that worship;¹⁹ and, specifically rejected the opinion expressed by the Indiana Appellate Court²⁰ which held that the term "church" included any building used either for worship or purposes connected with the faith of a religious organization.²¹ Furthermore, the New Jersey court stated that implicit in the classification of "accessory use"²²

16. *Garbaty v. Norwalk Jewish Center, Inc.*, 148 Conn. 376, 171 A.2d 197 (1961); *Synod of Chesapeake v. City of Newark*, 254 A.2d 611 (Del. Ch. 1969); *Corporation of Presiding Bishops v. Ashton*, 92 Idaho 571, 448 P.2d 185 (1968); *Marht v. First Church of Christ Scientist*, 75 Ohio L. Abs. 5, 142 N.E.2d 567 (C.P. 1955).

17. *Sexton v. Bates*, 17 N.J. Super. 246, 85 A.2d 833 (Super. Ct. 1951) and cases cited therein; *Heard v. City of Dallas*, 456 S.W.2d 440 (Tex. Civ. App. 1970); *Coe v. City of Dallas*, 266 S.W.2d 181 (Tex. Civ. App. 1953).

18. *Sexton v. Bates*, 17 N.J. Super. 246, 253, 85 A.2d 833, 836 (Super. Ct. 1951); *Heard v. City of Dallas*, 456 S.W.2d 440, 444 (Tex. Civ. App. 1970).

19. 17 N.J. Super. at 255, 85 A.2d at 837.

20. *Board of Zoning Appeals v. Wheaton*, 118 Ind. App. 38, 76 N.E.2d 597 (1948).

21. The *Wheaton* court citing *Scott v. Roman Catholic Archbishop, Diocese of Oregon*, 83 Ore. 97, 108, 163 P. 88, 91 (1917) held that the local zoning ordinance, providing for the construction of a church, included the construction of a convent and school:

A building may be erected for church purposes other than those connected with divine worship. The word "church" applies not only to a building used for worship, but to any body of Christians holding and propagating a particular form of belief. . . ; and any building intended to be used primarily for purposes connected with the faith of such religious organization may be said to be used for church purposes . . . and in this sense the erection of a convent is as much a church purpose as a house of general worship.

Id. at 46, 76 N.E.2d at 601.

22. The zoning ordinance in this case specifically provided for the construction of a church or synagogue and any use "accessory" to these specific provisions.

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was the requirement that a building accessory to the functions of the church be located on the same property.²³ This definition indicates that the religious use of any building will be construed as narrowly as the term "church."

Slevin stands in opposition to such a narrow definition of church or religious use as applied by the New Jersey court. The *Slevin* decision emphasizes that any activity associated with a church and its religious purpose will be classified a religious use for zoning.²⁴ A comparison of the Texas opinion, *Heard v. City of Dallas*,²⁵ with *Slevin* reflects the conflicting holdings. The facts in *Heard* are similar to those in *Slevin*. A day care facility for the preschool children of working mothers was operated by the church minister and his wife in the church rectory. Although religious training was a part of the children's daily program, other subjects and recreational activities were also included. The construction of a church, rectory or any place of "worship and religious training" of a recognized religion was permitted by the Dallas zoning ordinance.²⁶ The *Heard* decision, representative of the decisions in both Texas and New Jersey, held that the usual and traditional meanings would be applied to the terms "church" and "church uses;" thus placing the definitions within the narrow confines of worship, church school or such closely related activities.²⁷ Any intentions to include activities that are not directly related to worship, sacrifice or religious training were not acceptable for zoning purposes.²⁸

The Supreme Court of Pennsylvania adopted a totally different

"Accessory use" is used interchangeably with religious use. 17 N.J. Super. at 249, 85 A.2d at 834.

23. *Id.* at 258, 85 A.2d at 839.

24. It should be noted that the religious use of any property is always subject to the test of whether the activity endangers the public health, safety, morals or welfare. In New York and several other states, churches and religious uses are immune from many of the determining factors in this area. For a discussion of this issue see Note, *Churches and Zoning*, 70 HARV. L. REV. 1428 (1957). See also *Diocese of Rochester v. Planning Bd.*, 1 N.Y.2d 508, 136 N.E.2d 827, 154 N.Y.S.2d 849 (1956).

25. 456 S.W.2d 440 (Tex. Civ. App. 1970).

26. *Id.* at 442.

27. *Id.* at 444. See also *Coe v. City of Dallas*, 266 S.W.2d 181, 183 (Tex. Civ. App. 1953).

28. *Sexton v. Bates*, 17 N.J. Super. 246, 85 A.2d 833 (Super. Ct. 1951) (presence of tiled bathrooms and beauty salon removed the ritualarium from the strict religious use category); *Heard v. City of Dallas*, 456 S.W.2d 440 (Tex. Civ. App. 1970) (normal activities of a school were not directly related to operation of a church).

standard.²⁹ While the reasoning in *Slevin* looked only to the religious purpose of the activity, the Pennsylvania Court examined the purpose of the zoning ordinance and the nature of the proposed use. Asked to consider the permissibility of a cemetery under the zoning provisions,³⁰ the majority ignored the issue of whether a cemetery was a religious use.³¹ Appellants argued that a cemetery was a religious use because burial was an important part of the creed and doctrine of the Russian Orthodox Church, making the construction of a cemetery a use with a religious purpose. Instead of considering this issue, the majority noted the purpose of the zoning ordinance: "area homogeneity."³² In establishing a residential district, the majority stated, the drafters of the zoning ordinance intended to include only those uses which were homogeneous to the continued growth and enjoyment of the area. A cemetery, basically a secular use of land, was not conducive to the continued enjoyment of a residential neighborhood. Merely because the cemetery would be owned by a religious organization did not change the fact that a cemetery would detract from the purpose of the zoning provisions, which was to establish a residential district. Based on this reasoning the majority held a cemetery was not a religious use.³³

Slevin is distinguishable from the Pennsylvania decision in its holding concerning the effect of the religious use of property on the character of the neighborhood. When asked to consider this issue, the court stated: "If there are limits upon the extent to which the residential character of a neighborhood can be destroyed by a religious user . . . they are not apparent in . . . [the decisions rendered in New York]."³⁴ The court refused to hold that the religious use of property, even when liberally construed to include a drug center,

29. Appeal of Russian Orthodox Church, 397 Pa. 126, 152 A.2d 489 (1959).

30. Local zoning provisions specifically allowed any educational, religious or philanthropic use of property, as well as a hospital in a residential district. *Id.* at 131, 152 A.2d at 492.

31. *Id.* at 131, 152 A.2d at 492 (dissenting opinion).

32. *Id.* at 128, 152 A.2d at 490.

33. *Id.* at 129, 152 A.2d at 491. *But see* Overbrook Farms Club v. Zoning Bd. of Adjustment, 351 Pa. 77, 40 A.2d 423 (1945), where the court examined the use of a house as a synagogue, rabbi's office and private home, in terms of the traditional role of the church in the United States. In light of that tradition, the court found the utilization of the home a religious use under the zoning ordinance.

34. 66 Misc. 2d at 316, 319 N.Y.S.2d at 944.

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would be detrimental to the character of the neighborhood as contemplated by the drafters of the zoning ordinances.

Other jurisdictions have established narrow doctrines by refusing to include incidental functions in the definition of religious use. The Colorado Supreme Court held that the parking of buses on church property would have to be proven a function incidental and commonly associated with church operations.³⁵ No evidence was presented that buses were essential to the operation of a church or that they were customarily used; therefore, the court did not find the parking of buses a religious use under the zoning laws.³⁶ The *Slevin* doctrine looks only to the purpose of the activity in light of the rules and practices of the Church. Where transportation was necessary to carry members to and from services, as was the case in Colorado, the New York lower courts would appear inclined to hold the parking of buses on church property a religious use.

The *Slevin* decision is an unquestioned reaffirmation of the New York doctrine of broadly construing religious use for zoning purposes. A year prior to *Slevin*, in *Unitarian Universalist Church of Central Nassau v. Shorten*,³⁷ this same court held a day care center, operated jointly by a church and a state agency, to be a religious use.³⁸ Decisions prior to *Slevin*, utilizing the reasoning in *Bates*, have established a broad but undefined construction of religious use. Most courts have been willing to find an activity lying somewhere between worship and the establishment of a country club as a religious use, without explicitly stating the reasoning. *Slevin* carefully reasons why a drug center is within the religious purpose: "The challenges of drugs to the human mind and spirit can be fairly met by the moving thrust of religious institutions. Indeed the essential moral alienation of drug abuse seems most directly a religious problem. . . ."³⁹ Furthermore, "few things are more critical to the brotherhood of man and the religious activity of the church than assisting, in every way possible, to bring community youngsters to maturity as healthy, responsible, contributing members of the community."⁴⁰ Since the human

35. East Side Baptist Church v. Klein, ——— Colo. ———, 487 P.2d 549 (1971).

36. *Id.* at ———, 487 P.2d at 550.

37. 63 Misc. 2d 978, 314 N.Y.S.2d 66 (Sup. Ct. 1970).

38. *Id.* at 982-83, 314 N.Y.S.2d at 71-72.

39. 66 Misc. 2d at 317, 319 N.Y.S.2d at 944.

40. *Id.* at 317, 319 N.Y.S.2d at 945.

spirit and morals are a major concern of any religious institution, the *Slevin* court did not merely find that the counseling of drug users falls within the parameters of religious use as defined in *Bates*, but that it is a religious purpose directly related to all religious doctrines. Any activity so directly related to this religious purpose must be classified a religious use.

Slevin is explicit in its dismissal of plaintiffs' contentions that the drug center is not a religious use unless operated solely by a church for the benefit of the members of the congregation. The court held that such a contention was diametrically opposed to the "modern current of pan-ecumenicalism" and the "interchange of use of religious institutions in our society today."⁴¹

By relying on current attitudes concerning the ecumenical role of the modern church, *Slevin* displays the court's intentions to lay as few limits on the purposes and activities of the Church as possible. New York courts will look only to religious purpose, rejecting all other criteria to measure the parameters of the definition of religious use for zoning purposes. Therefore, so long as the courts can justify an activity as incidental to the doctrines, practices or rules of a religious organization, that activity will be construed to be a religious use.

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41. *Id.* at 318, 319 N.Y.S.2d at 946.